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BILL OF COMPLAINT.

Filed November 18, 1926

In Chancery of New Jersey

To the Honorable Edwin Robert Walker, Chan- 10
cellor of the State of New Jersey:

The complainant, Elizabeth Sash, Door and Supply Company, a New Jersey corporation, with its principal office in the City of Elizabeth, County of Union and State of New Jersey, respectfully shows that:

1. On November 27, 1925, George Beisley being indebted to complainant in the sum of forty-four hundred (\$4,400) dollars executed to it a note of that date to secure that sum, payable on February 27, 1926, with interest at the rate of three per cent. per annum. 20

2. To secure payment of the said note Lucy Beisley and George Beisley, her husband (mother and father of the George Beisley who executed said note), executed to said complainant, a mortgage of even date with the note; and thereby conveyed to it in fee the land hereinafter described, on the express condition that such conveyance should be void if payment should be made according to the terms of the note, which mortgage having been first duly acknowledged and the certificate of acknowledgment duly endorsed thereon was recorded in the office of the Register of Essex County in Book X-55 of Mortgages for Essex County, pages 583-585. 30

Bill of Complaint.

3. The mortgaged premises are described as follows:

10 BEGINNING in the northerly line of Spencer Street at a point therein distant one hundred feet easterly from the intersection of the same and the easterly line of Alexander Street; thence easterly along the line of Spencer Street fifty feet; thence northerly at right angles to Spencer Street one hundred feet; thence westerly parallel with Spencer Street fifty feet; thence southerly at right angles to Spencer Street one hundred feet to the northerly line of Spencer Street and the place of BEGINNING.

20 Being known and designated as lots #30 and 31, Block N on Map of Greater Newark Park, situate in the City of Newark, Essex County, N. J., surveyed March and August 1906 by Edward G. Kempf of Newark.

Being the same premises conveyed to the said Lucy Beisley by deed dated March 24, 1924, and recorded in the Essex County Register's office in Book F-71 of Deeds, page 444.

30 4. Any interest which said Lucy Beisley has in said lands and premises is subject to the lien of complainant's mortgage.

5. Any claim or interest which said George Beisley, husband of Lucy Beisley, may have in said land and premises, by way of inchoate right of curtesy or otherwise, is subject to the lien of the complainant's mortgage.

40 6. On April 11, 1925, said Lucy Beisley attempted to mortgage said land and premises to Unity Building and Loan Association of Newark, N. J., a New Jersey corporation, for five

Bill of Complaint.

thousand (\$5,000) dollars, which attempted mortgage was on April 23, 1925, recorded in the Register's office of Essex County in Book Q-53 of Mortgages for said county, page 515. Said Lucy Beisley was married to said George Beisley (senior) at the time of the execution and delivery of said mortgage, and her husband, George Beisley, did not join with said Lucy Beisley in the making and execution of said mortgage; said mortgage is consequently void and of no effect. 10

Any interest which said Unity Building and Loan Association of Newark, N. J., may have in said premises is subject to the lien of complainant's mortgage.

7. The greater amount of the principal with interest thereon at three per cent. per annum from November 27, 1925, to February 27, 1926, and at six per cent. per annum from February 27, 1926, is due upon complainant's note (or renewal note) and mortgage. 20

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

1. That Lucy Beisley, George Beisley, her husband; George Beisley, her son, and Unity Building and Loan Association of Newark, N. J., who are the defendants to this suit, may answer this bill of complaint and each statement therein made; 30

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

3. That the defendants, or one of them, may be decreed to pay complainant the amount so found due, with interest and costs, by a short 40

Bill of Complaint.

day, to be appointed by this court; and that in default of such payment, they, and each of them, be debarred and foreclosed of all equity of redemption in said lands; or

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

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

AARON MARDER,
Solicitor and Counsel with Complainant.

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**DECREE PRO CONFESSO AND ORDER
OF REFERENCE.**

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p style="text-align: center;">ELIZABETH SASH, DOOR & SUPPLY COMPANY, a New Jersey corporation, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">LUCY BEISLEY, <i>et als.</i>, <i>Defendants.</i></p>	<p style="font-size: 4em; line-height: 1;">}</p>	<p><i>On Bill, etc.</i></p> <p><i>Decree Pro Confesso and Order of Reference. Docket 62. Page 361.</i></p>	<p>10</p>
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This cause coming on to be heard on the return of an order to show cause herein dated May 9, 1927, why the defendant, Lucy Beisley, should not be permitted to file an answer herein, Walter A. Beers, Esq., appearing for the defendant, Lucy Beisley, and Aaron Marder, Esq., appearing for the complainant, and it appearing that said Lucy Beisley should not be permitted to file an answer herein, and that the only question is as to the amount of the mortgage being foreclosed; and it appearing further that process of subpoena for the appearance of the defendants, Lucy Beisley, George Beisley, her husband, and George Beisley, her son, has been duly issued and served upon said defendants, nor has either of them filed any plea, demurrer or answer to the bill of complaint within the time limited by law and have wholly failed and neglected so to do;

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Decree Pro Confesso and Order of Reference.

It is thereupon, on this first day of June, 1927,
 ORDERED, ADJUDGED and DECREED that said order
 to show cause dated May 9, 1927, be and the
 same is hereby discharged, and that the said
 bill be taken as confessed against the said Lucy
 Beisley, George Beisley, her husband, and
 10 George Beisley, her son; and that it be referred
 to Lionel P. Kristeller, Esq., one of the Masters
 of this court, to ascertain and report the amount
 due to said complainant for principal and in-
 terest upon the mortgage held by it upon the
 premises mentioned and described in the said
 bill of complaint, and that the said Master do
 make his report with all convenient speed.

Further ORDERED that defendant, ^{Unity Bldg. Loan Ass'n} ~~Lucy Beis-~~
 ley, be and is hereby required to plead, answer
 20 or demur to said bill of complaint within five
 days after service of a copy of this order.

And all further equity is reserved until the
 coming in of the said Master's report.

Further ORDERED that said Master take the
 proofs of complainant and defendant Lucy Beis-
 ley with respect to the amount due on said
 mortgage upon notice to the several defendants.

Respectfully advised,

30 MAJA LEON BERRY.

I consent to the making and entering of the
 decree pro confesso against the defendants,
 George Beisley, son of Lucy Beisley, and
 George Beisley, husband of Lucy Beisley.

WALTER A. BEERS,
 Solicitor for said Defendants.

MASTER'S REPORT.

Filed November 17, 1927.

IN CHANCERY OF NEW JERSEY.

Between

ELIZABETH SASH, DOOR &
SUPPLY COMPANY, a New
Jersey corporation,
Complainant,

and

LUCY BEISLEY, *et al.*,
Defendants.

On Bill, etc.

*Master's
Report.*

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In pursuance of an order of this court entered in the above-entitled cause, bearing date the first day of June, nineteen hundred and twenty-seven, I have been attended by the solicitor of the complainant and the solicitor of the defendant Lucy Beisley, and in the presence of the parties attending me I have considered of the matters thereby referred to me.

And the solicitor of the complainant produced before me the mortgage in its bill of complaint mentioned, bearing date the twenty-seventh day of November, nineteen hundred and twenty-five, made and executed by Lucy Beisley and George Beisley, her husband, to the said complainant, which mortgage was duly acknowledged according to law, by the said Lucy Beisley and George Beisley, her husband, and recorded as in the bill mentioned as appears by the endorsements thereon, which said mortgage is marked "Exhibit C. 2" on the part of the complainant.

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Master's Report.

No formal answer was filed in these proceedings by the defendant Lucy Beisley, but the defense sought to be interposed may be gleaned from an examination of the petition and affidavit filed by Lucy Beisley upon an application to permit her to defend this proceeding. This in
10 short is a plea of payment, and the evidence sought to be introduced was that Mrs. Beisley did not intend to sign a mortgage for four thousand four hundred dollars (\$4,400.00), but only intended to guaranty by her mortgage an account not to exceed two thousand two hundred dollars (\$2,200.00). Such a defense requires the defendant to prove it by the greater weight of the evidence. The defendant, Lucy Beisley, has not established to my satisfaction, by the greater
20 weight of the evidence that she did not know what she was signing, and I, therefore, find that the mortgage of four thousand four hundred dollars (\$4,400.00) was given by the defendant, Lucy Beisley, to the complainant to secure to the complainant not only the then present debt of her son, George Beisley, but was to secure for her son, George Beisley, future credits of approximately two thousand dollars (\$2,000.00).

I further find that the credits have all been
30 given by the complainant and that the complainant is entitled to recover the amount due upon said mortgage, less the credits due to George Beisley, and inasmuch as counsel has stipulated as to the accuracy of the books of the complainant, I find that there is due to the complainant on its mortgage for principal and interest on this day the sum of three thousand two hundred and ten dollars (\$3,210.00).

And I further certify and report that the
40 schedule hereunto annexed, marked "Schedule

Master's Report.

1'' and made part of this my report, contains a statement and account of the principal and interest due to the complainant on its mortgage, to which for greater certainty I refer.

And I further certify and report that it is necessary and advisable that the whole of the mortgaged premises should be sold to raise and pay the moneys so due to the complainant, and the surplus arising from such sale, if any there be, should be brought into this court to await the further order thereof. 10

I return herewith the testimony taken before me.

All of which is respectfully submitted, this twenty-eighth day of October, nineteen hundred and twenty-seven.

LIONEL P. KRISTELLER, 20
Master in Chancery of New Jersey.

SCHEDULE 1.

Renewal note bearing date the twenty-eighth day of August, Nineteen Hundred and Twenty-six, due in one month from date, in the sum of Three Thousand Dollars (\$3,000.00), and secured by the mortgage in the complainant's bill mentioned, upon which there was advanced by the complainant, the sum of.....	\$3,000.00	30
Interest for fourteen months to October 28, 1927	210.00	
Total due complainant, October 28, 1927.	\$3,210.00	

LIONEL P. KRISTELLER, 40
Master in Chancery of New Jersey.

EXCEPTIONS TO MASTER'S REPORT.

Filed November 21, 1927.

IN CHANCERY OF NEW JERSEY.

10 *Between*

ELIZABETH SASH, DOOR &
SUPPLY COMPANY, a New
Jersey corporation,

Complainant,

and

LUCY BEISLEY, *et al.*,

Defendants.

On Bill, etc.

*Exceptions to
Master's
Report.*

20

This defendant, Lucy Beisley, hereby excepts to the report filed in this cause by Lionel P. Kristeller, one of the Masters of this court, bearing date October 28, 1927, for the following reasons:

1. The Master assumed the debt of George Beisley, to secure which the defendant Lucy Beisley gave her mortgage, was \$4,400, notwithstanding the complainant's books showed the debt at that time to be \$4,279.16.

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2. The Master failed to credit as a payment made on the complainant's note, \$2,000, paid December 22, 1925, by George Beisley on account of his indebtedness then existing for which the original note, held by the complainant, was given.

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3. The Master found that the complainant's mortgage was given to secure "a present debt" of George Beisley and also "future credits of approximately \$2,000," which finding and the evidence supporting it alters, varies and contradicts the term of the mortgage, as follows: "George

Exceptions to Master's Report.

Beisley is justly indebted to the party of the second part in the sum of \$4,400 lawful money secured to be paid by his note bearing even date with these presents and due three months from the date herewith, with interest at 3%."

4. The evidence does not support the Master's finding that the complainant's mortgage was given to secure "future credits of approximately \$2,000," because the defendant George Beisley was indebted on complainant's own testimony in the sum of \$4,279.16 at the time of execution and delivery of the mortgage, so there could be no future credit over \$120.84.

10

5. If the Master's finding that the complainant's mortgage was given to secure future credits is correct, the Master failed to credit, as a payment on the mortgage, the \$2,120.84, representing the undistributed surplus credit or proceeds of the original note which remained undistributed or paid to George Beisley on February 27, 1926, the due date of the original note as expressed in both note and mortgage; which said sum or surplus credit was given to George Beisley on March 30, 1926.

20

6. The Master failed to report that the greater weight of evidence disclosed that the petitioner intended to guaranty a debt of approximately \$2,200 in that the debt of \$4,279.16, at the time of execution of complainant's mortgage, was to be reduced by payment of \$2,000.

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7. The Master had no right or authority to report whether Lucy Beisley knew what she was signing, the reference requiring him to ascertain the amount due as though the mortgage were valid upon execution—further equity being reserved by said order and reference.

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Exceptions to Master's Report.

8. The Master failed to report, as disclosed by the depositions submitted by him, that the complainant extended credit for a consideration to the debtor, George Beisley, by accepting several renewal notes, each for three months, without the consent of the defendant Lucy Beisley, after the due date of the original note to secure which Lucy Beisley executed the mortgage to the complainant; which extension of credit released the defendant Lucy Beisley from liability for the debt evidenced by the original note and discharged her property from the debt for the following reasons:

(a) The defendant Lucy Beisley, on execution of the mortgage, became a surety. Extending credit to a principal debtor without the surety's consent discharged the surety.

(b) The defendant Lucy Beisley pledged her property as collateral for the payment of the defendant George Beisley's debt and as such is entitled to all rights as though she were a surety.

(c) The defendant Lucy Beisley executed the complainant's mortgage as a limited guaranty. Extending credit to the principal debtor beyond the limitation discharged the guarantor from liability.

8. The Master failed to report that the defendant George Beisley paid the complainant's note, for which the mortgage was given to secure, upon maturity, and the complainant accepted another note at the time of maturity for other debts that were owed by George Beisley at the time of execution of the original note.

WALTER A. BEERS,
Solicitor of Defendant Lucy Beisley.

ORDER.

Filed July 3, 1928.

IN CHANCERY OF NEW JERSEY.

<i>Between</i>			
ELIZABETH SASH, DOOR & SUPPLY COMPANY, a New Jersey corporation, <i>Complainant,</i>		<i>On Bill, etc.</i>	10
<i>and</i>		<i>On Exceptions to Master's Report, &c.</i>	
LUCY BEISLEY, <i>et al.</i> , <i>Defendants.</i>		<i>Order.</i>	
		<i>Docket 62, Page 361.</i>	
			20

Exceptions having been filed by the defendant Lucy Beisley to the report by Lionel P. Kristeller, Esq., one of the Masters of this court, on matters referred to him by an order of this court made on the 1st day of June, 1927, and the matter coming on to be heard in the presence of Aaron Marder, Esq., solicitor of the complainant, and Walter A. Beers, Esq., solicitor of defendant Lucy Beisley, and the Court having considered the matter and the arguments of counsel thereon, it is, on this 3rd day of July, 1928, ORDERED, that all of the exceptions to the Master's report be, and the same are hereby overruled.

It is further ORDERED that said Master's report be, and the same is hereby, in all things, ratified and confirmed, according to the true tenor and meaning thereof.

It is further ORDERED that the sum of \$150 be allowed and paid to the solicitor of complainant by the defendant Lucy Beisley, to be included in

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Order.

the taxed bill of costs and collected with the other items of said bill.

10 It is further ORDERED that the sum of \$100 be allowed and paid to the said Master by said defendant Lucy Beisley, to be included in the taxed bill of costs and collected with the other items of said bill; this allowance to be in lieu of the usual Master's fees on a report.

It is further ORDERED that the application of said defendant Lucy Beisley for leave to file an answer *nunc pro tunc* be, and the same is hereby denied.

Respectively advised,

MAJA LEON BERRY,
V.-C.

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NOTICE OF APPEAL.

Filed July 12, 1928.

IN CHANCERY OF NEW JERSEY.

Between

ELIZABETH SASH, DOOR &
SUPPLY COMPANY, a New
Jersey corporation,

Complainant,

and

LUCY BEISLEY, *et al.*,

Defendants.

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On Bill, etc.

*Notice of
Appeal.*

The defendant Lucy Beisley hereby appeals from the order made in the above-entitled cause by the Chancellor on the advise of Vice-Chancellor Maja Leon Berry, on July 3, 1928, which order overruled the exceptions to the Master's report to the Court of Errors and Appeals in the Last Resort in All Causes.

20

Dated, July 9, 1928.

WALTER A. BEERS,
Solicitor for and of Counsel
with the Defendant Lucy Beisley.

30

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

WALTER A. BEERS,
Of Counsel with Defendant Lucy Beisley.

Service of a copy of the within notice of appeal is hereby acknowledged this day of July, 1928.

Carow Marder 40
Solicitor of Complainant.

PETITION OF APPEAL.

Filed August 8, 1928.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10

 ELIZABETH SASH, DOOR & SUPPLY
COMPANY, a New Jersey cor-
poration,
*Complainant-Appellee,**vs.*LUCY BEISLEY, *et al.*,*Defendant-Appellant.**On Appeal
from the
Court of
Chancery.**Petition of
Appeal.*20 To the Honorable the Court of Errors and Ap-
peals in the Last Resort in All Causes:The petition of Lucy Beisley, the appellant in
the above-entitled cause, respectfully shows that:

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1. Petitioner finds herself aggrieved by an
order made in the Court of Chancery by his
Honor Edwin Robert Walker, Chancellor of the
State of New Jersey, bearing date July 3, 1928,
in a certain cause in said Court of Chancery
wherein the said Elizabeth Sash, Door and Sup-
ply Company was complainant and the said Lucy
Beisley and others were defendants in this re-
spect, to wit, that the said order adjudges that
the appellant's exceptions to a report filed by
Lionel P. Kristeller, Esq., one of the Masters
of the Court of Chancery, be overruled and that
the said Master's report stand in all things con-
firmed.

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And petitioner appeals from the order of the
Chancellor which decrees as aforesaid upon the
ground that the same is erroneous in that:

Petition of Appeal.

(a) The Master reported as a fact that a mortgage made by petitioner, given to secure her son's existing indebtedness, at the time of its execution was also given to secure "future credits of approximately \$2,000," which finding, and any evidence supporting it, alters, varies and contradicts the terms of the mortgage as follows: 10
 "George Beisley is justly indebted to the party of the second part in the sum of \$4,400 lawful money, secured by his note bearing even date with these presents and due three months from the date herewith, with interest at 3%."

(b) The evidence does not support the Master's finding that the complainant's mortgage was given to secure "future credits of approximately \$2,000," because the defendant George Beisley was indebted on complainant's own testimony in the sum of \$4,279.16 at the time of execution and delivery of the mortgage, which was made in the sum of \$4,400, so there could be no future credit over \$120.84. 20

(c) The Master, in his report, failed to credit as a payment made on the complainant's note, \$2,000 paid December 22, 1925, by the petitioner's son, George Beisley, on account of his indebtedness then existing, for which the original note, held by the complainant, was given. 30

(d) The Master failed to report that the greater weight of evidence disclosed that the petitioner intended to guaranty a debt of approximately \$2,200 in that the debt of \$4,279.16, at the time of execution of complainant's mortgage, was to be reduced by payment of \$2,000.

(e) The Master failed to report that the mortgage made by the petitioner secured her son's debt represented by a note in the sum of \$4,400, 40

Petition of Appeal.

which complainant and petitioner's son, George Beisley, approximated as his debt and that this debt, which actually was \$4,279.16, was reduced by payments as follows: December 22, 1925, \$2,000; February 6, 1926, \$1,000; May 8, 1926, \$450.17.

- 10 (f) The Master should not have reported that the petitioner secured a debt of her son arising in the future after execution of the mortgage, because the bill of complaint contained no allegation under which it could be proven.

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

WALTER A. BEERS,
Solicitor for and of Counsel with Appellant.

August 7, 1928.

Service of a copy of the within petition is hereby acknowledged. I consent to the filing of same as of time.

30 *Claron Marder*
Solicitor for Complainant-Appellee.

ANSWER TO PETITION OF APPEAL.

Filed August 15, 1928.

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

ELIZABETH SASH, DOOR & SUPPLY
COMPANY, a New Jersey cor-
poration,

*Complainant-Appellee,**vs.*LUCY BEISLEY, *et al.*,*Defendant-Appellant.*

*On Appeal
from the
Court of
Chancery.*

*Answer to
Petition of
Appeal.*

10

The answer of Elizabeth Sash, Door and Sup- 20
ply Company, a New Jersey corporation, the
above-named appellee, to the petition of appeal
of Lucy Beisley, the above-named appellant.

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 an order was, on July 3, 1928, 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, 30
but as to the substance and form of said order,
this appellee begs leave to refer thereto when
the same shall be produced.

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

AARON MARDER,
Solicitor for and of Counsel with Appellee.

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**VICE-CHANCELLOR'S REASONS FOR
MAKING DECREE.**

COURT OF CHANCERY OF NEW JERSEY.

Chambers of MAJA LEON BERRY Vice Chancellor.

10

Toms River, N. J.
July 29, 1928.

In the matter of Elizabeth Sash & Door Company *v.* Beisley, I have examined the papers submitted to me and considered the briefs filed by counsel and have come to the conclusion that the exceptions to the Master's report should be overruled and the Master's report confirmed for the reasons stated by him.

20

I am convinced by the testimony that at the time the mortgage in question was executed it was the intention of the parties to secure not only past indebtedness but future credits to be allowed by the complainant and that the mortgage was intended to secure the note executed upon the date of the mortgage and described therein and all renewals thereof. The original note, however, was never surrendered and the subsequent notes executed by the defendant's son indicate that they were taken merely as collateral to the original indebtedness. The evidence submitted to show the purpose of the mortgage was not objectionable under the Parol Evidence Rule. I would suggest that you present an order overruling the exceptions and confirming the Master's report to me in Toms River not later than Tuesday next, as I shall not be available after that time.

30

I am returning to counsel for complainant herewith the exhibits submitted by him.

40

Very truly yours,
MAJA LEON BERRY.

MLB:S

DEPOSITIONS.

IN CHANCERY OF NEW JERSEY.

Between

ELIZABETH SASH, DOOR &
SUPPLY COMPANY, a New
Jersey corporation,

*Complainant,**and*

LUCY BEISLEY, *et al.*,

Defendants.

10

*On Bill, etc.**Depositions.*

Depositions taken in the above-entitled cause before me, Lionel P. Kristeller, Master in Chancery of New Jersey, this twenty-first day of October, nineteen hundred and twenty-seven, at two o'clock in the afternoon, at my office in the National State Bank Building, 810 Broad street, Newark, New Jersey, in pursuance of an order made in this cause and bearing date the first day of June, nineteen hundred and twenty-seven, and in the presence of Aaron Marder, solicitor for the complainant, and Walter A. Beers, solicitor for the defendants.

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LIONEL P. KRISTELLER,
Master in Chancery of New Jersey.

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Stipulations.

IN CHANCERY OF NEW JERSEY.

62/361

Between

10 ELIZABETH SASH, DOOR &
SUPPLY COMPANY, a New
Jersey corporation,

*Complainant,**and*LUCY BEISLEY, *et al.*,
*Defendants.**On Bill, etc.**Transcript of
Testimony.*

20 Before Lionel P. Kristeller, Master appointed
by an order of the Honorable Maja Leon Berry,
dated June 1, 1927.

Present:

Aaron Marder, solicitor for the complainant,
and Walter A. Beers, solicitor for the defendants,
Lucy Beisley and George Beisley, her husband,
and George Beisley, her son.

30 Mr. Marder: It is hereby stipulated by and
between Aaron Marder, solicitor for the com-
plainant, and Walter A. Beers, solicitor for the
defendants, Lucy Beisley and George Beisley,
her husband, and George Beisley, her son, that
the ledger and accounts of the complainant prop-
erly show and charge against said George Beisley
the materials and goods delivered for and on his
account at the times therein stated.

40 That George Beisley owed in November, 1925,
to the complainant the sum of \$1,596.20 on mis-
cellaneous accounts and the sum of \$2,682.93 on
the Ivy street, Newark, job, or a total of \$4,-
279.13.

Stipulations.

It is further stipulated that on the 39 Eastern Parkway job there were goods purchased by Beisley and delivered to the value of \$2,718.26, said total consisting as follows: \$2,181.00 by way of contracts dated November 10, 1925, and the extras, not under contract, consisting of the balance of \$537.26, being delivered from December 14, 1925, to June 5, 1926, and that the contract deliveries commenced November 13, 1925. 10

That up to November 27, 1925, the deliveries under the aforementioned contracts covering the Eastern Parkway job did not come to more than \$50.00.

That in addition to the other two the ledger properly shows and charges against George Beisley the sum of \$78.41 under miscellaneous accounts for deliveries between May 20, 1926, and June 22, 1926. That on December 27, 1925, there is a charge against said George Beisley for a "N. G." check of \$72.48. 20

That Beisley owes the balance of \$699.30 on the Beckingham job; the deliveries on that job commencing April 20, 1926.

Mr. Beers: I admit the accounts as stipulated, but object to its being proper proof, in that, it alters and varies the terms of the written instruments, namely, the note signed by George Beisley and the mortgage signed by Mrs. Beisley, with the exception that I admit the proof proper for the 11 Ivy street account and the miscellaneous items account of \$1,596.20 and the Ivy street job totaling \$2,682.93. 30

I object on the further ground to the stipulation for materials delivered after the due date of the original note signed by George Beisley on November 27, 1925. 40

Russell T. Lammerding, direct.

I object on the further ground that on November 27, 1925, George Beisley was indebted for the amount of the note and the complainant cannot collect for an indebtedness of more than \$4,400 owing at the time the note was given.

10 The Master: As I understand it, you do not dispute the accuracy of the books nor the accounts therein stated, except as to the Ivy street job and the miscellaneous accounts item. Your objection is that they are not proper charges to be collected under the foreclosure of this mortgage.

RUSSELL T. LAMMERDING, being sworn by the Master in behalf of the complainant, testifies as follows:

20

Direct examination by Mr. Marder.

Q You are the vice-president of the complainant? A I am.

30 Q And in November, 1925, the defendant George Beisley, trading as George Beisley & Son, was indebted to your company for a total of \$4,279.13, made up of miscellaneous accounts of \$1,596.20 and the Ivy street, Newark, job of \$2,612.93? A I believe that was the amount the bookkeeper gave me.

Q And your company is in the lumber supply business? A Yes, sir.

Q And Mr. Beisley, what is his business; he is a builder? A Yes, contractor and builder.

Q And he had been trading with you for how long a time? A I should say for a long time prior to that date.

40

Russell T. Lammerding, direct.

Q At that time when he owed you that note did he apply to you for additional credits? A He did.

Q What credits did he apply to you for? A He was interested in booking an additional contract and for other materials not contracted for.

Q He was interested in booking additional contracts in addition to what he already owed? A Yes.

Q And what did you tell him? A I told him that his account was over due now according to the books. That we had written him several times and it was necessary to protect the present account and for any additional materials needed.

Q What arrangements were made? A He mentioned that he thought his mother would protect the account and also the additional contracts that he was interested in placing with our company.

Q And was anything said about that at that time and about a cash payment on account also? A I believe he was to get a payment on another job he was going to get and if I recollect correctly it was made a week or so later.

Q And what arrangements were made, what was done? A He stopped in the office a few days later and I made an appointment at attorney, Aaron Marder's office in Newark for he and his mother in order to draw up a mortgage for the protection of his present account and the additional materials wanted for the contracts that he was interested in placing with our company. The mortgage was drawn up and at the same time we secured a note in order that he may have the use of the money.

Russell T. Lammerding, direct.

Q Is this the note that was secured? A Yes, sir, that is the note.

10 Mr. Marder: I offer this note in evidence. This note is dated November 27, 1925, and is made by George Beisley to the order of the complainant, in the sum of \$4,400.00, payable three months from date, with interest at the rate of 3% per annum. (Note received and marked Exhibit C. 1.)

Q How was the sum of \$4,400.00 arrived at?

A The sum of \$4,400.00 was what was due on the books at that time and if I remember correctly, the amount of additional contracts that he was interested in placing for future deliveries with our company.

20 Q Less \$2,000.00 that you would get in cash?

A Yes, less \$2,000.00. The books at that time were somewhat more than that—\$6,000.00 and some odd dollars.

Q And was Mrs. Beisley told what this was for? A I do not remember. Yes, I do remember, the note was received the same day the mortgage was made up and she was told that the mortgage was given to secure additional materials besides that which George Beisley or George Beisley & Son, owed to our company.

30 Q Was it understood at that time that you were to get \$2,000.00 in cash? A Yes, sir.

Q And did you get that \$2,000.00 in cash later on? A Yes, sir.

Q Now, do you remember who was present when this mortgage was executed? A Mrs. Beisley, George Beisley and myself.

Q And she signed the mortgage? A Yes, sir.

40

Russell T. Lammerding, cross.

Mr. Marder: I offer in evidence mortgage under foreclosure. (Received and marked Exhibit C. 2.)

Q How was that 3% arrived at in the note?

A 3% was arrived at for the simple reason that he was to get the materials at a later date and we did not feel free to charge him the full 6% interest rate due to the fact that the materials were not delivered. 10

Cross examination by Mr. Beers.

Q Do you remember when you first spoke to Beisley about securing your company's indebtedness? A Yes, sir.

Q How long was that before the mortgage was signed? A I could not say off-hand. 20

Q Do you know where? A Why, I spoke to him two or three times at the office and we also have collectors and they went around about the payment of his account, which was overdue. He might have been seen a dozen times.

Q Did you send Mr. Bergbauer to Mrs. Beisley's home to induce her to go to Mr. Marder's office and sign a mortgage? A I do not remember. 30

Q You do know that you had no method of collecting the money due at the time that mortgage was given by Mechanic's Lien proceedings or through any property which Beisley had.

Mr. Marder: I object to that question.

The Master: Objection overruled. Exception allowed.

A I could not say off-hand, although Mr. Beisley had a number of contracts that he claimed 40

Russell T. Lammerding, cross.

certain moneys due him he might have received the assets from.

Q Is that the deposit stamp on the back of the note of the Elizabeth Sash, Door & Supply Company? A It is.

10 Q It was paid on December 24, 1925? A Yes, sir.

Mr. Beers: I ask that this check be marked for identification. (Marked for identification Exhibit D. 1.)

Q You gave Mr. Marder the figures for the amount to be inserted in that mortgage made by Mrs. Beisley? A I did.

20 Q And did you tell Mr. Marder how much was owing to your company at that time? A Why, we made up a statement on Mr. Beisley's account, which showed how much he owed.

Q You did not have it with you, did you? A Yes, sir.

Q Did you state what surplus credit you were giving to Beisley? A Yes, sir.

Q How much did you state? A You will have to take that from the records, whatever it was.

30 Q Who did you talk to about this future credit? A George Beisley. His mother knew about the future credit at the time the mortgage was made up.

Q Did you have a conversation with Mrs. Beisley at Aaron Marder's office? A About future credits? About additional contracts he wished to place with our company? What contracts? I do not remember what particular jobs.

40 Q Did you know at that time what job he wanted credit on? A He had been trying to

Russell T. Lammerding, cross.

book the job with us about two weeks, but had not yet done so as we did not O. K. the job.

Q Do you know that a contract was signed on November 15th for the Eastern Parkway job before the note was signed? A Yes, sir.

Q And you still say you had not booked that account? A I said it was not O. K.'d by the office. 10

Q Was the contract signed in your presence? A No.

Q Did you know it was signed? A I knew it had been lying around for a couple of weeks.

Q But you had not made any deliveries under the contract? A It was not booked and no deliveries had been made until after the mortgage was signed.

Q You examined at this office, did you not, a few minutes ago a delivery slip for materials to 95 Eastern Parkway under that contract, and said that no delivery was made before that note was signed, did you not? A Delivery might have been made, but it was not O. K.'d by the office. 20

Q Does your firm send out deliveries under contracts before they are O. K.'d? A We allow small deliveries such as frames amounting to \$6.30 to be O. K.'d by the salesmen. 30

Q Do you recall telling Mrs. Beisley that she would not be responsible for any amount over \$2,200? A I never told her any such thing.

Q Did she object at all to guaranteeing any sum over \$2,200? A No; she had no objection.

Q You had no conversation with Mrs. Beisley before she got to Mr. Marder's office? A Never saw her before.

Mr. Beers: That is all.

Sarah Johnson, direct.

SARAH JOHNSON, being sworn by the Master in behalf of the complainant, testifies as follows:

Direct examination by Mr. Marder.

10 Q Did you send me this statement showing the credits on the Beisley account? A Yes, sir.

Q Will you show me these credits on your ledger and tell me what they mean? A On December 22, 1925, \$2,000.

Q You got \$2,000 in cash from Beisley on December 22, 1927. By cash do you necessarily mean money or check? A Check or cash.

Q You gave Beisley credit? A Yes, sir.

Q For how much? A \$2,000.

Q When? A On December 22, 1925.

20 Q And your ledger shows that on December 28, 1925, Beisley was given a credit for a note in the sum of \$4,400? A Yes, sir.

Q Now, on November 15, 1925, Beisley owed the complainant how much money? A On December 1, 1925, \$4,279.13, which is made up of \$1,596.20 miscellaneous account, and \$2,682.93 on the Ivy street job.

30 Q And after the credits you just testified to were given that left a credit balance of how much to Beisley? A At that time \$2,120.87.

Q According to your books that credit balance was transferred where? A To the Eastern Parkway job.

Q Has the credit balance been eaten up entirely? A It was. After the Eastern Parkway job was completed, less other credits received, left a credit balance of \$185.42.

40 Q That credit balance of \$185.42, was that eaten up in any way? A That was transferred

Sarah Johnson, direct.

to the general account and that would take in some of the miscellaneous account of \$78.41, and there was a "N. G." check of \$32.48 and there was a balance on the Chapman job of \$699.30.

Q You are the bookkeeper for the Elizabeth Sash, Door & Supply Company and in charge of all of their books? A Accounts receivable. 10

Q You had been trying for sometime to collect your old account, had you not? A Yes—not through any attorneys.

Q They were running along without interest, were they? A Unless there were some notes. The accounts were running without interest.

Q You know there were not any notes? A Not off-hand—the books will tell you.

Q Is that not why you were glad to get 3% interest on this money which was due? A No. 20

Q Was the \$2,000.00 credit given to Beisley on account of this note the day it was paid? A It was a future credit.

Q When was it credited? A We credit payments when given.

Q Do you know how you got the \$2,000.00? A I do not recollect.

Q I show you a check made by Lowy & Lowy, dated December 22, 1925, for \$2,000.00, to the order of the Elizabeth Sash, Door & Supply Company and ask you is that the check which you received as a credit on the note made by George Beisley, November 27, 1925? A You will have to consult the books. 30

Q Were the entries made under your supervision or by you? A Yes, by me.

Q How soon after you were told about them? A As soon as they come in I make the entries.

Q Do you recall when you entered that \$4,400 note? A No, I do not. 40

Sarah Johnson, direct.

Q Do you know why it was entered in December instead of November? A No.

Q You had charge of the collection of this \$4,400 note? A When they paid on account I took charge of those things.

10

Mr. Marder: It is hereby stipulated by and between Aaron Marder, solicitor for the complainant, and Walter A. Beers, solicitor for the defendants, Lucy Beisley, *et al.*, that the following notes, which Mr. Marder will offer in evidence, are renewal notes of the original \$4,400 note, marked Exhibit C. 1, and that said notes were given chronologically according to their dates, the difference between the note last given and the preceding note being paid to the complainant in cash:

20

I offer in evidence renewal note No. 1, dated February 27, 1926, made by George Beisley to the complainant, in the sum of \$3,433, with interest at 3%, due in two months from date. (Received and marked Exhibit C. 3.)

30

I offer in evidence renewal note No. 2, dated April 27, 1926, for \$3,000, made by George Beisley to the complainant, and due in two months from date, with interest. (Received and marked Exhibit C. 4.)

I offer in evidence renewal note No. 3, given by George Beisley to the complainant, dated June 28, 1926, in the sum of \$3,000, payable in two months from date, with interest. (Received and marked Exhibit C. 5.)

40

I offer in evidence renewal note No. 4, given by George Beisley to the complainant, in the sum of \$3,000, dated August 28, 1926,

Sarah Johnson, cross.

due in one month from date, with interest.
(Received and marked Exhibit C. 6.)

I offer in evidence protest notice in connection with the last renewal note. (Received and marked Exhibit C. 7.)

Q The interest items on the various notes, except the last note, were paid, were they not? 10

A Yes, sir.

Q Do you know how they were paid, by cash or check? A No, I do not.

Cross examination by Mr. Beers.

Q This is your handwriting? A Yes, sir.

Q That credit for a note of \$4,400 by a note of December 28, 1925, was written in this book on what date? A December 28, 1925. 20

Q December 28th? A Yes, sir.

Q And the items on this page for debits and credits were each written then on the date as indicated? A Not more than one or two days later. I post from the sales book which comes from the ticket on the sales and I post them in here the next day or two, not later than a day or two.

Q You are sure of that? A Yes, sir. 30

Q Are you sure that you did not make all these entries at the same time on this sheet? A Positively.

Q But how do you account for the fact that the debit items, which were entered on apparently ten or fifteen dates, appear to be entered in an even hand with no different ink color and that there is an entry of July 7th written in the book below a date of July 30th? 40

Sarah Johnson, cross.

Mr. Marder: I object.

The Master: Objection overruled. Exception allowed.

10 A As far as the ink is concerned we always use the same ink, and the reason for the date is that the ticket might not come through. We often have tickets coming in late. The driver may take the material out and the ticket might not be signed or for some reason or other I would not get it as soon as I should to be posted.

Q Is it not true that this account was transcribed from another ledger sheet? A No, sir.

Q Who instructed you to make the entry for credit on that note? A I could not tell that. The note was brought in to be given credit for so long ago I do not remember.

20 Q This note of November 27, 1925, which is in evidence as Exhibit C. 1, was stamped paid by you? A No, sir; I did not stamp it paid.

Q Do you know who accepted the notes in renewal of that note? A No, sir.

Q Your books show, do they not, that the 11 Ivy street account of \$2,682.93, and the miscellaneous item of \$1,596.20 were paid in full after the credit was placed on your books for the note of \$4,400 and \$2,000 received on December 22, 1925—is that right? A Yes, sir.

30 Q Do your books also show that there was a surplus credit to Beisley's account of \$2,120.87 which you did not transfer to any account until March 30, 1926, and on that date you applied that credit to the 39 Eastern Parkway account—is that correct? A I transferred it that day; yes, sir.

40 Q Do you know who authorized you to make that transfer? A I think I took it upon myself—I do not remember.

Russell T. Lammerding, re-direct—re-cross.

Q And you had that authority? A Yes, sir; I have that authority to take care of the accounts.

Q If after March 30, 1926, either of the Mr. Lammerdings examined the 95 Eastern Parkway account they could see that Beisley owed for the materials delivered and on that same ledger sheet would see the credit for \$2,120.87—is that correct? A They could see the credit. 10

Mr. Beers: That is all.

RUSSELL T. LAMMERDING, being recalled on behalf of the complainant, testifies as follows:

Re-direct examination by Mr. Marder. 20

Q This \$4,400 credit, was that entered by your direction? A Yes, sir.

Q Was credited by way of note? A Yes, sir.

Re-cross examination by Mr. Beers.

Q Was that surplus of \$2,120.87, which Beisley is supposed to have had to his credit by your books, transferred on March 30, 1925, to the Eastern Parkway job, at your request also? A No; not that I know of. 30

Q The bookkeeper, Miss Johnson, has the right to transfer the credit to that account? A She very often does.

Q You knew that it had been applied? A No, I did not know particularly.

Q Is that your signature? A Yes, sir.

Q Did you serve that notice on Levy, Fenster & McCloskey? A One of our employees did. I did not. 40

Lucy Beisley, direct.

Q At your request? A Yes, sir.

Q Who dictated the notice? A The amounts, all of it. The bookkeeper gave us the accounts and one of the stenographers made up a stop notice.

10 Q By the bookkeeper you mean Miss Johnson? A Yes, sir.

Mr. Beers: I offer in evidence a stop notice, signed by Russell Lammerding, for the Elizabeth Sash, Door & Supply Company, addressed to Henry and Mary Schoonmacher, to withhold the sum of \$2,560.81 for materials furnished to 39 Eastern Parkway, which is dated April 14, 1926. (Received and marked Exhibit D. 2 for identification.)

20

COMPLAINANT RESTS.

LUCY BEISLEY, being sworn by the Master in behalf of the defendants, testifies as follows:

Direct examination by Mr. Beers.

30 Q Mrs. Beisley, you are the defendant in this foreclosure suit, are you not? A Yes, sir.

Q George Beisley, whose note was secured by your mortgage on November 27, 1925, is your son? A Yes, sir.

Q When was the first time you were asked, that you recall, to guaranty George's account? A Well, I guess it was sometime in November. Mr. Lammerding and Mr. Bergbauer came up one afternoon and talked it over with me, but they said it was only an amount of about \$1,200, and I told them I did not want to because it took me

40

Lucy Beisley, direct.

all my life to earn what little I got and I did not want to do anything like that. They said, "You have nothing to worry about; we will stand back of him. We will clear all of this." Mr. Lammerding stood right there and said, "We will stand right back of George and we will back him in everything; we only want you just to sign up." 10

Mr. Marder: I move that this part be stricken out for the reason there is nothing to show that the persons that she talked to at that time could in any way bind the complainant, and they were not authorized to bind the complainant by any representations.

The Master: I think your testimony is that Mr. Bergbauer went up and brought her down. I will allow the testimony and rule on the objection later. 20

So we spoke it over and I said "no that is an awful lot of money to work for—it took me all my life," but they both said, "we will stand in back of George and we will see that he clears out all right. We only just want your guaranty for a little account, just to back him up." I said all right if that is all you want a credit of \$1,200, I will help my son, but when I got down to the office of Mr. Marder they figured it up and it amounted to about \$2,200, so I said, "well, \$2,200, that is an awful lot of money," and he says, "don't worry, he will clear himself out of it." 30

Q How soon after this conversation at your home did you go to Mr. Marder's office? A The very next morning, because they said they had it planned out, Mr. Marder to be at his office the next morning with George. 40

Lucy Beisley, cross.

Q And did you agree at Mr. Marder's office to guaranty payment of George's accounts to the extent of \$2,200? A Just \$2,200, that is all they asked me for.

Q Was anything said to you about giving George credit for new purchases? A No, sir; I heard nothing like that.

10 Q Do you know the amount the mortgage was made for? A Well, by the way they told me it was made for \$2,200.

Q Did you see the amount of it before you signed it? A They put down \$4,400 provided they got the \$2,000 from the Ivy street job and they would deduct that from the note; that is the way they put it to me.

Q Was the mortgage explained to you at the time you signed it? A Not that I can remember.

20

Cross examination by Mr. Marder.

Q Did you sign this original note? A The mortgage?

Q No; the note? A No, sir.

Q Mr. Beers was your lawyer in this matter, was he not? A Later on, and in connection with the foreclosure.

30

Q After the foreclosure suit was started you filed a petition in May of this year asking to be allowed to file an answer, is that true? A Well, I believe when they brought the paper to me.

Q You filed an affidavit in connection with the petition, did you not? With Mr. Beers? A Oh, yes.

Q You did? A Yes.

Q And you read that petition, did you? A I cannot remember.

40

Lucy Beisley, cross.

Q Did you not sign a petition asking to be permitted to file an answer in the foreclosure suit because the time had expired to answer, giving certain statements in that petition that you swore to in May, before Joseph J. Quinn? A Yes.

Q Do you remember that petition? A Yes, I suppose I do. 10

Q And everything in it was true? A Certainly. I do not recall what was in it.

Q Well, you recall making an affidavit that everything in the petition was true, don't you? A Yes, sir.

Q And that affidavit was made May 7th of this year? A I could not recall the date.

Q You just testified that you did not sign that note, is that true? A Do you mean the note that George signed? I did not sign that. I signed the mortgage. 20

Q Why did you then say in your petition which you swore to as true, as follows: "The complainant's mortgage was given as collateral security for a note made by petitioner's son and endorsed by petitioner in the sum of \$4,400." Why did you say that it was endorsed by you? A I did not endorse it.

Q Why did you say it, then? A Maybe I did not understand it. 30

Q Well, then this part of the petition is untrue? A I did not understand it.

Q Then it is not true as made? A Yes, sir; it is not true. I did not sign any note.

Q When Mr. Bergbauer came to you about a week before the mortgage was given did they tell you they were going to sue your son? A They did not.

Q Why in that same petition did you say that you were informed by the representative of 40

Lucy Beisley, cross.

the complainant that if you wished to prevent suit against our son you could do so by endorsing the note and giving your property as collateral? Why did you say that? A I did not quite understand what you said.

10 Q Did you read this petition when you signed it? A I do not remember.

Q You tried to settle this suit and tried to have us take back a second mortgage, letting us give you an extension of time on this mortgage, is that so? You were going to raise a second mortgage to pay us? A Yes, sir.

Q And you made no dispute about the amount claimed, did you not? A I did object to \$4,400. I was satisfied with \$2,200.

20 Q You did not come to me and tell me that, did you? A It was in your office.

Q You did not see me at all, but you told Mr. Bergbauer that you wanted to settle the suit and raise a second mortgage? A Certainly, I was satisfied to try and clear myself and my son.

30 Q You did not tell Mr. Bergbauer it was \$2,200 you owed on that mortgage? A I thought that was all. I understood that was all. That was all you put to me was \$2,200. If they had told me any more than \$2,200 I would not have signed.

Q Did they tell you at the time that Mr. Bergbauer and Mr. Lammerding were in my office that it was also future credits they wanted to clear? A No, nothing at all about the future.

40 Q They did not tell you anything at all about it? A No, Mr. Lammerding spoke to George about it and they did not tell me anything about it, they knew I would not stand for it.

Lucy Beisley, cross.

Q Did Mr. Lammerding in my office ever say anything to you about those future credits?

A No.

Q Why did you state in that petition and affidavit that Mr. Lammerding did say to you that your son expected to receive this Eastern Parkway job and that he asked you whether you would include this job in the note and you said no? A He did not ask me. He spoke to my son about it. 10

Q But you said in this statement sworn to by you that he did ask you that and you said no. Which statement is true? A Then, I did not get what was said. I know I spoke to George about no conversation had whatsoever.

Q Then this statement is untrue? A It may be. I did not understand it then. 20

Q You say that you came to Mr. Marder's office the next morning after Mr. Bergbauer and Mr. Lammerding spoke to you? A One of them.

Q You said it was the next morning? A Yes, sir.

Q What time of the day was it? A I think we came down there about ten o'clock in the morning.

Q And this all happened in the morning? A Well, I won't say sure, but I think we had to wait there about one hour or more. 30

Q What time did you leave Mr. Marder's office? A It was just about turning dark. I recollect then it must have been in the afternoon.

Q And you were not down in the morning? A In the afternoon.

Q This property on which this mortgage to the Elizabeth Sash, Door & Supply Company was 40

Lucy Beisley, cross.

placed is property known as 21 Spencer St., Newark? A Yes, sir.

Q And in April, 1925, you mortgaged that property to the Unity Building & Loan Association? A Yes, sir.

Q \$5,000 is that? A Yes, sir.

10 Q You were married at that time, were you not? A Yes, sir.

Q Separated legally from your husband? A No.

Q Not living with him? A No.

Q Why did you represent yourself as a widow to Mr. Cavicchia, attorney for the Building & Loan Association?

Mr. Beers: I object.

20 The Master: Objection sustained.

Q You signed that mortgage, did you not? A Yes, sir.

Q And described yourself as a widow?

Mr. Beers: I object.

The Master: Objection sustained.

30 Q Did I ask you when you were there whether you were married at that time? A No, sir.

Q I did not ask you that? A No, sir.

Q When did you first see Mr. Beers about this matter? A After I was served with a summons.

Q When was that? A I cannot recall, sometime in the spring.

Q Are you sure it was in the spring sometime? A Yes, sir, sometime late in the spring when I got the papers.

40

Lucy Beisley, cross.

Q May sometime? A It may have been around that time.

Q Sure it was not any earlier? A No, hardly because I know it was pretty warm.

Q Suppose I told you you were served on December 2, 1926, what would you say? A December 2d, I cannot recall just when I got it. 10

Q That was the first time you saw Mr. Beers? A It may have been.

Q Your recollection is pretty faulty? A I cannot place it.

Mrs. Beisley was served on the record December 2, 1926.

Q You saw Mr. Beers shortly thereafter, I suppose? A Yes, sir. 20

Q Did you discuss with him at that time what was due? A That was what I was told \$2,200.

Q You said a short time ago you came down to see Mr. Beers right after you got the subpoena? A Yes, sir.

Q That must have been sometime in December, 1926? A It was later than that. I know it was not around the holidays.

Q It was right after you got the subpoena, was it? A I think I let George take the papers down to him. 30

Q George knew all about the matter? A Sure, I suppose he did.

Q Suppose I was to tell you that on January 3, 1927, I wrote Mr. Beers a letter stating that the balance due to the Elizabeth Sash, Door & Supply Company on the Beisley account after payment of \$713.23, through Mr. Levy, on the Eastern Parkway job, that there would then be left 40

Lucy Beisley, cross.

10 about \$3,600 plus due the complainant company, and thereupon Mr. Beers wrote to me that the figures I gave him included the Chapman Place job, which was the only job he claimed at that time was not secured by the mortgage in question and that he promised to raise a second mortgage as soon as he could to cover all of the money, except what was due on the Chapman Place job, would that change your story as to what was intended to be secured by this mortgage?

Mr. Beers: I object. It is not a proper question.

20 The Master: I understand that the question was that you wrote a letter to Mr. Beers and he answered it. Objection overruled. Exception allowed.

A No.

Q Did you tell Mr. Beers that all the Elizabeth Sash, Door & Supply Company claimed, except what was due on the Beckingham job was secured by this mortgage? A No, sir.

30 It is stipulated that the Chapman Place job and the Beckingham job are the same and that the Schoonmacher job and the Eastern Parkway job are the same and that the payment made through Mr. Levy was on the Schoonmacher job.

Q This mortgage was prepared in Mr. Marder's office, was it not? A Yes, sir.

Q Was this mortgage or the conditions thereof explained to you before you signed it? A No, I do not think it was.

40 Q Are you sure that it was not? A I am sure.

Q You are positive about that? A Yes, sir.

Lucy Beisley, cross.

Q You do say, however, that you agreed that that mortgage was to stand security for \$2,200?

A Yes, sir.

Q You do remember that something was said about \$2,000 to be paid on account in addition to that mortgage being given? A Yes, sir.

Q Were you not told by Mr. Lammerding that this mortgage was given to secure your son's note of \$4,400, that the mortgage was to be given in addition to the \$2,000 cash payment and this mortgage was to be applied on the past indebtedness, leaving a balance of over \$2,000 for future credits? Were you not told that? A I did not understand that. Not one single word was said to me about future credits.

10

Q Not to you? A No.

Q Then your statement in the affidavit about the future is false, is it not? A You asked me whether it was put up to me; it was spoke between George and Mr. Lammerding and he knew that I could not stand for it as I did not have the means. I had no income.

20

Q But you stated in your affidavit that Mr. Lammerding said you might as well include the Schoonmacher job in the note? A He said it to George, not to me, not directly to me.

30

Q Then, if you say they talked to you directly you are not telling the truth? A They did not put it to me, they spoke between the two.

Q Do you remember before whom you acknowledged this mortgage, marked Exhibit C. 1?

A Sure.

Q Before whom? A You, Mr. Lammerding, George and myself.

Q Did you not go to some person and acknowledge that you signed, sealed and delivered

40

Lucy Beisley, re-direct.

this mortgage? A Yes, sir. I guess it was in some other office.

Q Was it before this lady? A I do not remember.

Q Did Mr. Marder go with you to this other office? A Yes, sir.

10

Re-direct examination by Mr. Beers.

Q Do you remember who, if any one, told you that you did not sign George's note? A I do not think I signed a note. I am sure I did not sign a note. I signed the mortgage.

20

Q You know now that you did not sign the note, but did you know it at the time I drew this petition when I inserted in it that you did not understand why the note you signed was made for \$4,400? A I did not think you meant the note that George signed. I thought you meant the mortgage.

Q Can you recall the first time you came to see me yourself about this mortgage matter? A It is too long ago. I know it was in the Prudential Building.

30

Q With respect to the time that you signed the affidavit on the petition so that you might be heard in court, can you remember how long before that time, if at all, it was when you came to see me? A I cannot place it.

Q Did you ever call to see me about the matter before you signed that petition? A Yes; I think it was the time you were in the Prudential Building. That was just before you moved up to your new place.

40

George Beisley, direct.

GEORGE BEISLEY, being sworn by the Master in behalf of the defendants, testifies as follows:

Direct examination by Mr. Beers.

Q You are the son of Lucy Beisley? A I am. 10

Q You made a note on November 27, 1925, to the Elizabeth Sash, Door & Supply Company? A I did.

Q When was the first conversation you had with anyone from the Elizabeth Sash, Door & Supply Company with respect to your mother guaranteeing payment of the note? A One week before we went to the lawyers.

Q Who did you speak to? A Fred Bergbauer, one of their salesmen. 20

Q What was the conversation? A Nothing in particular. Only that he says the company could use the money. I figured how my mother could stand security for it.

Q What was the next time you saw Bergbauer? A Three days after the first meeting and he made arrangements to bring Frank Lammerding and both him and Frank called to see my mother concerning a mortgage. 30

Q Did you ever speak to Russell Lammerding about your mother guaranteeing the notes before you called at Mr. Marder's office? A I never did.

Q What conversation took place when Frank Lammerding and Mr. Bergbauer called at your mother's home? A Nothing outside that they would help me pull the second mortgage down, which they considered at that time was about \$1,200, which I knew was more, and that they 40

George Beisley, direct.

had all arrangements made to go down there the next day.

Q And the next day you went to Mr. Marder's office with your mother? A Right.

10 Q What was the first said about the amount you would owe to the Elizabeth Sash, Door & Supply Company? A The amount was in the neighborhood of \$2,200 that I would owe to the Elizabeth Sash, Door & Supply Company. It was more than was figured the day before at my mother's home.

20 Q Why do you say \$2,200? A Well, there was a miscellaneous item of \$1,500 and some odd dollars and there was the Ivy street job of \$2,600 and some odd dollars, and \$2,000 coming to the Elizabeth Sash, Door & Supply Company which was not secured by them as yet.

30 Q Was anything mentioned about securing the Elizabeth Sash, Door & Supply Company for the Schoonmacher or Eastern Parkway account? A There was.

Q What was said about that? A They wanted me to pay for materials before I received them and I could not see it.

Q Did they want that amount included in the note? A That is what they tried to have.

30 Q Did you or your mother agree that that could be put in the amount of the note? A Not that I remember.

Q Do you remember definitely? A No.

Q Why was the note made for \$4,400? A I do not know unless they did not get their \$2,000 check yet, their being on the safe side.

40 Q You mean it included all? A It included all my bills, miscellaneous and the Ivy street job. It ran in the neighborhood of \$4,200 and some odd dollars and they made it \$4,400 so they would have enough for themselves.

George Beisley, direct.

Q Was it your intention when this \$2,000 was paid that you would get credit on the note for \$4,400? A That was what I figured.

Q Was there any conversation with your mother about her guaranteeing a future account? A Not directly. It was between the three of us.

Q What do you mean by the three of us? A 10
It was not a private spoken conversation.

Q Who did the talking? A Russell Lammerding to me in Mr. Marder's office.

Q You made an affidavit in this suit on May 7, 1927, that you did not know why the note was made for more than \$2,200, is that so? A That is true.

Q You also stated in your affidavit that you had not yet secured the Schoonmacher contract. A That is true. I did not recall that far back. I did not look the thing up when I made the affidavit. 20

Q Do you know whether or not you did have the Schoonmacher contract at that time? A I did.

Q The affidavit also states you thought the amount of the Schoonmacher contract was included in the note so that you would feel obligated to purchase materials from them if you should secure it, is that so? A That is true. 30

Q Did your mother see the note which you signed? A I do not remember.

Q Was your mother told that the note was made for \$4,400? A She was.

Q Was she told it was to secure the Schoonmacher account? A She was not.

Q Was that left unsaid? A Unmentioned.

Q At that time you did owe the Elizabeth Sash, Door & Supply Company the amounts 40

George Beisley, direct.

which have been stipulated on the record totaling \$4,379.13, is that correct? A That is.

Q Did Mr. Lammerding bring any books to Mr. Marder's office? A Only a small notebook.

Q Did he know exactly how much you owed at that time? A Not exactly.

10 Q When the note came due three months later you paid it by giving another of your notes, is that correct? A It is correct.

Q Did you ask your mother whether or not she would consent to an extension of time of payment or guarantee or if she would guarantee payment of the renewal note?

Mr. Marder: I object. It is immaterial, nothing to do with our case.

20 The Master: Objection overruled. Exception allowed.

A No, I did not. I never bothered her after the mortgage was signed. I never consulted her. I took it in my own hands.

Mr. Marder: I object.

The Master: Objection overruled. Exception allowed.

30 Q After you were served with a subpoena in December, 1925, did you call to see me? A I did.

Q And the several times that you called before the petition was signed in May, did you tell your mother the results of your conversations with me?

Mr. Marder: I object.

40 The Master: Objection sustained.

George Beisley, direct.

Q You made payments on the debt which was originally extended by the note of November 27, 1925, to reduce that particular debt to \$3,000, plus interest? A None of those payments included the \$2,000 which was paid December 22, 1925, to the Elizabeth Sash, Door & Supply Company.

10

Q Did you instruct Lowy & Lowy on December 22, 1925, to pay the Elizabeth Sash, Door & Supply Company \$2,000 out of the money which was due on 11 Ivy street? A I did.

Q And this check which is marked for identification is the check given to the Elizabeth Sash, Door & Supply Company for that payment? A I could not tell you. I never received the check myself; Lowy & Lowy paid it directly.

20

I offer in evidence the check of Lowy & Lowy.

(Received and marked Exhibit D. 1.)

Q On December 22, 1925, did you owe the Elizabeth Sash, Door & Supply Company any money other than what was represented by the note for the miscellaneous account items, which totaled \$4,200 and some odd dollars? A That is all I owed them.

30

Q So that the \$2,000 could not be applied on any other debt? A No, sir.

Q I show you a check dated February 6, 1926, to the Elizabeth Sash, Door & Supply Company for \$1,000. Was this paid on account of the indebtedness which was originally represented by the note of \$4,400? A It was.

Q That is your signature? A That is my signature.

40

George Beisley, direct.

I offer this check in evidence.

(Received and marked Exhibit D. 3.)

10 Q I show you a check dated May 8, 1926, to the Elizabeth Sash, Door & Supply Company for \$450.17, and ask you if that was paid on account of the indebtedness which was originally represented by the notes for \$4,400 of November, 1925? A It was.

I offer this check in evidence.

(Received and marked Exhibit D. 4.)

At this point the hearing was adjourned to Friday, October 28, 1927, at 2 o'clock.

20

I certify that the foregoing depositions were taken by Flora Miller, the stenographer selected by me and by me duly sworn, faithfully and truly to take stenographically the testimony given and to reproduce the same in typewriting; that such depositions were taken in my immediate presence and hearing, and by said stenographer sworn as above, and I believe that she has correctly stated the evidence given.

30

LIONEL P. KRISTELLER,
Master in Chancery of New Jersey.

40

Depositions.

IN CHANCERY OF NEW JERSEY.

Between

ELIZABETH SASH, DOOR &
SUPPLY COMPANY, a New
Jersey corporation,
Complainant,

and

LUCY BEISLEY, *et als.,*
Defendants.

On Bill, etc. 10
Depositions.

Depositions taken in the above-entitled cause before me, Lionel P. Kristeller, Master in Chancery of New Jersey, this twenty-eighth day of October, Nineteen Hundred and Twenty-seven, at two o'clock in the afternoon, at my office in the National State Bank Building, 810 Broad street, Newark, New Jersey, in pursuance of an order made in this cause and bearing date the first day of June, Nineteen Hundred and Twenty-seven, and in the presence of Aaron Marder, solicitor for the complainant, and Walter A. Beers, solicitor for the defendants.

20

LIONEL P. KRISTELLER,
Master in Chancery of New Jersey.

30

40

George Beisley, cross.

IN CHANCERY OF NEW JERSEY.

Between

10	ELIZABETH SASH, DOOR & SUPPLY COMPANY, a New Jersey corporation, <i>Complainant,</i>	}	<i>On Bill, etc.</i>
	<i>and</i>		
	LUCY BEISLEY, <i>et al.</i> , <i>Defendants.</i>		

Hearing resumed at the office of the Master,
National State Bank Building, 810 Broad street,
Newark, New Jersey, on October 28, 1927, at two
o'clock, there being present:

Lionel P. Kristeller, the Master,
Aaron Marder, solicitor for the complainant,
Walter A. Beers, solicitor for the defendants.
Lucy Beisley, defendant,
George Beisley, defendant's son,
Fred Bergbauer, witness for the complainant,
Frank Lammerding, witness for the complain-
ant,
Sarah Johnson, witness for the complainant.

GEORGE BEISLEY, witness for the defense.

Cross examination by Mr. Marder.

Q Who first told you about having to give
a mortgage on the property in question? A
Frank Bergbauer.

Q And was Frank Lammerding with him at
the time? A He was not.

George Beisley, cross.

Q When was this he saw you? A I don't recall the date exactly.

Q Well, was it before or after, you were taking up with the plaintiff company, the question of supplying you with material on the Eastern Parkway job? A It was about.

Q It was about. And it was in connection with your getting that material, was it not? A Well, it was not spoken that way. 10

Q Well, it was in connection with helping you to get that material, was it not? A Right.

Q At that time you knew that the complainant was getting two thousand dollars from Lowy and Lowy?

Mr. Beers: I object. The record shows that he did not get it that time. 20

The Master: What time?

Mr. Marder: When Bergbauer got the money.

A Well, I knew they were going to get it. I didn't know they were going to get it as soon as they did.

Q You were counting on two thousand dollars? A I was counting on two thousand dollars. 30

Q And of course in trying to persuade the complainant to give you credit, you used that as an argument, didn't you? A Certainly.

Q And didn't Mr. Bergbauer tell you that if you secured, by way of your mother's mortgage of the property in question, the balance above that two thousand dollars, which later on was gotten from Lowy and Lowy, and also this new job; that the complainant would give you the credit? A Not exactly. He mentioned that— 40

George Beisley, cross.

Q How did he say it? A He mentioned the fact that if I could help him along, and being as I was his customer, I should try and see if I could not get my mother to raise it some way or other. I had no means to raise it, only what was due me from jobs on which material was delivered. And I should see if I could not do it in that ways or other direction. He mentioned no credits or anything else.

Q Well, you knew that, you told him, didn't you? A Certainly I told him. Told him after I promised the money. This money that was due him, this two thousand dollars coming from Lowy and Lowy.

Q Well, you finally agreed to get your mother to sign some sort of mortgage? A I, myself didn't.

Q How did it come about that your mother signed the mortgage? A Frank Lammerding and Frank Bergbauer come down and spoke to my mother concerning it.

Q All right. You were present there at that time? A I was.

Q And by that time Mr. Bergbauer knew that two thousand dollars was coming from Lowy and Lowy? A He figured it, but wasn't sure of it.

Q By that time they also knew what that Schoonmacher job would come to, more or less? A About the estimates on it.

Q And at that time also, you owed the total sum of \$4,279.13, consisting of \$1,596.20 on miscellaneous accounts, and \$2,682.93 on the Ivy street job? A Somewhere's around there.

Q Those are the exact figures. And didn't Mr. Bergbauer or Frank Lammerding, either or both of them, say that since, \$2,000 was coming

George Beisley, cross.

from Lowy and Lowy, the arrangement would be for you to give a \$4,400 mortgage or thereabouts; in other words, to give a note to be secured by your mother's mortgage, sufficient to pay the balance of the forty-two odd hundred dollars after the two thousand dollars were paid, and the expected credits in connection with the Schoonmacher job. 10

Mr. Beers: I object because the evidence is not permissible as to Lucy Beisley. The preceding questions tend to show that she was present during this conversation, and it is not to be assumed that she was.

The Master: I sustain the objection.

Q Was your mother present when this conversation was taking place? A She was. 20

Mr. Marder: Does your Honor rule differently on this question now?

The Master: No.

Q Your mother was present when all this was taking place, in connection with your giving a mortgage to secure the credits, isn't that so? A She was.

Q And she heard all you said? A And she heard what I said. 30

Q And she heard what he said? A She did.

Q Didn't Bergbauer or Frank Lammerding, one of them say, so that your mother could hear it, that they wanted from you a mortgage sufficient to secure the old account, the balance of the old account after this two thousand dollars would be paid, and in addition thereto, the credits that you desired in connection with the Schoonmacher job? A They did not. 40

George Beisley, cross.

Q You knew that your note secured the balance due on the forty-two hundred dollars after the two thousand dollars was paid, and you expected credit on the Schoonmacher job, didn't you?

10

Mr. Beers: I object, because the note and mortgage speak for themselves as to what they represented.

The Master: So far as the note is concerned, I will allow him to testify that it is his note. He didn't say anything about the mortgage in the question. He can answer.

Mr. Beers: I object.

The Master: Objection overruled.

Mr. Beers: Exception.

20

A I knew the note was for forty-four hundred dollars. I didn't figure what the object was. They had it figured it was for forty-four hundred dollars, in the neighborhood of forty-four hundred dollars, which I already owed them.

Q And you now say that that forty-four hundred dollar note was supposed to secure only the material that you owed them at the time? A Right.

30

Q That is right? A That is right.

Q And you also say that forty-two hundred dollars payment was on that account? A It was to be on my account which the note took in. My entire account.

Q You say the note took in the entire account at that time? A Right, sir.

Q And you say this two thousand dollar payment you expected to get was to applied on the account owed? A Well, it was to be applied on my account. Why they made it forty-four hun-

40

George Beisley, cross.

dred dollars was, well, it was over my head. I knew I didn't quite owe forty-four hundred dollars.

Mr. Beers: Mr. Kristeller, can I note on the record an objection to all this testimony binding Mrs. Beisley as to what the note was to secure? 10

The Master: Yes, you can have that. I don't think it has any binding effect.

Mr. Marder.

Q At that time did you think that forty-four hundred dollar note included only the sum then owing to the Elizabeth Sash and Door Supply Company, or did you think it included also the expected credit on the Schoonmacher job, after the two thousand dollars was gotten from Lowy and Lowy? A Of course, I did not. 20

Q Which one of those two did you think it was? A I figured it was the amounts I was then owing to the Elizabeth Sash and Door.

Q Do you remember making an affidavit in May, 1927, for the purpose of allowing your mother to defend this foreclosure suit? A I do.

Q Were the statements in that affidavit true? A As far as I can recollect. 30

Q All right. You said in that affidavit as follows: "The complainant knew I had not yet secured the Schoonmacher job at the time the note and mortgage was executed, so that I thought the complainant included this sum in the note which I made, so that I would feel obligated to purchase my materials from them, should I secure it." Do you remember making that statement in the affidavit? A I do. 40

George Beisley, cross.

Q That is directly opposite to what you just said, is it not? A Well, it is in one way. The complainant knew that I wasn't positive myself at the time of making the affidavit, that I had the contract on the Schoonmacher job, and when questions arose as to the materials, that is where I figured they got the forty-four hundred dollars or more.

Q When you say that is where you figured, you mean when? A At the time of the affidavit.

Q You figured what it was for the Schoonmacher job? A That they included the Schoonmacher job, and didn't give me any credit for any other materials.

Q Yes, but you certainly knew what you had in mind? A That is true.

Q Which did you have in mind? A I had in mind the clearance of the general account.

Q These notes and renewal notes: Exhibits C. 1 to C. 6 inclusive, are all signed by you, aren't they, Mr. Beisley? (Shows exhibits to witness.) A Yes.

Q And you read these before you signed them? A Right.

Q And the note of February 27, 1926, in the sum of thirty-four hundred and thirty-three dollars is given in renewal of this first note of forty-four hundred dollars, is it not? A It is.

Q Likewise, this note of February 27, 1926, Exhibit C. 4, is given in renewal of both of the preceding notes, is it not? A It is.

Q And likewise Exhibit C. 5, is given in renewal of the preceding notes? A It is.

Q The one dated June 28, 1926. And likewise, the last note, of August 28, 1926, is given

George Beisley, cross.

in renewal of the preceding notes, is it not? A
It is true.

Q You testified on direct examination (p. 28),
that the note was made for forty-four hun-
dred dollars because it ran in the neighborhood
of forty-two hundred dollars, and some odd dol-
lars over, and that the complainant made it
forty-four hundred dollars so that they would
have enough for themselves, isn't that so? A
That is so.

10

Q And you also testified it was your inten-
tion that when the two thousand dollars was re-
ceived from Lowy and Lowy, that would be on
the account of the note, that is so, isn't it? A
Yes.

Q Then, how is it that all of these renewal
notes are in excess of twenty-two hundred dol-
lars, which is the difference between forty-four
hundred dollars and two thousand dollars; were
signed by you after this two thousand dollar
payment was made through Lowy and Lowy? A
Well, I have signed the notes as long as the
"Sash" renewed them. I never questioned them
concerning the notes, and I kept right on figuring
as they were delivering materials to me, they
were keeping on adding them right on the notes.

20

Q Who told you to say that? A I dreamed
that.

30

Q Sir? A I dreamed that.

Q You dreamed that? A Yes.

Q Didn't you at the last hearing, page 31 of
the testimony, claim as the only credits on the
original note of forty-four hundred dollars was
the check of one thousand dollars, dated Feb-
ruary 6, 1926; and in addition thereto, the check
of four hundred and fifty dollars and seventeen

40

George Beisley, cross.

cents, dated May 2, 1926? A I did. The two thousand dollar check was in exhibit then.

Q I am not asking about that two thousand dollar check. Do you remember what you owed the Elizabeth Sash and Door Supply Company on February 27, 1926? A I do not.

10 Q You were getting from the Elizabeth Sash and Door Supply Company at that time only items on account of the Schoonmacher job, is that so?

A That was the only job in operation at that time.

Q Do you remember how much was delivered on the account of the Schoonmacher job up to that time? A I do not.

20 Q Do you remember having a conversation with Frank Lammerding in connection with the first renewal note, dated February 27, 1926? A I don't remember. I can't recall.

Q Do you know whether this is Frank Lammerding's handwriting or not? (Showing paper to witness.) A Yes, I recall now. It is his handwriting.

Q Do you remember why this renewal note of February 27, 1926, was made at three per cent. interest? A That is what the main note was made for.

30 Q I am asking you, do you remember why the renewal note was made at three per cent.? A No, there was no question over the interest.

Q Why was it made three per cent.? A I do not know.

Q You don't remember? A No.

40 Q Isn't it true that you asked Frank Lammerding to make this first renewal note of February 27, 1926, at three per cent., since at that time, you had not gotten all of your material on the Schoonmacher job? A I hadn't men-

George Beisley, cross.

tioned nothing concerning interest. No, it isn't true.

Q Did Frank Lammerding say that to you?

A No.

Q Now, the day this note was signed by you, it was signed in the office of Aaron Marder, was it not? A The first note, yes. 10

Q Who wrote that note out? A I don't remember.

Q Didn't Mr. Marder write this note out? A I don't remember.

Q There were present at that time, yourself, Russell Lammerding, your mother, and Aaron Marder, is that so? A That is true.

Q And was it told your mother and you that the mortgage was given to secure your note for forty-four hundred dollars? A It was. 20

Q And was it further told both your mother and yourself, that the forty-four hundred dollars represented the expected credit on the Schoonmacher job, and the balance due on what you then owed; running into forty-two odd hundred dollars, less the two thousand dollars expected payment? A It was not.

Q Was it not, also told you and your mother that the interest rate would be three per cent. per annum, instead of six per cent. per annum, because for about one-half of the amount of the note, you had not yet received in goods or in merchandise? A There was no question raised about the interest. 30

Q Was that said to you? A No.

Q You are certain of that? A Certain.

Q What time of day was it that you were in Aaron Marder's office? A In the forenoon.

Q With your mother? A I was. 40

George Beisley, cross.

Q Were you present when your mother signed this mortgage? A I was.

Q Was it signed in Aaron Marder's office? A It was.

Q Was it acknowledged in Aaron Marder's office? A I don't think so.

10 Q What time of day was it acknowledged? A I don't remember.

Q Was it acknowledged in the forenoon? A It was the same day we were there.

Q In the forenoon? A Right, sir.

Q Where was it acknowledged? A In the same building.

Q Did you see your mother acknowledge it? A I didn't watch closely.

20 Q Do you remember your mother acknowledging it? A I do.

Q What did you see her do when she acknowledged it? A She swore that the statements were true, or something like it. That is all I noticed her do.

Q Did you ask your mother whether she was married, about that time? A No.

Q Was your father present? A No.

Q Did you bring your father in later on to sign that mortgage? A I did.

30 Q Wasn't it discussed with you at the time your father was supposed to come in and sign the mortgage? A It was.

Q Now you made application to the Elizabeth Sash and Door Supply Company for credit on this Schoonmacher job, before this note and mortgage was signed, didn't you? A I don't remember.

40 Q Certainly you ought to remember that? A I think it was only estimates which I got from him.

George Beisley, cross.

Q But you made application to them for credit, didn't you? A No, I merely put in estimates concerning it.

Q You are sure you didn't enter an order before? A I don't remember.

Q Is this your handwriting, Mr. Beisley? (Showing witness paper.) A It is. 10

Q Did you write your name of George Beisley and Son? A It is my handwriting.

Q Didn't you sign this application or rather this order, for materials? A I did.

Mr. Marder: I offer for identification an order for lumber, mill and machine material. Contract signed by George Beisley, dated November 10, 1925, in connection with the 39 Eastern Parkway job, known as the Schoonmacher job. The lumber estimate being eleven hundred and sixty dollars; the mill estimate being six hundred and forty-eight dollars; and the machine material being \$373. (Marked in evidence, by consent, as C. 8.) It was stipulated that the amounts set forth in this order, are the exact amounts charged to George Beisley, on the books of the complainant, for materials furnished on the contracts for the Schoonmacher job. 20 30

Q Doesn't this refresh your recollection? A It does.

Q And aren't you now ready to testify that you knew exactly how much credit you wanted in connection with the Schoonmacher job, on November 10, 1925? A I am, now. Yes.

Q So, you did want this credit of \$2,181, the total of the contract estimates, before the note 40

George Beisley, cross.

and mortgage in suit, were executed, isn't that so? A That is right.

Q At that time when this estimate was submitted, or rather when this order was entered, you knew that you were going to get the complainant \$2,000 through Lowy and Lowy, didn't you? A I didn't know how much they were getting.

Q But, you knew about the \$2,000. You expected it would be about \$2,000? A I wasn't positive myself there were moneys down there due me.

Q Well, how much? A I wasn't positive.

Q You knew that they were getting this money shortly, didn't you? A I wasn't positive myself. It was a contract job.

Q But you completed the contract, didn't you? A That is true.

Q What job was this, the Ivy street? A 11 Ivy street.

Q You knew the contract was completed? A I did.

Q And how much money was coming to you at that time? A Close on to \$3,000.

Q Close on to \$3,000, and you expected the Elizabeth Sash and Door Supply Company to get an amount? A I figured on giving them that.

Q You figured on giving them perhaps \$3,000? A I wasn't sure.

Q How soon did you expect to give them it? A I wasn't positive myself. You can't live on promises.

Q I know you can't. Wasn't this the time when this order was handed by you to Mr. Bergbauer, the salesman for the complainant; that you told him that you expected to get some money

George Beisley, cross.

on the Ivy street job, and, consequently, you ought to get this credit? A Right, sir.

Q And was the time he said to you that he would try to get you credit, after he took it up with the company? A He didn't mention anything to me whatsoever.

Q Did he talk to you about getting your mother to put up security when you put this order in with him? A No, sir. 10

Q When did he talk to you first about getting your mother to put up the security? A I think a day or two after.

The Master: After what?

A After the last meeting.

Mr. Marder. 20

Q After this order was made? A No, it must have been four days after the order.

Q After the order, didn't he tell you at that time you could not get credit unless it was secured? A He didn't mention it that way. He said my credit would be a whole lot better if I should try to secure the miscellaneous that was due the company. He must have known the Ivy job would cash in shortly. And he would see what he could do on miscellaneous accounts to bring me up to date. 30

Q Didn't he tell you, also, at some time, that the company wanted this Schoonmacher job secured before the advance of credit? A He did not.

Q Sure about that? A Positive.

Q Didn't Mr. Frank Lammerding tell you? A He did not. 40

George Beisley, cross.

Q Was that told to you in the office of Aaron Marder, when your mother signed the mortgage?

A It wasn't referred to in the ways you express it. It wasn't told to me it was being carried on as a note.

10 Q Was it told you and your mother that this mortgage was given to secure also the Schoonmacher job? A It was not.

Q You are sure of that? A Positively.

Q Have you talked this case over with your mother since? A No, sir.

Q Never said a word to her about it? A The only time we talked about this case was when we entered Mr. Beers' office. That is very seldom.

20 Q Did you ever say anything to your mother about this case when she came down here; I mean since she signed the mortgage? A I haven't mentioned anything concerning these notes or mortgages or anything else to her. The only thing I ever mentioned was different things mentioned in Mr. Beers' office.

Q Who did the talking in Mr. Marder's office about the transaction? A I think it was mostly done by you and my mother.

Q "By you," you mean Mr. Marder? A Yes.

30 Q What did Mr. Marder say? A That I can't recall; I don't remember.

Q Did Mr. Marder explain the transaction to Mrs. Beisley? A I don't remember this. I was talking with Mr. Lammerding at that time.

Q Did Mr. Lammerding explain the transaction? A I don't think he did.

Q You don't think so? A No.

40 Q Well, there was some conversation, wasn't there, in Mr. Marder's office, about this mortgage guaranteeing the future credit? A Mr. Lammerding and myself, had a conversation.

George Beisley, cross.

Q In Mr. Marder's office? A It was.

Q Your mother was present? A Right.

Q What was that conversation? A I think to guarantee a future credit, which to me would mean hardly anything.

Q Don't give me impressions. Tell me what was said. A A guarantee of future credit. 10

Q Having in mind the Schoonmacher job? A Having in mind the Schoonmacher job.

Q He wanted you to do that, didn't he? A Yes.

Q And you agreed to do that? A I was satisfied if my mother would be.

Q Did you turn to your mother and ask her that? A I asked her, certainly.

Q What did she say? A I don't recall all she said. 20

Q What did she say? A She didn't see how she could do it.

Q And then she finally consented, didn't she? A I don't think she did.

Q Are you sure she didn't? A I didn't see her do it.

Q At least, it was after that conversation that she signed the mortgage, wasn't it? A Right, sir. 30

Mr. Marder: That is all.

The Master: There is no answer in this case filed on behalf of the defendant Lucy Beisley. The only answer we can take is the petition by Lucy Beisley to be permitted to defend the foreclosure proceeding, and if an answer were or had been filed, the answer would have been given to secure the sum of \$4,400, less the payment of \$2,000 40

Fred Bergbauer, direct.

that was about to be made. That is what the answer would have contained.

Mr. Beers: The defendant rests.

10 FRED BERGBAUER, being sworn by the Master in behalf of the complainant, testifies as follows:

Direct examination by Mr. Marder.

Q You are the salesman for the Elizabeth Sash, Door & Supply Company? A I am.

Q You saw George Beisley about the Schoonmacher order, didn't you? A I did.

20 Q And that order was procured from George Beisley on November 10, 1925? A That is true.

Q What, if anything, was said to him at that time, about securing the Schoonmacher job? A Well, after I brought the order into the office, they refused to O. K. it. I saw George shortly after the order brought and I told George it would be necessary for us to have some sort of security in order to give him credit on this new booking and also to take care of the old account on the books

30 Q And did you know at that time that some money was coming in connection with the Ivy street job? A I did.

Q Did you know the exact amount? A He told me we were to get \$2,000 at that time.

Q And what did George say to you about getting security, if anything? A George suggested to me that he would endeavor to get a mortgage from his mother to cover the old account. I carried that news back to the office.

40

Fred Bergbauer, cross.

Q You can't tell us what you said to the office. Did you see George after that? A I did.

Q What did you tell him? A I told him the mortgage would be acceptable providing it was covering the old account on the books and this new account on the books.

Q What did George say? A He told me he would speak to his mother about it, and at a later date he arranged for us to see his mother. 10

Q Did you see his mother at this later date? A I did.

Q Was Frank Lammerding present? A He was.

Q Was George present? A George was present.

Q Was his mother present? A Yes.

Q What was said at that time? A I went for the purpose of finding out whether it was agreeable for Mrs. Beisley to give us a mortgage on her property to protect the old account and this order that George just gave us for the Schoonmacher job. It was said that she would. 20

Q Did she agree to? A She agreed to give a mortgage to protect him. That is all.

Cross examination by Mr. Beers.

Q Were any figures mentioned at Mrs. Beisley's home? A There were some figures mentioned. 30

Q Do you recall what they were? A George Beisley and son's old account amounted to in the neighborhood of twenty-two hundred and some odd dollars, or a total of— No, that he was looking to pay \$22,000 upon this booking here. I mean the order that George gave us on November 10th. 40

Frank Lammerding, direct.

FRANK LAMMERDING, being sworn by the Master in behalf of the complainant, testifies as follows:

Direct examination by Mr. Marder.

10 Q Mr. Lammerding, you are connected with the complainant in what capacity? A In the credit department.

Q And were you present at this conversation with Mrs. Beisley and George Beisley and Mr. Bergbauer, just testified to by Mr. Bergbauer? A I was.

20 Q What was said at that time? A George Beisley made the appointment for us to go see his mother. He was present and we spoke to George about protecting the balance due on his general account after the payment had been made on the Puth job. I believe Puth was the owner of the Ivy street job. And also guaranteeing the new Schoonmacher job.

Q Did Mrs. Beisley agree to give a mortgage? A She did.

30 Q Securing the complainant on the balance due on the Ivy street job, on the general account, after the two-thousand-dollar-payment, and also the Schoonmacher job? A She did.

Q When did this conversation take place? A Some time in November.

Q Where? A I believe it was 21 Spencer street.

Q Mrs. Beisley's home? A Yes, sir.

Q I show you Exhibit C. 3; is that your note (showing paper to witness)? Is that your handwriting? A Yes, sir.

40 Q All except the signature, of course? A And the due date.

Frank Lammerding, cross.

Q And the due date. That is the note dated February 27, 1926? A Yes, sir.

Q Do you remember how this came to be written with interest at three per cent.? A Yes, sir.

Mr. Beers: I object on the ground that Mrs. Beisley is not bound under the renewal notes, and any conversation between her son and a representative of the Elizabeth Sash and Door Supply Company. And the conversation not being in her presence, is not binding upon her. 10

The Master: I will allow the question, not as binding upon Mrs. Beisley, but showing the course of the transaction. The course of the transaction, not with respect to the mortgage, but with respect to the notes. 20

A When the note came— The day the note was due, or it might have been the day or two prior to the due date, I went out to the job and saw George on the job.

Q What job? A The Eastern Parkway, the Schoonmacher job.

Q The Schoonmacher job? A Yes, sir. We then made out the new note, the renewal note, and when it came down to the question of interest, he specifically told me that the note was at three per cent., because we had included in the original note and mortgage the Schoonmacher job, and we were being paid for materials bought, that were not yet delivered. 30

Cross examination by Mr. Beers.

Q You were not present in Mr. Marder's office when the mortgage was signed? A No, sir. 40

Frank Lammerding, cross.

Q So that you do not know what the final agreement was between Mrs. Beisley and the Elizabeth Sash and Door Supply Company? A Yes, I know.

Q You do? A Only from hearsay.

10 The Master: We don't want any hearsay.

Mr. Beers.

Q When you called at Mrs. Beisley's home, she specifically agreed to guarantee deliveries on the Schoonmacher account? A Yes, sir.

Q So that if Russell Lammerding testified that Mrs. Beisley was to guarantee a general credit to her son to include any job without specific mention as to the Schoonmacher job, his statements are incorrect, is that so? A His statements are not incorrect, because that is the only job we were to talk about at that time, and when Russell Lammerding said contracts, the booking sheets include three contracts. One job and three contracts.

20

Mr. Beers: That is all.

Aaron Marder, the solicitor for the complainant, tendered himself to be sworn as a witness on behalf of the complainant to testify to the circumstances of the signing and execution of the mortgage in question.

30

It was then stipulated that no inference was to be drawn against the complainant by reason of the failure of the solicitor for the complainant to testify in behalf of the complainant and that the solicitor for the defendants would not argue either before the Master or the Vice-Chancellor, if exceptions

40

Sarah Johnson—Lucy Beisley, re-direct.

are taken by either side to the Master's report, that any inference is to be drawn against the complainant by reason of the failure of the solicitor for the complainant to testify in these proceedings.

It is hereby stipulated that one of the credits to Beisley on the Schoonmacher job is the sum of \$713.23 procured through Counsel Levy in settlement of the Elizabeth Sash, Door and Supply Company's stop notice.

10

SARAH JOHNSON, being recalled as a witness in behalf of the complainant, testifies as follows:

20

Re-direct examination by Mr. Marder.

Q Tell us how much is due on the last note, on this mortgage, according to your records? A With interest, \$3,210.

Q How do you arrive at that? A The note is dated August 28, 1926. Today would be fourteen months at six per cent., would be \$210. The protest fees were \$2.86.

30

LUCY BEISLEY, recalled as a witness in behalf of the defendants, testifies as follows:

Re-direct examination by Mr. Beers.

Q Were you asked by the Elizabeth Sash, Door and Supply Company, or your son George,

40

Lucy Beisley, re-direct.

if they could extend the time of payment on the note after the day it was due? A No, sir.

Q Did George ever confer with you as to payments made on any of the notes? A No, sir.

10 Q Do you know anything that happened with respect to deliveries of materials, or payments of any kind, made to the Elizabeth Sash, Door and Supply Company, after the date the mortgage was executed? A No, sir; not a word.

Mr. Marder: No cross examination.

The Master: The case is closed.

20

30

40

*Exhibit C. 2.***Exhibit C. 2.**

THIS INDENTURE, made the twenty-seventh day of November in the year of Our Lord One Thousand Nine Hundred and Twenty-five, Between LUCY BEISLEY and GEORGE BEISLEY, her husband, of the City of Newark in the County of Essex and State of New Jersey, of the First Part: And ELIZABETH SASH DOOR & SUPPLY COMPANY, a New Jersey corporation having its principal office in the City of Elizabeth in the County of Union and State of New Jersey of the Second Part:

WHEREAS, George Beisley (son of said Lucy) is justly indebted to the said party of the second part, in the sum of FORTY FOUR HUNDRED DOLLARS (\$4400) lawful money of the United States of America, secured to be paid by his note bearing even date with these presents, and due three months from date with interest at the rate of 3% per annum.

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

Exhibit C. 2.

land and premises, hereinafter particularly described, situate, lying, and being in the City of Newark in the County of Essex and State of New Jersey.

BEGINNING in the northerly line of Spencer Street at a point therein distant one hundred feet easterly from the intersection of the same and the easterly line of Alexander Street; thence easterly along the line of Spencer Street fifty feet; thence northerly at right angles to Spencer Street one hundred feet; thence westerly parallel with Spencer Street fifty feet; thence southerly at right angles to Spencer Street one hundred feet to the northerly line of Spencer Street and the place of BEGINNING.

10

Being known and designated as lots #30 and 31 Block N on Map of Greater Newark Park, situate in the City of Newark, Essex County, N. J., surveyed March and August 1906 by Edward G. Kempf of Newark.

20

Being the same premises conveyed to the said party of the first part by deed dated March 24, 1924, and recorded in the Essex County Register's Office in Book F 71 of Mortgages page 444.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; AND ALSO all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same and every part and parcel thereof, with the appurtenances. TO HAVE AND TO HOLD, the above granted and described premises, with the appurtenances,

30

40

Exhibit C. 2.

unto the said party of the second part, its successors or assigns, to its or their proper use, benefit and behoof, forever.

10 PROVIDED, ALWAYS, and these presents are upon this express condition, that if the said party of the first part, her heirs, executors, or administrators shall well and truly pay unto the said party of the second part, its successors or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void.

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

30 AND the said party of the first part, for herself, her heirs, executors and administrators, does covenant and grant to and with the said party of the second part, its successors or as-
40

Exhibit C. 2.

signs, that the said party of the first part, their heirs and assigns, shall not nor will claim or demand or be entitled to receive any credit or credits on the interest payable hereon or on the moneys to secure payment of which this mortgage is made for so much of the taxes assessed against said lands as is equal to the tax rate applied to the amount due on this mortgage or any part thereof.

10

IN WITNESS WHEREOF, the said party of the first part has hereto set her hand and seal the day and year first above written.

Signed, Sealed and Delivered
in the presence of

LUCY BEISLEY (L. S.)
Flora Miller, as to Lucy Beisley,

20

GEORGE BEISLEY (L. S.)
Flora Miller as to George Beisley.

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

BE IT REMEMBERED, That on this second day of December in the year of Our Lord One Thousand Nine Hundred and Twenty-five before me, A Notary Public of New Jersey, personally appeared GEORGE BEISLEY, who, I am satisfied is the grantor mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed:

30

(Seal)

Flora Miller
A Notary Public of New Jersey.

40

Exhibit C. 2.

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

10 BE IT REMEMBERED, That on this twenty-seventh day of November in the year of our Lord One Thousand Nine Hundred and Twenty-five before me the subscriber, a Notary Public of New Jersey, personally appeared LUCY BEISLEY, who, I am satisfied, is the grantor mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed:

(Seal)

Flora Miller

20 A Notary Public of New Jersey.

Received in the Register's Office of the County of Essex N. J. on the 2nd day of December A. D., 1925, at 2:13 o'clock, in the afternoon, and Recorded in Book X-55 of Mortgages for said County, on pages 583-584.

Howard S. Dodd
 Register

30

40

Exhibits C. 3—C. 4.

EXHIBIT C. 3.

Elizabeth, N. J. Feb. 27 1926

\$3433.00

Two (2) Months after date I promise to pay to
the order of Elizabeth Sash Door & Supply Co.
Thirty Four Hundred Thirty Three & 00/100 10
Dollars at Vailsburg Trust Co. Newark, N. J.
Value received with interest at 3%

Due April 27 1926

George Beisley.

(Endorsed) Elizabeth Sash, Door & Supply Co.
John P. Closs Jr Treasurer
(Bank stamps.)
(Cancelled.)

20

EXHIBIT C. 4.

Elizabeth, N. J. April 27, 1926.

\$3000.00

Two (2) months after date I promise to pay to
the order of Elizabeth Sash, Door & Supply Co.
Three thousand & 00/100 Dollars
at the Vailsburg Trust Company, Newark, N. J.
Value received with int. 30

Due June 27 1926

George Beisley.

(Endorsed) Elizabeth Sash, Door & Supply Co.
John P. Closs Jr Treasurer
(Bank stamps.)
(Cancelled.)

40

Exhibits C. 5—C. 6.

EXHIBIT C. 5.

June 28, 1926.

\$3000.00

Two (2) months after date we promise to pay
to the order of Elizabeth Sash, Door & Supply Co.
10 Three thousand & 00/100 Dollars
at Vailsburg Trust Company, Newark, N. J.
Value received with int.
No. 3876 Due Aug 30

George Beisley.

(Endorsed) Elizabeth Sash, Door & Supply Co.
John P Closs Jr Treasurer.
(Bank stamps.)

20

EXHIBIT C. 6.

Newark, N. J. August 28, 1926.

\$3000.00

One (1) month after date I promise to pay to
the order of Elizabeth Sash, Door & Supply Co.
Three thousand & 00/100 Dollars
at Vailsburg Trust Company, Newark, N. J.
30 Value received with int. 28 ds 14.07
No. 7023 Due Sept 28

George Beisley

(Endorsed) Elizabeth Sash, Door & Supply Co.
John H. Lammerding President
(Bank stamps.)
(Cancelled.)

40

*Exhibit C. 8.***Exhibit C. 8.**

Date Nov. 10, 1925

ELIZABETH SASH, DOOR & SUPPLY CO.
ELIZABETH, N. J.

Gentlemen:

10

Kindly enter order for the following list of material:

Materials ordered other than shown on list to be charged for extra.

To be delivered to 39 Eastern Parkway Newark
N J

As per Lumber estimate covering list of Oct 28,
1925

For the sum of Eleven Hundred Sixty & 00/100
Dollars (\$1160.00)

20

As per Mill estimate covering list of Oct 14, 1925
For the sum of Six Hundred Forty eight &
00/100 Dollars (\$648.00)

As per Mason Material covering list of Oct 29,
1925

For the sum of Three Hund Seventy-three &
00/100 Dollars (\$373.00)

Mortgages now on property

Mortgages to be placed

Charge to Beisley & Son

30

Address 13 Magnolia St., Newark N J

Owner Henry Schoonmaker

Address 57 Cedar Ave., Newark N J

Reference

Payments Will be paid in full within four (4)
months from date.

Booked by Fred J. Bergbauer

Very truly yours,

Beisley & Son

Per George Beisley.

40

*Exhibits D. 1—D. 2 Identification.***EXHIBIT D. 1.**

BROAD & MARKET NATIONAL BANK

Newark, N. J. Dec. 9, 1925

Pay to the order of Elizabeth Sash, Door &
Supply Co. \$2000.10 Two thousand Dollars
Lowy & Lowy(Endorsed) Pay Elizabeth Trust Company,
Elizabeth, N. J. or order Elizabeth Sash, Door
& Supply Co.**Exhibit D. 2 Identification.**20 Notice by Journeyman, Laborer or Material-
man to Owner to Retain Amount Due or to be-
come Due from Contractor or Master Workman.
To Henry & Margaret SchoonmakerOwners of the new building known as #39
Eastern Parkway in the City of Newark County
of Essex and State of New Jersey.30 TAKE NOTICE That there is due to Eliz.
Sash, Door & Supply Co. from Beisley & Son
Contractors the sum of TWENTY-FIVE HUN-
DRED SIXTY & 81/100 (\$2560.81) Dollars for
building materials by you, the said owners, used
and employed in the erecting and constructing of
your said building; That we have demanded pay-
ment of said Contractor Beisley & Son and they
has refused to pay said Eliz. Sash, Door & Sup-
ply Co., which Co. therefore notifies you to retain
the amount so due, out of the amount owing by
you to said Contractor Beisley & Son or that
40 may hereafter become due from you to said Con-
tractor Beisley & Son for labor or materials used

Exhibit D. 2 Identification.

in the erection of said building and to pay the same to said Elizabeth Sash, Door & Supply Company.

Dated, April 14th 1926

ELIZABETH SASH, DOOR &
SUPPLY COMPANY 10
(Signature) Russell Lammerding
(Address) #906 Westfield Avenue
Elizabeth, New Jersey

Note: This Stop Notice is served without prejudice to the right of lien of our company, should we conclude that we may have reason or legal right so to do.

Elizabeth Sash, Door & Supply Company.

20

This notice was received by me at 57 Cedar Ave. Newark, N J the 15th day of April, A. D. 1926, at 3:40 P. M. o'clock in thenoon.

.....

Owner.

30

40

Exhibits D.3—D. 4.

EXHIBIT D. 3.

VAILSBURG TRUST COMPANY

Newark, N. J., Feb 6 1926 No. 54

10 Pay to the order of Elizabeth Sash Door &
Supply Co. \$1000.00
One Thousand and 00/100 Dollars
Beisley & Son.
a/c George Beisley.

(Endorsed) Pay Elizabeth Trust Company,
Elizabeth, N. J. or order Elizabeth Sash, Door
& Supply Co.

(Bank stamps.)

20

EXHIBIT D. 4.

VAILSBURG TRUST COMPANY

Newark, N. J., May 8 1926 No. 142

Par to the order of Elizabeth Sash Door & Sup-
ply Co. \$450.17
Four hundred Fifty and 17/100 Dollars
Beisley & Son.
a/c George Beisley

30

(Endorsed) Pay Elizabeth Trust Company,
Elizabeth, N. J. or order Elizabeth Sash, Door
& Supply Co.

(Bank stamps.)

40

Exhibit—Petition of Lucy Beisley.

EXHIBIT NO. —

IN CHANCERY OF NEW JERSEY.

Between

ELIZABETH SASH, DOOR &
SUPPLY COMPANY, a New
Jersey corporation,
Complainant,

and

LUCY BEISLEY, *et als.*,
Defendants.

10

On Bill, etc.

Petition.

62-361

To the Honorable Edwin Robert Walker, Chan-
cellor of the State of New Jersey:

20

The petition of Lucy Beisley, of the City of
Newark, in the County of Essex and State of
New Jersey, respectfully shows that:

1. The complainant in the above cause filed
its Bill to foreclose a mortgage made by this
petitioner and her husband, on November 27th,
1925, covering property which is owned by the
petitioner in her own right, paid for by her. The
complainant's mortgage was given as collateral
security for a note made by petitioner's son and
endorsed by the petitioner, in the sum of \$4400.00
payable in three months, with interest at 3%.

30

2. This petitioner was served with process of
subpoena to answer the complainant's Bill, with-
in twenty days after December 10th, 1926, which
this petitioner has failed to do.

40

Exhibit—Petition of Lucy Beisley.

3. About one week before the mortgage is dated, a representative of the complainant called at petitioners home, with her son, who does not live with her, in reference to an amount of \$2200.00 owing by petitioner's son for building materials, delivered for the erection of a building at 11 Ivy Street, Newark, N. J. Petitioner was informed by the representative of the complainant, that if she wished to prevent suit against her son, she could do so by endorsing his note and giving her property as security.

4. On the date that the mortgage was executed, the petitioner was brought to the office of Aaron Marder, who is the complainant's attorney. The petitioner consented to guarantee the payment of \$2200. and thereafter mention was made by Mr. Russell Lammerding, a representative of the complainant, of the contract which her son expected to receive for a building on Easter Parkway, to be erected by one Schoolmacher. This petitioner believed that Mr. Russell Lammerding, through conversation with her son, at Mr. Marder's office, ascertained that the petitioner's son was hoping to procure this job. Mr. Lammerding stated to the petitioner "You might as well include the Schoolmacher job in the note." The petitioner answered, "Oh Boy! Don't say that. I could never make it." In answering this Mr. Lammerding said, "that doesn't mean a thing to you. We won't look to you for any more than \$2200." Mr. Marder also said, "that will mean nothing to you."

5. This petitioner visited the office of the complainant's attorney with the expectation of guaranteeing payment of \$2200. for the Ivy Street job. Mention of the Schoolmacher job was a

Exhibit—Petition of Lucy Beisley.

surprise to this petitioner and he did not understand why the note she signed was made for \$4400. The petitioner accepted the word of the complainant and its attorney that they would look to her only for \$2200. on her endorsement. This petitioner had no advise or counsel, it was not suggested that she procure a counsel and she was not given time to consider the effect of her endorsement. 10

6. This petitioner, from a reading of the subpoena issued, did not know that the complainant was demanding of her more than \$2200. This petitioner did not consult an attorney personally because she felt that she had no defense to the foreclosure, for the sum of \$2200.

7. This petitioner was informed by her son's attorney, Walter A. Beers, during the month of January, 1927, that he understood the complainant expected payment from this petitioner for the Ivy Street job, the Schoolmacher job, and a third job, which her son completed for one Beckingham, on Chapman Place, Newark. The petitioner's attorney has been unable to secure statements of any accounts. 20

8. This petitioner relied upon her son, George Beisley, to straighten out the accounts with the complainant. She did not think there was any question that she owed \$2200. to the complainant, did not understand that more was expected of her, and therefore, did not consult an attorney personally. 30

9. The petitioner is now informed that the complainant is about to proceed in its cause, to prove the amount due upon the note and mortgage made by her in a sum exceeding \$3600. which sum the petitioner is informed includes the 40

Exhibit—Petition of Lucy Beisley.

Ivy Street job, Schoolmacher job and Becking-
ham job.

10 10. Petitioner is now informed that she has
a just and legal defense to the complainant's pro-
ceedings and therefore prays that the complain-
ant be restrained from proceeding further in this
cause, until the further order of this court;
that this petitioner be permitted to file an An-
swer without oath, setting forth all of her de-
fenses to the complainant's Bill and that she
have such relief as your Honor may think equita-
ble and just.

WALTER A. BEERS,
Solicitor of Petitioner.

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

LUCY BEISLEY, of full age, being duly sworn
according to law, upon her oath deposes and
says:

30 1. I am the petitioner in the foregoing peti-
tion named. I have read the same and am
familiar with the contents thereof, and the mat-
ters and things therein contained are true.

LUCY BEISLEY.

Sworn and subscribed to before me
this 7th day of May, 1927.

JOSEPH J. QUINN,
Master in Chancery of N. J.

Exhibit—Affidavit of George Beisley.

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

GEORGE BEISLEY, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I have read the petition of my mother, Lucy Beisley. 10

2. I understood at the time my mother executed the mortgage referred to in the petition, that she was guarantying payment for materials delivered to 11 Ivy Street, Newark, N. J. but did not understand that she was to guarantee payment of materials to be delivered on my Schoolmacher or Beckingham jobs. The Schoolmacher job was commenced December, 1926, after the execution of the mortgage. 20

3. I did not question the acts of the complainant or its attorney, at the time the mortgage was executed by my mother, but relied entirely upon them to draw the papers, so that they would set forth our true intentions.

4. I did not know why the note referred to was made for more than \$2200. and did not ask. The complainant knew I had not yet secured the Schoolmacher contract, at the time the note and mortgage were executed, so that I thought the complainant included this sum in the note which I made, so that I would feel obligated to purchase my materials from them, should I secure it. I several times, after the subpoena was issued to my mother, called at Mr. Beer's office. I never informed Mr. Beers that there was any paper other *then* a mortgage executed, *but* my mother. I did not tell him that the mortgage was given as collateral security for a note. I did 40

Exhibit—Affidavit of George Beisley.

not tell Mr. Beers that the note was executed before I had a contract for the Schoolmacher or Beckingham jobs. I did not give Mr. Beers this information because I thought that it made no difference, both my mother and I have signed a note for \$4400.

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GEORGE JOHN BEISLEY.

Sworn and subscribed to before me
this 7th day of May, 1927.

JOSEPH J. QUINN,
Master in Chancery of N. J.

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Exhibit—Memorandum of V.-C. Berry.

Exhibit —.

COURT OF CHANCERY OF NEW JERSEY

Chambers of
MAJA LEON BERRY
Vice Chancellor

Toms River, N. J.
May 24, 1927.

10

In the matter of the application in the above cause for permission to file an answer out of time, this is to advise you that the motion will be denied, as it clearly appears from the moving papers that there is at least \$2200 due on the mortgage, the only question being as to the amount of the encumbrance.

I think, therefore, that the complainant should be permitted to enter his decree pro confesso and take a reference to a Master for the purpose of determining the amount due. 20

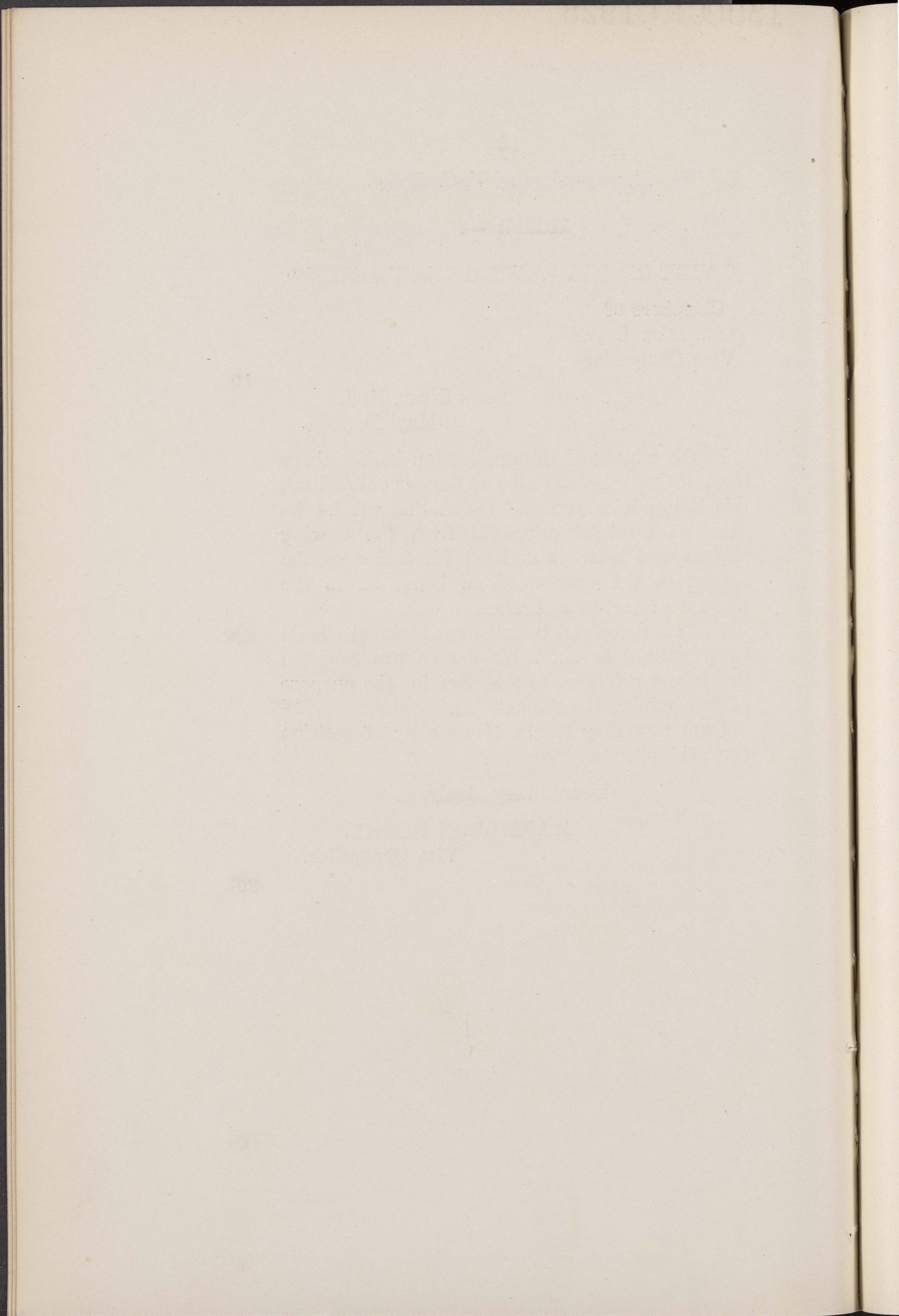
I am returning to Mr. Beers copy of petition and affidavit.

Yours very truly,

MAJA LEON BERRY,
Vice Chancellor.

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

New Jersey Court of Errors and Appeals

Between

ELIZABETH SASH, DOOR & SUP-
PLY COMPANY, a New Jersey
corporation,

Complainant-Appellee,

and

LUCY BEISLEY, *et al.*,

Defendant-Appellant.

On Bill, Etc.

*On Appeal
from the
Court of
Chancery.*

BRIEF OF APPELLANT.

Statement of the Facts.

This appeal is brought to review an order in Chancery advised by Vice-Chancellor Berry (p. 13) overruling this appellant's exceptions (p. 10) to a master's report (p. 7).

The complainant filed its bill to foreclose a mortgage given by the appellant as a surety for her son for the purpose clearly expressed in the mortgage in the following words:

"Whereas George Beisley (son of Lucy Beisley) is justly indebted to the party of the second part in the sum of \$4,400 lawful money of the United States of America, secured to be paid by his note bearing even date with these presents and due three months from date with interest at the rate of 3% per annum.

NOW THIS INDENTURE WITNESSETH that the party of the first part for the better securing the payment of the said sum of money mentioned, etc."

On the date the note bears date, likewise the mortgage (there is no evidence to the contrary), the mortgage was signed, acknowledged and de-

livered to the complainant on the same day (p. 82). The complainant recorded the mortgage December 2, 1925 (p. 82). On the day of delivery of the note and mortgage, the son, George Beisley, owed the complainant \$4,279.13 (Stipulation, p. 24).

Under a contract for delivery of building materials by the complainant to the son, George Beisley, made before the note and mortgage were signed, and under which contract \$50 worth of material had been delivered, George Beisley received material of the value of \$2,718 (Stipulation, p. 23) and later, on another contract, became indebted for a balance due in the sum of \$699.30 for deliveries commencing April, 1926, to a certain Beckingham job (p. 23).

None of the defendants filed answer to the complainant but the matter was referred to the master under decree and order (p. 5). "Further ordered, that said master take the proofs of complainant and defendant Lucy Beisley with respect to the amount due on said mortgage upon notice to the several defendants." The master found, "That the mortgage (p. 8) of \$4,400 was given by the defendant, Lucy Beisley, to the complainant to secure to the complainant not only the then present debt of her son, George Beisley, but was to secure for her son, George Beisley, further credits of approximately \$2,000." The report does not make clear how the master made his calculations. His schedule (p. 9) annexed to the report, sets up a renewal note of the original \$4,400 note signed by the son, which renewal note was not signed in the mother's presence (p. 73).

"A When the note came—the day the note was due, or it might have been the day or two prior to the due date, I went out to the job and saw George on the job."

Not only was the note signed without her being present, but there is no evidence on the part of the complainant that the mother ever knew any renewal notes were signed. Her testimony (p. 76):

“Q Were you asked by the Elizabeth Sash, Door and Supply Company, or your son George, if they could extend the time of payment on the note after the day it was due? A No, sir.

Q Did George ever confer with you as to payments made on any of the notes? A No, sir.

Q Do you know anything that happened with respect to deliveries of materials, or payments of any kind, made to the Elizabeth Sash, Door and Supply Company, after the date the mortgage was executed? A No, sir; not a word.”

And her son testified (p. 50):

“Q When the note came due three months later you paid it by giving another of your notes, is that correct? A It is correct.

Q Did you ask your mother whether or not she would consent to an extension of time of payment or guarantee or if she would guarantee payment of the renewal note? A No, I did not. I never bothered her after the mortgage was signed. I never consulted her. I took it in my own hands.”

The mother's testimony is that, first assuming the initiative a representative of the complainant called at her home where the son did not live and asked her to help her son to the extent of guaranteeing \$1,200 and that later she was induced to guaranty \$2,200 (p. 37).

“So we spoke it over and I said, ‘No, that is an awful lot of money to work for—it took me all my life,’ but they both said, ‘We will stand in back of George and we will see that he clears out all right. We only just want your guaranty for a little account, just to

back him up.' I said all right if that is all you want a credit of \$1,200, I will help my son, but when I got down to the office of Mr. Marder they figures it up and it amounted to about \$2,200, so I said, 'well \$2,200 is an awful lot of money,' and he says, 'Don't worry, he will clear himself out of it.' "

This mother's testimony throughout indicates she has no business mind and has a poor expression of thought, and though the petition for leave to file an answer (Exhibit, p. 89) made before the decree under which the matter was heard by the master, indicates that she informed her attorney (myself) who drew the petition, that the mortgage should only have been for approximately \$2,200, that was not what she meant. By agreeing to guarantee \$2,200 what she meant was what she said in her own words at the hearing (p. 38):

"Q Did you know the amount the mortgage was made for? A Well, by the way they told me it was made for \$2,200.

Q Did you see the amount of it before you signed it? A They put down \$4,400 provided they got the \$2,000 from the Ivy street job and they would deduct that from the note; that is the way they put it to me."

The son explains the variance between the actual debt of \$4,279 and the note for \$4,400 (p. 48):

"Q Why was the note made for \$4,400? A I do not know unless they did not get their \$2,000 check yet, their being on the safe side.

Q You mean it included all? A It included all my bills, miscellaneous and the Ivy street job. It ran in the neighborhood of \$4,200 and some odd dollars and they made it \$4,400 so they would have enough for themselves."

The \$2,000 was paid on the indebtedness in December, 1925 (p. 51).

“Q Did you instruct Lowy & Lowy on December 22, 1925, to pay the Elizabeth Sash, Door & Supply Company \$2,000 out of the money which was due on 11 Ivy street?
A I did.”

When this first note, originally for \$4,400, came due \$1,000 was paid to the complainant.

“Q I show you a check dated February 6, 1926, to the Elizabeth Sash, Door & Supply Company for \$1,000. Was this paid on account of the indebtedness which was originally represented by the note of \$4,400? A It was.”

That renewal note should have been for \$1,400 and not \$3,400 as it was actually made for (Exhibit P. 3, p. 83). Why the son did not object to his not having that credit of \$2,000 on the note is clear from his testimony under cross examination (p. 61):

“Q Then, how is it that all of these renewal notes are in excess of \$2,200, which is the difference between \$4,400 and \$2,000; were signed by you after this \$2,000 payment was made through Lowy & Lowy? A Well, I have signed the notes as long as the ‘Sash’ renewed them. I never questioned them concerning the notes, and I kept right on figuring as they were delivering materials to me, they were keeping on adding them right on the notes.”

This testimony refers to the new jobs he started on Eastern Parkway, where the materials totaled \$2,700, and the Beckingham job also. The stipulations have already been referred to showing this to be so. What did the son care in what amount the note was made for? He was not thinking of his mother's liability. He did owe \$3,400 at the time the note came due as an additional \$2,100 worth of materials had been deliv-

ered to him during the time the first note of \$4,400 was running (Stipulation, p. 23). I have already quoted the testimony indicating that the mother was not present and did not know this renewal note was signed, so that there was no binding effect on her by this peculiar arrangement made with the son. Her liability is under the original note and she can insist upon the credits being made which were not given.

On the next renewal note the son paid \$450.17 (p. 52), of which \$50.17 was applied as interest (which the complainant had a right to do), so that the next renewals and the last one also (Exhibits C. 3, C. 4 and C. 5) in so far as the mother is concerned, should be for \$2,000 less than they were made for, thus making her liability \$1,000 plus interest. These renewal notes are referred to simply to show how the complainant came into possession of the son's note for \$3,000 with which the mother had nothing to do whatsoever, and which renewal note the master set up as the complete schedule of accounting in his report. I also refer to the renewals to show how the \$2,000 credit was left out between the son and the complainant. Even the Vice-Chancellor in overruling the exceptions to the report recognized that the complainant's right came under the original note only (p. 20). "The original note, however, was never surrendered and the subsequent notes executed by the defendant's son indicate that they were taken merely as collateral to the original indebtedness." And if that be so, the master had no right to set up the renewal note as a schedule.

The president for the complainant concern, the only person present at his attorney's office when the arrangement was made (with the exception of the mother and son) testifies (p. 24) that the

son owed \$4,279.13 when the note and mortgage were signed was all, not part, secured by the mortgage (p. 25), but says that future deliveries were also to be secured. That if the son paid (p. 26) \$2,000 then the indebtedness could again be increased by crediting any new accounts. Thus this calculation: the indebtedness of \$4,279.13 being reduced to \$2,279.13 after \$2,000 was paid a month after the transaction of November 21, 1925, became effective, that left \$2,120.87 for future credits. (Those two sums total \$4,400.) And in face of the written provision of the mortgage the complainant contends further (p. 34):

“Q Do your books also show that there was a surplus credit to Beisley’s account of \$2,120.87 which you did not transfer to any account until March 30, 1926, and on that date you applied that credit to the 39 Eastern Parkway account—is that correct? A I transferred it that day; yes, sir.”

That was one month after the note came due which the mortgage was given to secure and even that, contends the complainant, did not extinguish the son’s surplus credit, for although the job to which the transfer was made created an indebtedness of \$2,718.26 (p. 23) having received money other than this complainant’s so-called surplus, by crediting that sum of \$2,120.87 in full it made an overpayment on this job (p. 30).

“Q Has the credit balance been eaten up entirely? A It was. After the Eastern Parkway job was completed, less other credits received, left a credit balance of \$185.42.”

That sum was then again taken to apply on other items and at that must have been ever after March 30, 1926, which was over a month after the original note came due.

“Q That credit balance of \$185.42, was that eaten up in any way? A That was

transferred to the general account and that would take in some of the miscellaneous account of \$78.41, and there was a 'N. G.' check of \$32.48 and there was a balance on the Chapman job of \$699.30."

That being the condition of the account for Eastern Parkway job on March 30, 1926 (an overpayment of \$185.42), on April 14, 1926, the president of complainant corporation had the same bookkeeper give him the amount due on this job (p. 36), who then dictated and drew up a stop-notice addressed to the owner to withhold \$2,560.81 (Exhibit D. 2, p. 86) which he had served on owner's attorney (p 35). The books seem to be meaningless. Apparently if they collected on that notice the account would again be "juggled" so that surplus would have been put to another job under a plan to "keep mother liable on job we do not get paid for." And so the complainant in its own way disposed of the \$2,000 paid in December, 1925.

I.

An agreement to charge a surety must all be in writing and cannot be aided by parol evidence.

A surety's obligation, being assumed without pecuniary compensation, the obligation cannot be extended by implication or construction and is strictly construed. More so here, being drawn by the complainant's attorney without the mother having any advice whatsoever. That contract says, "George Beisley is indebted in the sum of \$4,400 secured by his note." The evidence that future credits also were secured and that finding by the master, sustained by the Vice-Chancellor, contradicts that writing. The dictionary defines "debt" as "that which one owes another; money; goods or services one is

bound to pay another” and adds the legal acceptance as “Debt is a form of money due whether by certain and expressed agreement or as established by a court as a debt of record.”

In *Plymouth Township v. Larksville*, 110 Atl. 801, the Court said:

“‘Debt’ is used often interchangeably with the word ‘liability.’ The latter has a wider import and includes every kind of obligation, even unascertained, as distinguished from ‘debt’ in that the latter are ascertained and determined.”

In *Lachman v. Block*, 28 L. R. A. 255 (Iowa), 17 Southern 153, the Court sustaining a suretyship as follows: “I agree to become surety for \$1,000,” said that where there is no designation of the past, present or future debt the obligation will not extend to debts created in the future.

In *Hoffman v. Laurie*, 3 L. 259, there was an agreement as follows: “This is to certify that I, Jacob Hoffman, do become surety for Abraham Van Camp on a note of \$60.” The Court there said:

“It does not appear to whom Hoffman became surety. Laurie’s name is not in the instrument. As it is a promise to pay the debt of another the promise must all be in writing. Parol evidence cannot help.”

I am well aware of the cases *Bell v. Fleming*, 12 Equity 13; *Campbell v. Perth Amboy Shipbuilding Co.*, 70 Equity 40, and other cases to which the complainant’s counsel will refer and to which I refer later on in another point, which cases hold that the purpose for which a mortgage is given can be explained by parol. But all of those cases deal with a mortgagor and a mortgagee and not with a surety who must be bound by his writing alone, unaided by parol evidence.

II.

Parol testimony cannot enlarge upon any contract in writing—suretyship or otherwise.

In *Bell v. Fleming*, 12 Equity 13, a mortgage was made for \$100,000. \$38,000 was owed at the time the mortgage was drawn and the balance to be advanced. The Court there said:

“The objection that parol testimony is not competent for the purpose of showing that the mortgage was executed and intended to secure a debt different from that expressed in the mortgage, was particularly noticed by the Vice-Chancellor in the case of *The Bank of Utica v. Finch*, 3 Barb. C. R. 297. Its admissibility was properly sustained, on the ground that it was offered, not to contradict the written instrument but to show the purpose and intent for which it was executed. But this objection must necessarily have been considered in every case where the validity of a mortgage for future advances has been sustained.”

Much emphasis can be laid on the last sentence. The parol testimony shows the purpose but does not enlarge upon the consideration secured of \$100,000. So that case is not in point.

The parol testimony, tending to prove the mortgage secured anything more than \$4,400, which the son was indebted for, would enlarge upon the contract. That is contradictory. That in effect is equivalent to an agreement to execute a new mortgage. It is true that a mortgage given for a specific debt can, by agreement between the parties, be held as security for another debt after the first has been paid, but not before it is paid. It does not alter the writing. It is a new agreement between the parties and not a contradictory statement such as we deal with here where the writing secures \$4,400 and the

complainant asserts a contemporaneous agreement by parol made at the same time to the effect that future credits were also secured.

So in *Campbell v. Perth Amboy Shipbuilding Co.*, 70 Equity, page 40, where certain notes were given and secured by a mortgage. Later some were paid and the mortgage, by agreement, was held to secure new notes made later on. The Court said:

“That it is quite competent for the parties to use the mortgage for a security other than that mentioned in it, is entirely clear and authoritatively settled.

“Our courts have gone so far as to hold that a mortgage given for money loaned, which loan has been repaid and the mortgage delivered up to the mortgagor, may be redelivered for another and distinct loan and be entirely valid between the parties and as against all other parties except intervening encumbrancers.”

This case also lays down the rule permitting the purpose of a mortgage to be shown (but not as to a surety) and is likewise distinguished from the case in consideration because the reference is to subsequent agreements. The Court in the case last cited states the rule but not the reason for it.

Wigmore on Evidence, Vol. 5, page 2441, well expresses the reason:

“A transaction subsequent in time must always be a separate transaction. The rule of exclusion can only apply to negotiations contemporaneous in time, or prior but incomplete. If, for example, a document is executed July 1st it may embody the final and exclusive result of negotiations before and up to that date but a transaction on August 1st must be a separate one.”

In *Kapalinski v. Sitniski*, 91 Equity 524, the Court held that a wholly or partially satisfied

mortgage (no surety involved) may be a security for a future or other debt. That is another case permitting parol evidence of the purpose for which a mortgage is held but certainly the mortgage cannot secure a future or other debt at the same time (this is important) that no part of the original debt has been paid.

Fidelity & Deposit Co. v. Poe, 114 Atl. 713. Where an agreement which was secured became extinct, a surety not assenting to a subsequent contract cannot be held thereafter.

To remove the case under consideration from the class here discussed, the complainant attempted to avoid the fact that it was actually pointing out to the Court a contemporaneous verbal agreement to guaranty further credits in addition to the \$4,400 old indebtedness by an effort to show the \$2,000 payment under question was credited. This the effort (p. 26):

“Q How was the sum of \$4,400 arrived at? A The sum of \$4,400 was what was due on the books at the time and if I remember correctly, the amount of additional contracts that he was interested in placing for future deliveries with our company.”

But if that could be believed what is to be done with all the testimony about the surplus credit? The testimony (see discussion of facts) that after \$2,000 was paid upon the \$4,279.13 there was left a surplus later to be credited of \$2,120.87. Further, if that testimony just quoted is for the Court to infer that payment for materials under the new contract was to be paid for in advance and that, therefore, over \$6,000 was due (president's testimony, p. 6) and the arrangement shown by parol is supposed to be to the effect that the contract was to be binding only after the debt was reduced to \$4,400 by

paying \$2,000 on account, then I say that is contradicted first by the order blank for the materials (Exhibit C. 8, p. 85). "Payments will be made in full within four months from date." Second, by the stop-notice which was served on this job for \$2,560.81 (Exhibit D. 2, p. 86). Third, by complainant's books that the surplus which they had on their books of \$2,120.87 (after the debt of \$4,279.13 was reduced by \$2,000) was transferred to this job March 30, 1926 (p. 30).

There is one other arrangement which should be discussed which the complainant might contend will let in parol evidence so that the \$2,000 credit could be disposed of without crediting it upon the original note. That is, that the arrangement did not become binding to secure \$4,279.13 but that the papers were all held in escrow to become binding to secure \$2,279.13 after \$2,000 was paid and that the note was therefore for \$4,400 so that future advances could be made for the balance. There is no testimony that only part of the old accounts were secured. In fact, the complainant's testimony is to the contrary. Lammerding, the president, the only one who made the arrangement, said it secured \$6,000, which was the full amount of the old accounts and the future credits (p. 26). (Mortgage, however, does not state so.) No one testified that the papers were held in escrow and the evidence is that the mortgage was not only accepted but actually recorded before the \$2,000 was paid. Moreover, the mortgage is not the only instrument under consideration. The note says, "Value Received" (p. 72). If the parties were not bound by the arrangement until December 22, 1925, when the \$2,000 was paid, I ask counsel in his brief to point out the testimony, not the inference to sustain such a contention. The testi-

money of the president who made the arrangement (p. 26):

“Q And was Mrs. Beisley told what this was for? A I do not remember. Yes, I do remember, the note was received the same day the mortgage was made up and she was told that the mortgage was given to secure additional materials besides that which George Beisley or George Beisley & Son, owed to our company.”

That of itself brings this case within the rule discussed, if the complainant's president is to be believed, that the arrangement was security for old accounts of \$4,279.13 and a verbal contemporaneous agreement to secure other money but \$2,000 was to be paid later on.

The taking of the note also changes the aspect of the case somewhat as is pointed out in Wigmore on Evidence, Vol. 5, p. 335.

“The rule on varying a document takes on an altogether peculiar aspect when applied to agreements collateral to a negotiable instrument. The person, amount and time must be contained in a negotiable instrument and other terms must not be adverse to unhindered transfer. How far can parties therefore modify their personal agreement * * *. The writing is final as to time, person and amount. There are two rules. As to variable or expressed terms no extrinsic evidence can avoid enforcement. As to fixed or implied terms they can be. An extrinsic agreement as to the mode and amount of payment must be by that test ineffective since the parties have expressly dealt with those matters in the instrument.”

III.

Consideration which is expressed to be for a specific claim cannot be contradicted by parol.

The consideration is not stated merely \$4,400 but specifies what it represents—security for a debt of George Beisley and makes reference to the note. I will not again recite the facts in full. This rule is well stated in 10 R. C. L. at p. 1044:

“The rule permitting the true consideration of written contracts to be inquired into by parol evidence does not apply where the statement in the contract as to the consideration is more than a mere receipt or acknowledgment of payment, and is of contractual nature. If the consideration is expressed merely as a recital of a precedent or contemporaneous fact, parol evidence is receivable to prove that the recited fact is untrue, and that the recited consideration has not been paid at all, or has been paid on a different account; but if the instrument states a contractual consideration, parol evidence is not admissible to vary or contradict the consideration expressed. Accordingly, oral evidence is inadmissibly in a case where a conveyance expressly recites that it is made for the settlement and release of specified claims. Thus the consideration for a release by an injured employee to his employer, expressed as being ‘in consideration of the employer’s agreement to pay physician’s and hospital charges’ and a specified cash payment to the employee, is contractual so that it cannot be contradicted by parol.”

IV.

The proofs must be confined to the allegations of the bill of complaint.

The bill of complaint says (p. 1), "On November 27, 1925, George Beisley being indebted to complainant in the sum of \$4,400 executed to it a note of that date to secure that sum payable on February 27, 1926, with interest at the rate of 3% per annum."

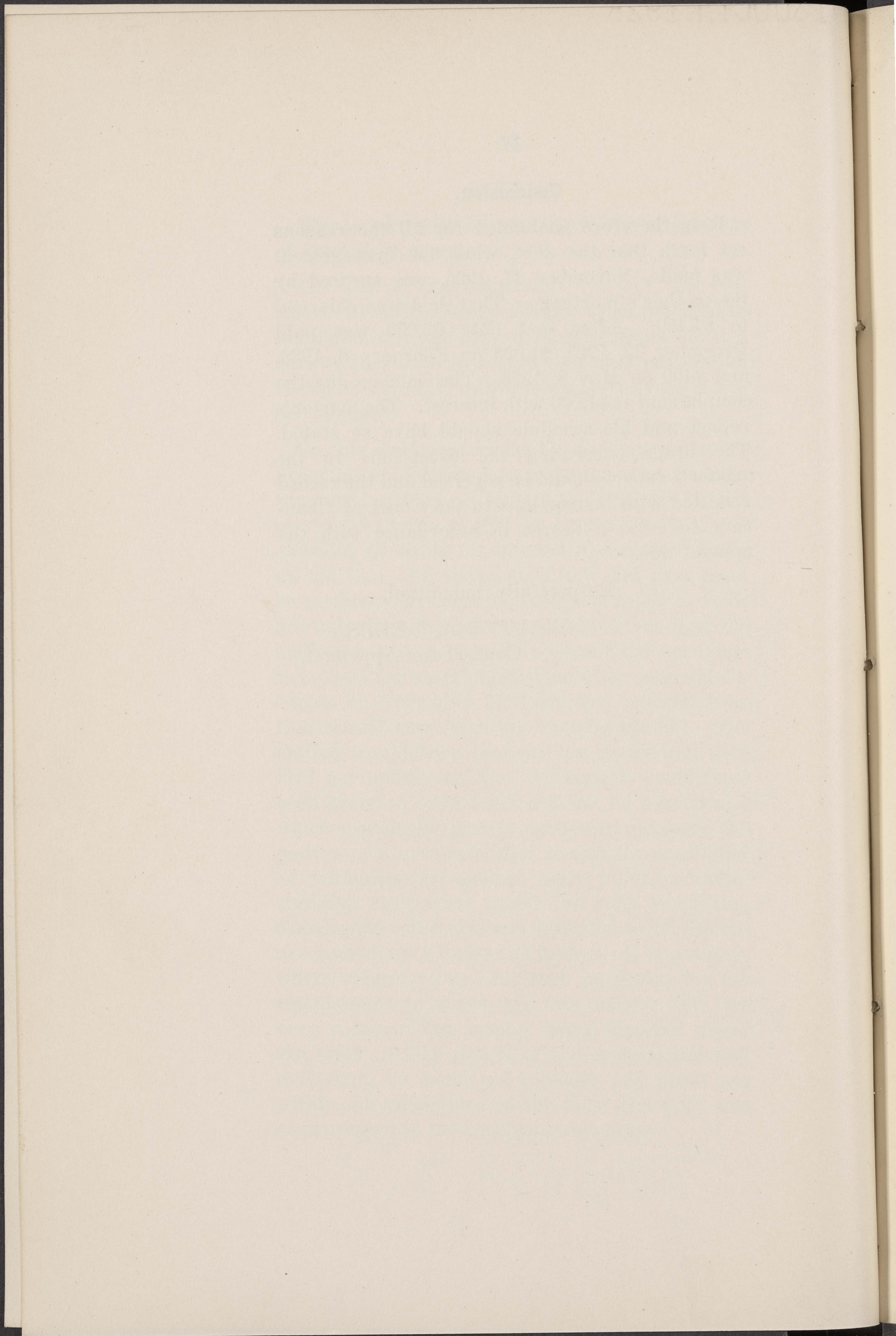
On this statement in the bill the complainant's proof must be limited to proof in what sum the son was indebted on that date, which at best if not \$4,279.13 was \$4,400, the account being stated at \$4,400 probably for interest, the account being an old one. All payments after that date must be credited. If the complainant wanted to show not only that the son was indebted but that the mother, a surety, agreed to permit the mortgage to be held for other obligations after such indebtedness on November 27, 1925, was reduced, then that should have been set forth in the bill. The mother would have been put on notice and then filed her answer so that the matter would have been heard in open court and not on a reference which practically gave a master in chancery the powers of a vice-chancellor to test the credibility of witnesses as against each other, notwithstanding his powers under the rules respecting foreclosure references are intended to be limited to a recording of dates and figures. It is practice, where references are for such purposes, for the complainant to select his own master for this very reason. The master being directed under the order to take proofs of the complainant and defendant, he could not consider any proof not within the allegations of the bill. His duty was as expressed in the conclusion hereafter.

Conclusion.

It is therefore contended for all the reasons set forth that the debt, when the arrangement was made, November 27, 1925, was secured by the mother's mortgage. That debt was enlarged to \$4,400. After that date \$2,000 was paid December 22, 1925, \$1,000 on February 6, 1926, and \$400 on May 8, 1926. The balance due the complainant is \$1,000 with interest. The master's report and his schedule should have so stated. The order overruling the exceptions to the master's report should be reversed and the record remitted with instructions to the Court of Chancery to enter a decree in accordance with the amount due.

Respectfully submitted,

WALTER A. BEERS,
Counsel for Appellant.



130001.1.1928

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

New Jersey Court of Errors and Appeals

Between

ELIZABETH SASH, DOOR & SUP-
PLY COMPANY, a New Jersey
corporation,

Complainant-Appellee,

and

LUCY BEISLEY, *et al.,*

Defendants-Appellants.

On Bill, etc.

*On Appeal
from the
Court of
Chancery.*

BRIEF ON BEHALF OF COMPLAINANT- APPELLEE.

This is an appeal from an order advised by Vice-Chancellor Berry (p. 13) overruling the exceptions of the defendant-appellant Lucy Beisley (p. 10) to a master's report in foreclosure (p. 7).

Statement of Facts.

The suit was to foreclose a mortgage given by the defendant Lucy Beisley to the complainant to secure the indebtedness, past and future (at the time of the giving of the mortgage), of her son, George Beisley, to the complainant.

Defendant Lucy Beisley, being out of time for the filing of an answer on her petition in this cause (pp. 89-94), procured an order to show cause why she should not be permitted to file an answer. Said order to show cause was argued before Vice-Chancellor Berry, who wrote the following memorandum, by way of letter to counsel (p. 95):

“In the matter of the application in the above cause for permission to file an answer

out of time, this is to advise you that the motion will be denied, as it clearly appears from the moving papers that there is at least \$2,200 due on the mortgage, the only question being as to the amount of the encumbrance.

“I think, therefore, that the complainant should be permitted to enter his decree *pro confesso* and take a reference to a master for the purpose of determining the amount due.”

And thereupon the decree *pro confesso* (p. 5) was entered, which contained also the order of reference, above mentioned.

The Master's report (p. 7), dated October 28, 1927, so far as pertinent, reads as follows:

“No formal answer was filed in these proceedings by the defendant, LUCY BEISLEY, but the defense sought to be interposed may be gleaned from an examination of the petition and affidavit filed by LUCY BEISLEY upon an application to permit her to defend this proceeding. This in short is a plea of payment and the evidence sought to be introduced was that Mrs. Beisley did not intend to sign a mortgage for Four Thousand Four Hundred Dollars (\$4,400.00), but only intended to guaranty by her mortgage an account not to exceed Two Thousand Two Hundred Dollars (\$2,200.00). Such a defense requires the defendant to prove it by the greater weight of the evidence. The defendant, LUCY BEISLEY, has not established to my satisfaction, by the greater weight of the evidence that she did not know what she was signing, and I, therefore, find that the mortgage of Four Thousand Four Hundred Dollars (\$4,400.00) was given by the defendant LUCY BEISLEY, to the complainant to secure to the complainant not only the then present debt of her son, GEORGE BEISLEY, but was to secure for her son, GEORGE BEISLEY, future

credits of approximately Two Thousand Dollars (\$2,000.00).

“I further find that the credits have all been given by the complainant and that the complainant is entitled to recover the amount due upon said mortgage, less the credits due to GEORGE BEISLEY, and inasmuch as counsel has stipulated as to the accuracy of the books of the complainant, I find that there is due to the complainant on its mortgage for principal and interest on this day the sum of Three Thousand Two Hundred and Ten Dollars (\$3,210.00).”

Thereupon defendant Lucy Beisley filed exceptions (p. 10) to the said Master's report, which exceptions were argued before Vice-Chancellor Berry, resulting in the order appealed from, the opinion of the Vice-Chancellor insofar as pertinent (p. 20) reading as follows:

“In the matter of Elizabeth Sash & Door Company *v.* Beisley, I have examined the papers submitted to me and considered the briefs filed by counsel and have come to the conclusion that the exceptions to the Master's report should be overruled and the Master's report confirmed for the reasons stated by him.

• I am convinced by the testimony that at the time the mortgage in question was executed it was the intention of the parties to secure not only past indebtedness but future credits to be allowed by the complainant and that the mortgage was intended to secure the note executed upon the date of the mortgage and described therein and all renewals thereof. The original note, however, was never surrendered and the subsequent notes executed by the defendant's son indicate that they were taken merely as collateral to the original indebtedness. The evidence submitted to show the purpose of the mortgage was not objectionable under the Parol Evidence Rule.” (Italics mine.)

Upon reading appellant's brief in this cause it appears that appellant has abandoned all other questions and points other than a question of *fact*, to wit: a claim or argument that the original note and mortgage were made for \$4,400 with the expectation that the \$2,000 received from Messrs. Lowy & Lowy on the Ivy street job were to be credited on this obligation.

Argument as to Facts.

It is submitted that it clearly appears from all the testimony, including the testimony of the defendant's witnesses, especially that of the son, George Beisley, that the facts of the case and the arrangements between the parties were as follows:

That in November, 1925, the son, George Beisley, owing to the complainant the sum of \$4,279.13 and expecting to be able to afford the complainant the payment of \$2,000 on account, and wanting also some additional credit with the complainant for future jobs and deliveries, notably the Schoolmaker (also called Schoonmaker and Eastern Parkway) job, induced his mother, Lucy Beisley, to execute the mortgage in question in order to secure the balance of the then indebtedness after the expected \$2,000 was paid, and also to secure future credits from complainant to her son, George Beisley, notably because of the Schoolmaker job.

That the sum of \$4,400.00 was determined on to represent the sum of the balance of such indebtedness (after the expected payment was made) and the credit for future obligations and consequently the son, George Beisley's note was given for that amount and the mortgage in question recites that it was given to secure said note.

At this point it might be well to point out some of the inconsistencies between the petition filed by Lucy Beisley (p. 89) when she endeavored to obtain permission of the court to file an answer and her testimony on the hearing before the Master. In her petition (p. 90) she claims that she expected to guarantee the payment of \$2,200.00 for the Ivy street job. In her testimony (p. 38, ll. 15 to 20) she states that they made the instrument for \$4,400 with the understanding that if they got \$2,000 from the Ivy street job (this was the payment from Messrs. Lowy & Lowy) they would deduct that from the note. The stipulation (p. 22) shows that in November, 1925, George Beisley owed complainant the sum of \$1,596.20 on miscellaneous accounts and the sum of \$2,682.93 on the Ivy street, Newark, job, or a total of \$4,279.13. It is evident, therefore, that either one or the other of the stories is incorrect, for if the statement in the petition that she intended only to guarantee the Ivy street job (amounting to \$2,682.93) to the extent of \$2,200.00 was true, she would not have testified as above pointed out wherein she admits liability for the difference between \$4,400 represented by the note and mortgage and \$2,000 received from the Ivy street job. Moreover, it is hardly probable that a three-month note and mortgage would be procured to secure a \$2,000.00 payment then shortly to be made and which was made well within the three-month period.

In her petition (p. 90, par. 4) she admits that she was also asked to include the Schoonmaker job and she also says in her petition that she refused so to do; it is submitted that the following part of her answer on page 38, lines 15, etc., is the truth: "They put down \$4,400.00 provided they got the \$2,000.00 from the Ivy street job,"

and it is further submitted that the balance of it "they would deduct that from the note," was added by Lucy Beisley in an effort to minimize the charge against her. There should also be noted the variance between her petition and the facts in that in her petition she states she endorsed the note, which was absolutely untrue.

It should also be noted that in her petition she admits conversations about future credits, and in her testimony (p. 45) she at first denies such conversations, but then she finally admits them.

It is further submitted that the explanation (on bottom of p. 4 of appellant's brief) of the variance between the then debt of \$4,279.00 and the note for \$4,400.00, is absolutely without merit, for stating the account in any possible way would not cause \$4,279.00 to equal \$4,400.00, and the fact that the note was for \$4,400.00 instead of \$4,279.00 absolutely destroys appellant's contention that the note and mortgage were given to secure the then indebtedness of George Beisley, and the fact that the payment of \$2,000.00 was shortly expected and George Beisley wanted additional credits clearly proves that the note and the mortgage were given to secure the balance (after the \$2,000.00 payment) and the future credits.

At this point it might also be well to point out a mistake in appellant's brief (p. 13), where it is stated that Lammerding, the president of the complainant, stated that the mortgage secured \$6,000.00. Lammerding's testimony (p. 26, which is the same page as that stated in appellant's brief as authority for the alleged statement), reads as follows:

"Q How was the sum of \$4,400.00 arrived at? A The sum of \$4,400.00 was what was due on the books at that time and if I re-

member correctly, the amount of additional contracts that he was interested in placing for future deliveries with our company.

Q Less \$2,000.00 that you would get in cash? A Yes, less \$2,000.00. The books at that time were somewhat more than that—\$6,000.00 and some odd dollars.

Q And was Mrs. Beisley told what this was for? A I do not remember. Yes, I do remember, the note was received the same day the mortgage was made up and she was told that the mortgage was given to secure additional materials besides that which George Beisley or George Beisley & Son, owed to our company.

Q Was it understood at that time that you were to get \$2,000.00 in cash? A Yes, sir.

Q And did you get that \$2,000.00 in cash later on? A Yes, sir.

Q Now, do you remember who was present when this mortgage was executed? A Mrs. Beisley, George Beisley and myself.

Q And she signed the mortgage? A Yes, sir.

Mr. Marder: I offer in evidence mortgage under foreclosure. (Received and marked Exhibit C. 2.)

Q How was that 3% arrived at in the note? A 3% was arrived at for the simple reason that he was to get the materials at a later date and we did not feel free to charge him the full 6% interest rate, due to the fact that the materials were not delivered."

It is submitted that this testimony is in full answer to the various and inconsistent contentions made by appellant in her brief (p. 13).

Without attempting to cover all of the testimony and evidence, there are some other points which unquestionably prove that the statement of facts hereinabove contained and summary of the transactions between the parties, as above contained, are correct:

1. The fact that the \$4,400.00 note bore interest at the rate of 3% is particularly cogent in that since about half of the account was owing, 3% on the total was equivalent to 6% on the half owing, or was to be owing shortly.

2. The fact that all of the renewal notes (which were all made after the \$2,000.00 payment from Messrs. Lowy & Lowy), did not give credit for said \$2,000.00 payment is by itself convincing that the parties intended the original mortgage to secure also the future credits. George Beisley's explanation of that fact is very lame and is as follows (p. 61):

“Q Then, how is it that all of these renewal notes are in excess of twenty-two hundred dollars, which is the difference between forty-four hundred dollars and two thousand dollars; were signed by you after this two thousand dollar payment was made through Lowy and Lowy? A Well, I have signed the notes as long as the ‘Sash’ renewed them. I never questioned them concerning the notes, and I kept right on figuring as they were delivering materials to me, they were keeping on adding them right on the notes.

Q Who told you to say that? A I dreamed that.”

3. The son, George Beisley, made the application for the future credits in connection with the so-called Schoonmaker and Eastern Parkway job on November 10, 1925 (Exhibit C. 8, p. 85), which was seventeen days before the execution of the \$4,400 note and the mortgage, so that the amount of the future credits was pretty accurately determined (see testimony also of George Beisley on pp. 65 and 66).

4. George Beisley's testimony unquestionably demonstrates the truth of complainant's story. Following are some extracts therefrom:

On page 48 he testifies on direct examination:

“Q What was the first said about the amount you would owe to the Elizabeth Sash, Door & Supply Company? A The amount was in the neighborhood of \$2,200 that I would owe to the Elizabeth Sash, Door & Supply Company. It was more than was figured the day before at my mother’s home.

Q Why do you say \$2,200? A Well, there was a miscellaneous item of \$1,500 and some odd dollars and there was the Ivy street job of \$2,600 and some odd dollars, and \$2,000 coming to the Elizabeth Sash, Door & Supply Company which was not secured by them as yet.

Q Was anything mentioned about securing the Elizabeth Sash, Door & Supply Company for the Schoonmaker or Eastern Parkway account? A There was.

Q What was said about that? A They wanted me to pay for materials before I received them and I could not see it.

Q Did they want that amount included in the note? A That is what they tried to have.

Q Did you or your mother agree that that could be put in the amount of the note? A Not that I remember.

Q Do you remember *definitely*? A No.

Q Why was the note made for \$4,400? A I do not know unless they did not get their \$2,000 check yet, their being on the safe side.

Q You mean it included all? A It included all my bills, miscellaneous and the Ivy street job. It ran in the neighborhood of \$4,200 and some odd dollars and they made it \$4,400 so they would have enough for themselves.” (Italics mine.)

On page 55, testifying about his first conversations with a representative of the complainant for the purpose of procuring credit for the East-

ern Parkway-Schoonmaker job, his testimony is as follows:

“Q At that time you knew that the complainant was getting two thousand dollars from Lowy and Lowy?

Mr. Beers: I object. The record shows that he did not get it that time.

The Master: What time?

Mr. Marder: When Bergbauer got the money.

A Well, I knew they were going to get it. I didn't know they were going to get it as soon as they did.

Q You were counting on two thousand dollars? A *I was counting on two thousand dollars.*

Q *And of course in trying to persuade the complainant to give you credit, you used that as an argument, didn't you? A Certainly.*” (Italics mine.)

On cross examination (p. 68) after being forced to admit that he made an order in writing for the Schoonmacher and Eastern Parkway job on November 10 (p. 65) he testifies as follows:

“Q Well, there was some conversation, wasn't there, in Mr. Marder's office, about this mortgage guaranteeing the future credits? A Mr. Lammerding and myself, had a conversation.

Q In Mr. Marder's office? A It was.

Q Your mother was present? A Right.

Q What was that conversation? A I think to guarantee a future credit, which to me would mean hardly anything.

Q Don't give me impressions. Tell me what was said. A *A guarantee of future credit.*

Q Having in mind the Schoonmacher job?

A *Having in mind the Schoonmacher job.*

Q He wanted you to do that, didn't he?

A Yes.

Q *And you agreed to do that? A I was satisfied if my mother would be.*

Q Did you turn to your mother and ask her that? A I asked her, certainly.

Q What did she say? A She didn't see how she could do it.

Q And then she finally consented, didn't she? A I don't think she did.

Q Q Are you sure she didn't? A I didn't see her do it.

Q *At least, it was after that conversation that she signed the mortgage, wasn't it?* A *Right, sir.*" (Italics mine.)

Parol evidence is admissible to show the true nature of the transaction.

In *Bell v. Fleming's Executors*, 12 Eq. p. 13, affirmed by the Court of Errors and Appeals on page 491, it is held that a mortgage to secure future advances is valid. The opinion by Vice-Chancellor Williamson, reads partly, on page 18, as follows:

"The objection, that parol testimony is not competent for the purpose of showing that the mortgage was executed, and intended to secure a debt different from that expressed in the mortgage, was particularly noticed by the Vice-Chancellor in the case of *The Bank of Utica v. Finch*, 3 Barb. C. R. 297. Its admissibility was properly sustained, on the ground that it was offered, not to contradict the written instrument but to show the purpose and intent for which it was executed. But this objection must necessarily have been considered in every case where the validity of a mortgage for future advances has been sustained."

In *Campbell v. Perth Amboy Shipbuilding and Engineering Company*, 70 Eq. p. 40 (affirmed by E. & A. per curiam 71 Eq. 302) the mortgages recited three month notes. The notes given were demand notes. Opinion on page 59 reads partly as follows:

"That it is quite competent for the parties to use the mortgage for a security other than

that mentioned in it, is entirely clear and authoritatively settled.

“Our courts have gone so far as to hold that a mortgage given for money loaned, which loan has been repaid and the mortgage delivered up to the mortgagor, may be redelivered for another and distinct loan and be entirely valid between the parties, and as against all other parties except intervening encumbrances.

“It is authoritatively settled, in this state, that it is competent to prove by parol what the real object of a mortgage is, and that it is given for a purpose not disclosed in the condition.

“Among numerous cases cited by counsel, I mention the following: *Bell v. Fleming*, 12 N. J. Eq. (1 Beas.) 13; affirmed *Ib.* 491; *Robinson v. Urquhart*, 12 N. J. Eq. (1 Beas.) 515; *Flanagan v. Westcott*, 11 N. J. Eq. (3 Stock.) 264; *Hoy v. Bramhall*, 19 N. J. Eq. (4 C. E. Gr.) 563; *Farnum v. Burnett*, 21 N. J. Eq. (6 C. E. Gr.) 87; *Griffin v. New Jersey Oil Co.*, 11 N. J. Eq. (3 Stock.) 49; *Silvers v. Potter*, 48 N. J. Eq. (3 Dick.) 539; *Undersill v. Atwater*, 22 N. J. Eq. (7 C. E. Gr.) 16, 599; *Lanahan v. Lawton*, 50 N. J. Eq. (5 Dick.) 276.”

In *Wilbur v. Jones*, 80 Eq. 520; affirmed by the Court of Errors and Appeals on the opinion by Chancellor Walker, then Vice-Chancellor, claim was made that the mortgage in question, which recited that it was a purchase money mortgage, was in fact given as collateral for some other chattel mortgage. The opinion on pages 523-524 reads as follows:

“On the law of the case much that is apposite is to be found in *O'Brien v. Paterson Brewing and Malting Co.*, 69 N. J. Eq. (3 Robb.) 117, in which Vice-Chancellor Pitney, said (at p. 127);

‘Against any relief is urged the time-honored rule that parol evidence cannot be used

to vary or contradict the terms of a written contract.

'Without stopping at this moment to enumerate and classify the numerous exceptions to that rule, especially in a court of equity, it is sufficient to say that the evidence here relied upon does not tend to vary the terms of the contract. There is no contention that the complainant did not understand that he was signing an absolute promissory note in favor of the defendant, payable one day after date, and negotiable in its terms. What he does contend is, that it never had any binding effect upon him in equity.

'To show this by parol is no more a breach of the rule invoked than it is to prove that an absolute deed is given as a mortgage, or that a promissory note is given by the maker to the payee without consideration and as an accommodation to the latter, or that it was given for a consideration that had wholly failed, or was a mere gift, as in *Metler v. Metler*, 18 N. J. Eq. (3 C. E. Gr.) 270, and affirmed on appeal, 19 N. J. Eq. (4 C. E. Gr.) 457.'

"The defendant in the case at bar is not attempting by parol evidence to vary the terms of a written instrument, but is asserting a parol agreement made at the time the conveyances were executed, showing that the mortgage sought to be foreclosed, although absolute in terms, was given as additional or collateral security for the payment of the chattel mortgage. And in this I think he has abundantly succeeded on the evidence. Another thing, the defendant sets up and proves that he has paid the chattel mortgage, and avers that there is nothing whatever due from him to the complainant on account of the mortgage sought to be foreclosed in this cause. This amounts to a defence of payment, and upon familiar principles, the defendant is entitled to show that he has paid a mortgage sought to be enforced against him. Upon the question of pay-

ment, the evidence concerning the reason for the giving of the real estate mortgage, and the subsequent payment of the chattel mortgage (which, under the defendant's contention, operates as payment of the real estate mortgage), is receivable.

"A mortgage has a dual character—first, it is a covenant to pay a sum of money upon an expressed consideration, and second, it is a conveyance of land to secure the debt. The first is an executory contract, and the second an executed conveyance with a defeasance, and liable to be defeated if at the time it is sought to be enforced there is nothing due upon the executory contract it was given to secure. See *Perkins v. Trinity Realty Co.*, 69 N. J. Eq. (3 Robb.) 723, 727; affirmed S. C. 71 N. J. Eq. (1 Buch.) 304."

In *Bliss v. Cronk* (contained in Mr. Beers brief before the Master) 62 Eq., page 496, it is held that the wife could show that a mortgage, which was claimed to be given by her as security for her husband's obligation to a partnership of which he was a member, was not intended by her to be so given, thus affirming the so-called "exception to the parol evidence rule."

In this case also, the mortgage recited through error, that it was the wife's debt to the partnership that was secured by the mortgage. Held that the real purpose of the mortgage was to enable the firm to obtain credit from a third person, and since no third person's rights were involved in the suit in question, the mortgage was held to be without consideration.

The defendant, by offering parol evidence in connection with the negotiations, etc., leading up to the mortgage, (the testimony of the appellant, Lucy Beisley, and her son, George Beisley), waived all benefit of the parol evidence rule 22 *Corpus Juris*, page 1295.

From the above, it is patent, it is submitted, that the true nature of the transaction may be shown; that Mrs. Beisley, by giving the mortgage in question, guaranteed her son's then present indebtedness in the amount of \$2,279.13 to the complainant, together with future credits, both not to exceed, of course, the sum of \$4,400.00 mentioned in the note.

It is suggested also that the appellant places herself in a dilemma in taking the position that parol evidence is not admissible to show the true nature of the transaction, for she then bars herself from attempting to prove that the note and mortgage were given to secure the past indebtedness only.

In conclusion it is respectfully submitted that the order appealed from should be affirmed.

Respectfully submitted,

AARON MARDER,
Of Counsel with Complainant-Appellee.

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