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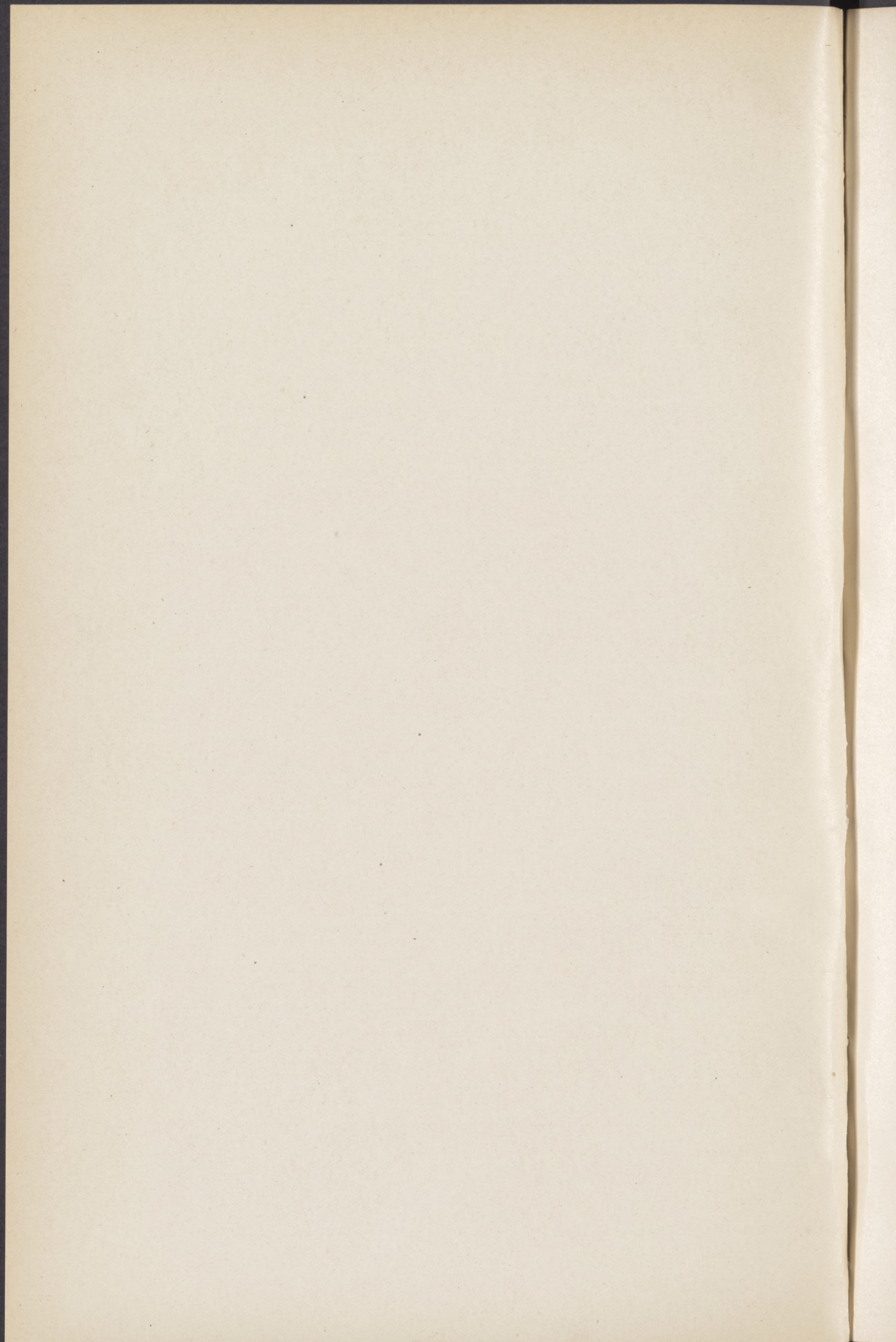
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Bill of Complaint.

BILL OF COMPLAINT.

Filed.

In Chancery of New Jersey

10

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

The complainant, John Kapalczynski, of Bloomfield, New Jersey, respectfully shows that:

1. On October 13, 1911, Frank Sitniski, being indebted to the complainant, John Kapalczynski, in the sum of three thousand dollars (\$3,000.00), executed to him a bond of that date to secure that sum, payable on October 13, 1912, with interest at the rate of five and one-half per centum (5½%) per annum, payable half-yearly from the date of the bond.

20

2. To secure payment of the bond, said Frank Sitniski, widower, executed to said John Kapalczynski a mortgage of even date with the bond, and thereby conveyed to him in fee the lands hereinafter described, on the expressed condition that such conveyance should be void if payment should be made according to the terms of the bond. Which mortgage, having been first duly acknowledged, and the certificate of acknowledgment duly endorsed thereon, was registered in the Register's office of Essex County in Book D-28 of Mortgages, on pages 320-321.

30

3. The mortgaged premises are described as follows: "All that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Town of Bloomfield, in the County of Essex, and State of New Jersey":

Beginning at a point on the southeasterly line of Myrtle avenue with the southerly line of a new street laid out through the land of Francis C. Thomas, parallel with Chapel street, now called Howard street and from thence running (1) southeasterly along the southerly line of Howard street one hundred and thirty-five feet; then (2) southeasterly and parallel with Myrtle avenue fifty feet; thence (3) northwest, parallel with said proposed new street (now called Howard street), one hundred and thirty-five feet to the southeasterly line of Myrtle avenue, and thence (4) along the same, fifty feet to the point or place of beginning. Being the same premises conveyed to

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Bill of Complaint.

Frank Sitniski, widower, by Frank Skarupski, and Mary Skarupski, his wife, by deed bearing even date herewith.

4. Said mortgage was a purchase money mortgage, and so recited.

10 5. The mortgage contained an agreement that the mortgagor, his heirs and assigns would keep the buildings on the mortgaged premises insured against loss or damage by fire, in a sum not less than three thousand dollars (\$3,000.00), and would assign the policy of insurance to the mortgagee, his representatives or assigns, and in default of so doing, that the mortgagee, his representatives or assigns should be entitled to effect such insurance, and the premiums paid for the same by the mortgagee, or his assigns, with interest at six per centum (6%) per annum, should be a lien on said land added to the amount of the mortgaged debt, and secured by the mortgage.

20 6. On October 14, 1911, said Frank Sitniski married Anna Krok.

7. On or about September 7, 1917, the said Frank Sitniski died intestate, leaving him surviving as his next of kin and heirs-at-law, his widow, Anna Sitniski, and his children, Blanche Sitniski, Stella Sitniski, Edmund Sitniski, Chester Sitniski, Mary Sitniski, Adolph Sitniski and Beatrice (or Bronislava) Sitniski. No letters of administration have been granted to anyone upon his estate. Any interest which the said Anna Sitniski may have in said lands by way of right of dower, or otherwise, is subject
30 to the lien of complainant's mortgage. Any interest which the said Blanche Sitniski, Stella Stiniski, Edmund Stiniski, Chester Sitniski, Mary Sitniski, Adolph Sitniski and Beatrice (or Bronislava) Sitniski may have in the said lands is subject to the lien of complainant's mortgage.

8. The said Stella Sitniski, Edmund Sitniski, Chester Sitniski, Mary Sitniski, Adolph Sitniski and Beatrice (or Bronislava) Sitniski, heirs-at-law of the said Frank Sitniski, above mentioned, are infants under the age of twenty-one years, to wit: Stella Sitniski, aged eighteen (18) years and upwards; Edmund Sitniski, aged fifteen (15) years and upwards; Chester Sitniski, aged
40 six years and upwards; Mary Sitniski, aged four (4) years and upwards; Adolph Sitniski, aged three (3) years and upwards, and Beatrice (or Bronislava) Sitniski, aged one (1) year and upwards.

Bill of Complaint.

9. On October 13, 1918, three years' interest was due on complainant's bond and mortgage, and no part thereof has been paid.

10. Frank Sitniski, and his heirs-at-law, failed to keep the buildings on said lands insured against fire or damage, in any sum.

10

11. On October 16, 1917, complainant caused the same to be insured in the New Jersey Fire Insurance Company of Newark in a sum sufficient to cover his said mortgage, and paid the sum of fifteen dollars and fifty-four cents (\$15.54) for insurance premium thereon, and on October 16, 1918, complainant caused said premises to be insured in the Newark Fire Insurance Company, for one year, and paid the sum of sixteen dollars and twenty-eight cents (\$16.28) for insurance premium thereon, which sums with interest at the rate of six (6) per centum per annum are liens on said premises added to the amount of the mortgage debt, and secured by the complainant's mortgage, and are prior to the claim of the said widow and heirs-at-law of the said Frank Sitniski.

20

12. Said Frank Sitniski failed to pay the taxes assessed against said premises, and on December 20, 1917, the complainant paid the sum of seventy-eight dollars and twenty-two cents (\$78.22), the amount of taxes for the year 1917, assessed against said premises. Said Frank Sitniski, or his heirs-at-law, failed to pay the taxes assessed against said premises for the year 1918, and on December 20, 1918, said complainant paid the sum of seventy-eight dollars and eighty-eight cents (\$78.88), the amount of taxes for the year 1918 assessed against said premises, which said sums, with interest at the rate of six (6) per centum per annum, are liens on said premises, added to the amount of the mortgage debt, secured by complainant's mortgage, and are prior to the claim of the said widow and heirs-at-law of said Frank Sitniski.

30

13. Leon Jaworski is a tenant in occupation of a portion of said premises. Any interest which the said Leon Jaworski may have in said premises is subject to the lien of complainant's mortgage.

40

14. The said Frank Sitniski, Anna Sitniski, Blanche Sitniski, Stella Sitniski, Edmund Sitniski, Chester Sitniski, Mary Sitniski, Adolph Sitniski and Beatrice (or Bronislava) Sitniski, and

Bill of Complaint.

Leon Jaworski, or one of them, have always been in possession of the mortgaged premises. The whole amount of principle, with interest thereon from October 13, 1915, is due upon complainant's bond and mortgage.

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

1. That Anna Sitniski, Blanche Sitniski, Stella Sitniski, Edmund Sitniski, Chester Sitniski, Mary Sitniski, Adolph Sitniski, Beatrice (or Bronislava) Sitniski, and Leon Jaworski, who are the defendants to this suit, may answer this bill of complaint without oath, and each statement therein made;

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

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

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 his 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.

30

FREDERICK H. PILCH,
Solicitor and Counsel with Complainant.

Bill amended so as to read after paragraph 8 on page 3:

“No proceedings have been taken in the Orphans' Court of Essex County for the appointment of a guardian or guardians of the persons or property of any of the above-named infants.”

40

Answer.

ANSWER.

Filed.

Blanche Sitniski, Stella Sitniski, and Edmund Sitniski, infant defendants in the above-entitled cause, answering complainant's bill of complaint by William J. Blum, their guardian *ad litem*, say: 10

1. That they have no knowledge of paragraphs one, two, three and four, and leave complainant to his proof.
2. They have no knowledge of paragraph five.
3. They admit paragraph six.
4. They admit paragraph seven.
5. They admit paragraph eight.
6. They deny paragraph nine.
7. They deny paragraph ten. 20
8. They have no knowledge of paragraph eleven.
9. They deny paragraph twelve.
10. They admit paragraph thirteen.

11. They admit so much of paragraph fourteen as states that the defendants have been in possession of the mortgaged premises. They deny that the whole amount of the principal with interest thereon from October 13, 1915, is due upon complainant's mortgage, but on the contrary thereof say that in the year 1913 Frank Sitniski, now deceased, paid to complainant \$1,000 on account of the principal of said mortgage, leaving only \$2,000 due on account of the principal of said mortgage; that Frank Sitniski continued to pay the interest on the \$2,000 up to and including April 13, 1917, and that the true amount due on said mortgage is \$2,000, with interest from April 13, 1917. 30

JAMES P. MYLOD,
Solicitor of Defendants.

REPLICATION.

Filed. 40

The complainant joins issue on the answer of the defendants.

FREDERICK H. PILCH,
Solicitor of Complainant.

Anna Sitniski, direct.

PROOFS.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>JOHN KAPALCZYNSKI,</p> <p style="text-align: center;"><i>and</i></p> <p>ANNA SITNISKI, <i>et als,</i></p>	<p><i>Complainant,</i></p> <p><i>Defendants.</i></p>	<p><i>On Bill to</i> <i>Foreclose.</i></p> <p><i>Depositions.</i></p>
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20 Depositions taken in the above-entitled matter before me, Alonzo Church, Advisory Master in Chancery of New Jersey, this fifteenth day of October, 1919, at 2:30 o'clock in the afternoon, at my office, No. 810 Broad street, Newark, New Jersey, in pursuance of an order of reference made in this cause and dated October 4, 1919, in the presence of Frederick H. Pilch, Esq., Solicitor of complainant, and Charles Jones, appearing for James P. Mylod, Esq., solicitor of defendants, Blanche Sitniski, Stella Sitniski, and Edmund J. Sitniski.

ALONZO CHURCH,
Advisory Master.

30 Bond from Frank Sitniski to John Kapalczynski, dated October 13, 1919, in the sum of \$3,000, offered in evidence and proved by Frederick R. Pilch, marked Exhibit P. 1; mortgage accompanying said bond, covering premises in the Town of Bloomfield, Essex County, New Jersey, registered in the Essex County Register's office in Book D-28 of Mortgages, pages 320, etc., marked Exhibit P. 2.

ANNA SITNISKI, sworn.

40 *Direct examination* by Mr. Pilch.

Q You are the widow of Frank Sitniski, are you not? A Yes.

Q When did you marry him, do you remember the date? A October 14, 1911.

John Kapalczynski, direct.

Q Do you know when Mr. Sitniski died? A August 7, 1917.

Master. The petition says September. A It was August, I remember that.

Q Did he leave any children? A He left three children by his first wife, Blanche, Stella and Edmund.

Q Do you know how old they are? A Blanche is not quite 20; I do not quite know. 10

Q These are not your children? A No.

Q Who are your children? A Chester, 7; Mary, 5; Adolph 4; Bronislava, 2.

Q What was your maiden name, Mrs. Sitniski? A Anna Krok.

Master. Was there any will? A No, he didn't make any will, he died too quick.

Q Was anybody appointed guardian of your children in the Orphans' Court? A No, I have nobody. 20

Master. How about letters of administration? A No, I never had them.

BLANCHE SITNISKI, sworn.

Direct examination by Mr. Jones.

Q You are a daughter of Frank Sitniski, are you not? A Yes.

Q Do you know how many children he had by his first wife? A Five—three living and two dead. 30

Q What are their names and ages? A Blanche, 20; Stella, 17; Edmund, 15.

Q Do you know who occupies the premises in question? A Mr. Jaworski is on one floor; Mrs. Sitniski, and I do not know who is on the third floor.

JOHN KAPALCZYNSKI, sworn.

Direct examination by Mr. Pilch. 40

Q You are the complainant in this case, aren't you? A I didn't start this case; the Blums started it.

Q Is this your mortgage (showing complainant Exhibit P. 1)? A I could not see; I can't read it.

John Kapalczynski, direct.

Q Did Mr. Sitniski keep these premises insured against fire?

A No. He did not pay it; I paid it.

Q How much? A I couldn't tell you.

Q Is it a first mortgage? A I paid Mr. Russell, the real estate man the second time, and Peter Quinn; there is a receipt in it.

10

Q Here is a certificate of the issuance of the insurance policy.

Certificate covering policy No. 22031, New Jersey Fire Insurance Co., to Estate of Frank Sitniski, amount \$4,000, premium \$15.54, offered and accepted in evidence and marked Exhibit P. 3.

A I do not know how much I paid, I could not tell you. I cannot see nothing.

Q You paid something? A I paid taxes right along.

20

Q You paid something and got a policy. How much did you pay? A There is a policy, but I forget it. I could not tell you how much; I do not know.

Q You don't remember? A I could not tell you what I paid.

Q You paid something, though? A I believe I paid quite a little. I drew out, I think, \$100, and I get \$20 back or \$15. I could not tell you. Then I paid my own insurance and I drew some money. I could not tell you how much.

Q Did you pay any taxes on this property? A Yes, I paid the taxes.

30

Q Do you know how much it was? A \$80 or \$75.

Q Two years' taxes? A Yes, sir.

Q Is this the tax bill? (Show complainant tax bills of the Town of Bloomfield for the years 1917 and 1918.) A I cannot see.

Q This is for 1917; did you pay 1917 taxes? A I paid 1917, \$78 and odd cents; the next year it was a little more. I am not sure of it.

Q That is the tax bill, is it? A Yes, that is the tax bill.

40

(Mr. Pilch endeavored to prove the tax receipts by complainant, who said he could not read them, and Mr. Jones, after consultation with Mrs. Sitniski, who admitted that she had never paid them, assented to the receipted tax bills being accepted in evidence. Tax Bill, Town of Bloomfield, 1917, \$78.22, marked Exhibit P. 4, and Tax

John Kapalczynski, cross.

Bill, Town of Bloomfield, 1918, \$78.88, marked Exhibit P. 5.)

* * *

Q How much interest is due you on this mortgage? A She never paid me two years, and she owed me a year before that—three years, most of it. One year he paid two years' payment.

Q When did he make the last payment? A I do not know; I couldn't think.

Q Was it in the fall or the spring? A In the fall.

Q What year was that, how many years ago? A About three, four or five years; I could not tell you.

Q You do not know whether three or four years was paid? A Three years' interest is due.

Q There is interest due you for three years? A Yes.

Cross examination by Mr. Jones.

Q When do you figure that your interest is due? A We figured some time this month.

Q About the 19th of October? A The 13th or the 19th, I couldn't tell you; I can't read or write.

Q How many times a year did he pay his interest? A All the time except one year behind.

Q How many times a year? A Sometimes I would wait for a year. If he got money he paid me every six months.

Q How much did he used to pay you every six months? A \$60.

Q How long was he paying you \$60? A Quite a while.

Q How long was he paying you \$60 interest; how many years did he continue to do that? A I couldn't hardly tell you.

Q Six years? A It might be six or five.

Q Before that time he paid you a larger amount? A Yes.

Q Something happened six years ago? A He is dead about three years.

Q Something happened to the mortgage about six years ago? A Yes, sir.

Q What was it? A Of course, he give me some money and he paid me something on account and I gave him a receipt for it.

Q How much did you say he gave you? A \$785.

Q In cash? A Yes.

Q About that time he withdrew some money from the Building & Loan? A I don't know, I couldn't tell you.

John Kapalczynski, cross.

Q Were you with him when he withdrew it? A No, I was not.

Q You didn't go to the bank with him? A No.

Q When did you find out he had it? A He came to the school and said: "Kapalczynski, come to my house tonight, I pay you something."

10 Q Didn't he ask you to go to the bank with him? A No, I remember I didn't go there with him.

Q You didn't endorse the check he got it with? A No, I never did.

Q I show you a check of the Essex County Building & Loan Association, made out to the order of Frank Sitniski, and with your name on the back of it? A Yes, that is my writing.

Q How do you account for that being there? A I might have been there. I have a short time in my mind. I must have been there.

20 Q Afterwards you knew that Sitniski went to the bank? A Yes.

Q You don't remember whether you went with him or not? A No, I didn't.

Q Can you in any other way account for your signature being on the back of the check? A I might write; I couldn't tell you.

Q They know you at the bank? A Yes.

Q They don't know Frank Sitniski? A Yes.

30 Q They know you in the bank? A Yes.

Q Didn't you take Frank Sitniski there with this check and identify him? A It might be; I forget.

Q Don't you recall there was something like that? A It was so long I forget.

Q What bank did you go to? A The National Bank.

Q Where Mr. Dodd is cashier? A Yes.

Q Don't you remember going with Mr. Sitniski with a big check to the bank? A No, I cannot remember.

40 Q You do remember a little after that Frank Sitniski coming up to the school? A He called on me there, but I don't know whether I go the same day or another day.

Q Go where? A To the bank.

Q Did you go? A I think I did; I couldn't tell you.

Q On that evening that you went to the bank, if you did go to the bank, you met Frank Sitniski at his house, did you not? A Yes.

John Kapalczynski, cross.

Q Who was there? A Mr. John Prill, Mike Prill, and Searznecki.

Q He is your brother-in-law? A Yes.

Q This young lady was there? (Pointing to Blanche Sitniski.) A I never saw her.

Q Of course, Mr. Sitniski was there? A Yes, sir. 10

Q He had this \$2,000 in bills, didn't he? A Yes, all kinds of bills.

Q In bills? A Yes.

Q He owed you some interest at that time? A Yes.

Q He paid you the interest first? A I don't know; he gave me money, I took it, and that was all to it. Whether it was interest or not I couldn't swear whether it was interest or not.

Q At any rate, he paid you a certain amount of interest first? A Yes, he owed me some. 20

Q What time of the year was it? A Just the same as this month.

Q It might have been November? A I think so.

Q That is the date of the check? A Yes, sir.

Q Had he paid you any interest that year, do you recall? A I couldn't tell you.

Q You don't remember? A No, I couldn't tell you.

Q Do you recall whether he paid you any money as interest first and then principal on the mortgage? A Yes, he did give me money, he says interest, but I couldn't tell you. 30

Q Didn't he pay you a thousand dollars off the principal at that time? A No, he never paid me \$1,000.

Q You say the money that was paid, whatever sum was paid, was paid at this time? A Yes, sir.

Master. That was to pay on the principal? A Yes, sir.

Q How do you remember, if you forget all the other things, that it was \$785? A I tell Mr. Prill after while I think he give me smaller than that, but he paid me \$785. 40

Q We were speaking of when Frank Sitniski paid you some money; you recall pretty distinctly about its being in the fall of the year? A Yes, sir.

Q About two weeks after that payment didn't he come and ask to borrow some money of you? A He took just the same

John Kapalczynski, cross.

as he give to me. He got a piece of paper and said, "The full amount," and I said, "Yes."

Q Didn't he borrow from you \$200 at that time? A Yes, sir, he borrowed the whole amount. I gave him a receipt for it.

10 Q How long did he want that money for; did he pay you back the money he borrowed? A He never gave it to me.

Q So that everything he paid you that night he then came back and borrowed from you? A Yes, sir.

Q You didn't execute any bond and mortgage for money advanced at that time? A No.

Q Two weeks later he didn't give you another bond and mortgage? A No.

Q Then later you merely loaned him some money? A Yes, sir.

20 Q You say that after that time he used to pay you \$60 every six months? A Yes, sir.

Q What amount was he paying interest on? A 5½ per cent.

Q What amount of money was he paying interest on? A It was supposed to be paid on \$2,215.

Q As a matter of fact, don't you remember that on the night in question, the time when you met at Frank Sitniski's house a \$1,000 was paid you on the principal, so that there was then \$2,000 due on the mortgage; then, about two weeks later, he came and borrowed \$200 from you? A I don't know.

30 Q He borrowed, two weeks later, about \$200, or thereabouts? A He borrowed some money.

Q No papers, no bond and mortgage was given for that loan then? A He says, "That goes in the mortgage."

Q You may have talked about it, but no bond and mortgage was given? A No.

Q After that time, after the time he came to you and borrowed this other \$200, you say that from that time every six months he owed you \$60? A Yes, sir.

40 Q And he kept on paying that up to the time of his death? A Yes, sir.

Q He owed you for one year at the time of his death? A Yes.

Q Now, as a matter of fact, didn't you tell John Blum there was \$2,000 due on this mortgage? A I never see Blum; I never say nothing to Blum or nothing.

John Kapalczynski, cross.

Q Did you, or did you not, tell John Blum that there was due on this mortgage \$2,000 at the time of the death of Frank Sitniski? A I always say he owed me \$2,215.

Q So that you say now, that you didn't say there was due on this mortgage \$2,000? A That is right.

Q Didn't you tell John Blum, in the presence of others that Frank Sitniski had paid \$1,000 on this mortgage? A He never paid me a \$1,000. 10

Q Don't you remember, immediately after the night when he paid you this money, that a receipt was given; that that receipt was shown to John Blum and he said that receipt was no good, because you had signed with a mark and there was no witness—you recall that? A Yes, sir.

Q You recall going to Peter Quinn, and Peter Quinn drawing up a paper saying \$1,000 had been paid on that mortgage? A He called me there and I went with him. 20

Q You went with Frank Sitniski? A Yes.

Q You signed a paper there saying \$1,000 was paid off? A I signed some paper, but what it was I don't know.

Q You signed a paper? A He give me a slip and said it was so much money and I made a cross.

Q You understood that you were signing before Peter Quinn as a witness the fact that a certain amount had been paid off on that mortgage? A Not a \$1,000.

Q How long after that meeting at Frank Sitniski's house was it that you visited Peter Quinn's office? A A day or two days. 30

Q Was it before or after Frank Sitniski came to borrow the \$200? A It was at the school.

Q Was it before or after? Did I understand you to say that two weeks later he came and borrowed \$200? A He borrowed more than that.

Q When you went to Peter Quinn was that before or after he had been to your house and borrowed this extra sum? A It was after.

Q After? A Yes, sir.

Q Just what do you mean, you went to Peter Quinn's after or he came to your house after? A The same day I give him a receipt and he says, "John, I need the worst way money; loan me some." I give to him. I carry that money in the pocket— 40

Q You gave him some money? A I gave him some money. I think I gave him \$700. I gave him a receipt for it.

John Kapalczynski, cross.

Q You would have the receipt for it? A I ain't got nothing.

Q Was it before or after that you went to Peter Quinn's?
A Afterwards.

Q It was after you have given him back this \$700? A The
money I gave him and we go for Peter Quinn. He said that is
10 a receipt for you, afterwards he come after the money. He said,
"You loan me and I let it go on the mortgage."

Q Did you go to Peter Quinn before Frank came and bor-
rowed this other money or after he had borrowed this money?
A Before.

Q When you went to Peter Quinn's office, he had paid you
how much? A \$785.

Q You say that you gave him a receipt for \$785 on account
of principal? A Yes, sir.

Q When you went to Peter Quinn's office, what did you put
20 in that statement that you signed in Mr. Quinn's presence as to
how much you had paid on the mortgage? A I couldn't tell.
I make a cross.

Q You knew the cross was on some statement? A Yes.

Q What were you told you were signing? A I said I couldn't
sign it and I put my cross on it.

Q They read it to you? A Yes.

Q How did you pay that money on the insurance and taxes,
by cash or check? A Cash.

Q Have you any check account? A No.

Q Where do you keep your money? A Bloomfield Savings
30 Bank.

Q When Frank Sitinski paid you this money in or about
November, 1913, what did you do with that money? A I car-
ried it and he took it back again.

Q What did you do with the money he paid you? A I car-
ried it and gave it back to him.

Q Where did you carry it? A In my pocket.

Q And you put it in your pocket and kept it there a week or
40 more? A Yes.

Q In your pocket? A I hide it away in the school.

Q You think you hid it away in the school? A I hide it
away in the school.

Q Did you hide this \$700 or \$785 away in the school? A
Yes, I did.

John Kapalczynski, cross.

Q You say when he came to borrow this money again you went to the hiding place and got and paid him? A Yes.

Q Who was there? A No one.

Q Did you ever tell anybody about it? A No, he has always been a good fellow to me. I borrowed of him without note and I said I will do the same to you.

Q After Frank died you did go to the widow? A Yes. 10

Q And you told her Frank had paid a \$1,000 on the mortgage? A I said he owed me \$2,215.

Q Didn't you say to the widow that "I will put up a fence around this property and pay for it—" A No, I didn't. She came to me three times—

Q Didn't you go to the widow and say, "I will pay for this stone wall around your property; we will say there is five years' interest on this mortgage; we will run this mortgage up to a little over \$3,000, and we will foreclose the mortgage? A No, 20
sir.

Q Didn't you pay for the stone wall? A Yes.

Q You paid for the stone wall? A Yes.

Q What did you do that for, you didn't own it? A She come twice and say that property go to pieces; that the property is in poor condition. Then I says to her I ain't got nothing to do with that property, ask the girls do they sign for it and will lend you that. After while she comes back and says I will lend her that money or not. She comes to the school with her brother or somebody else. I go to the Trust Company and draw the \$200 and she put up the fence. 30

Q You had the money in the Trust Company? A Yes, I believe Mr. Blum has the receipt for the money she got.

Q As a matter of fact, when Frank Sitniski paid you this money, didn't you put it in the Trust Company? A No, sir.

Q Have you your book with you? A I leave it in the bank.

Q How long did you open this account in the Trust Company? A Four of five years ago.

Q So that you had the money in the Trust Company? A I drew \$600 from the Essex County B. & L. Association. 40

Q When? A About four or five years.

Q What did you do with it? A I put it in the Trust Company.

Q It had nothing to do about Frank Sitniski? A No, it was just about the same time.

John Kapalczynski, re-direct.

Q What did you do with the interest, did you put that in the Trust Company? A Sometimes I used to. Sometimes I put it away.

Q Do you recall what the amounts of those receipts were? A I couldn't tell you.

10 Q \$60? A I don't know. We go to Peter Quinn and Peter Quinn give me receipt.

Q Do you recall whether \$60 was paid you every six months? A Sometimes he has not got it, then he pays me for one year.

Re-direct examination by Mr. Pilch.

Q What did you do with the money you got from Frank Sitniski? A I told you I carried it in my pocket.

Q How much did you give him when he came back? A \$785.

Q Not \$200? A Not \$200.

20 Q Did he ever pay you any interest on that \$785? A Sometimes he give me, sometimes not. He says, "Just keep quiet."

Q Did you ever state to the widow that there was only \$2,215 due? A Yes.

Q Why did you tell her there was only \$2,215 due when you had loaned him more money? A Yes, sir.

Q Did you ever tell Mr. Blum what was due on this mortgage? A No, I didn't tell anyone.

Q Frank Sitniski paid you \$60 every six months? A Yes.

30 Q After this payment of \$785 did he ever pay you any money besides that? A No.

Q He didn't pay you any money on the \$785? A Only on the quiet.

Q How much did he give you? A I guess he give me \$20, sometimes \$10 another time.

Q Was that interest? A One time he give me a \$100. He wanted it paid off little by little.

Q Did he ever pay anything off on the principal of the \$785?

Objection by Mr. Jones as being irrelevant to the matter in controversy.

40.

Objection overruled.

On a certain night he paid off a certain sum, two weeks later he goes there and makes a personal loan of a certain amount, which is certainly in doubt, and says to keep it quiet; no bond and mortgage was given; it was nothing

Victor Sawicki, direct.

except a personal loan. There has already been testimony to show it was not a mortgage.

Q What did you mean by saying he paid you \$60 every six months? A He paid me \$2,215 interest money and he paid me separately interest.

Q Did he pay you interest on the two amounts at the same time? A Only just on the quiet. 10

Q At the same time? A Any time he got a little money.

Q Did he pay his interest regularly? A No.

Q Did he give it to you in the same amounts each time \$60, or how did he pay it? A He would give me more if he got the money and less if he did not have it.

Q He paid it in odd amounts at different times? A Yes, sir.

VICTOR SAWICKI, sworn.

Examination by Mr. Pilch.

Q Were you present at the time this money was paid to Mr. Kapalczynski? A Yes. 20

Q Do you know how much was paid? A No, I can't remember that.

Q About how much was paid?

Objection by Mr. Jones.

Master. Don't you know how much was paid that night? A I could not swear to it. I think not quite a thousand dollars, I don't know. 30

Q After this time, Mr. Sawicki, did you ever have a conversation with Mr. Sitniski?

Objection by Mr. Jones.

Objection overruled.

A Yes, a couple of times. Once he speak about a mortgage and asked me to change the mortgage, and I told him to change it. He said he would, and after he say "No," I haven't changed the mortgage because we have settled again. 40

Q What do you mean by asked to change the mortgage?

Objection by Mr. Jones.

Blanche Sitniski, direct.

JOHN M. HAGUE, sworn.

Examination by Mr. Jones.

Q Mr. Hague, you live in Bloomfield? A Yes, sir.

10 Q And you occupy some position in the Essex County Building & Loan Association? A Secretary.

Q You are here under subpoena to bring certain information as to the withdrawal of certain money from that institution by one Frank Sitniski? A Yes.

Q In what form? A Cancelled check made out to his order.

Q Produce it?

(Mr. Hague produced cancelled check of the Essex County Building & Loan Association to the order of Frank Sitniski, dated Nov. 17, 1913, for \$2,000.)

20 Q Has it been paid? A Yes, it has been cashed—paid.

Q What are the endorsements on it? A Frank Sitniski and John Krueger, cashed First Teller.

Q Do you know who John Krueger is? A He was here as a witness.

Q Was he the owner of the mortgage? A Yes.

Q The witness before the last? A Yes.

Q You recognize him as John Krueger? A Yes.

Q You are familiar with John Krueger's signature? A Yes, sir, I have seen it on papers of the association.

30 Q Have you ever seen him write? A I could not swear that I have seen him write, but I have seen his signature on documents. I have had a good many ways of seeing his signature, and he admits it.

(Check offered in evidence and marked Exhibit P. 6.)

Q When was it paid? A It was drawn November 17, 1913, but there is no stamp to show when it was paid.

BLANCHE SITNISKI, sworn.

40 *Examination by Mr. Jones.*

Q You are the daughter of Frank Sitniski? A Yes, sir.

Q How old are you now? A 20.

Q You are one of the defendants on this foreclosure? A Yes, sir.

Blanche Sitniski, direct.

Q When did your father die? A August 7, 1917.

Q Prior to your father's death, where were you living? A 79 Myrtle avenue, Bloomfield.

Q For some time prior to his death were you living there? A Yes, six years.

Q Your own mother had died some time previous and your father had re-married Anna Krok, who is your stepmother? A Yes. 10

Q And you continued to live there after his re-marriage, did you? A Yes.

Q Do you recall when some payment was made on a mortgage that was on the house? A Yes, I do.

Q Do you know what mortgage it was? A A mortgage on the house at 79 Myrtle avenue. I saw the mortgage.

Q You recall an event when your father and Mr. Kapalczynski, or Mr. Krueger, as he is sometimes called, came to the house; do you know what they did that night? A Money was paid, \$1,000 on the mortgage and interest that was due up to the date. 20

Q Do you know where your father got the money from? A He got the money from the building & loan.

Q How do you know? A I saw the check.

Q What did your father do with the check? A He took it to the bank and cashed it.

Q What did he do with the money? A I saw the money.

Q Do you know where he put the money? A In a bureau drawer, under lock and key. 30

Q How long was it there? A In the afternoon and evening.

Q Who came in the evening? A John Krueger.

Q Is he the same as John Kapalczynski, the complainant? A He is called both.

Q One is the Polish name and the other the English derivative? A Yes.

Q Who else? A My step-mother, John Prill, Mike Prill, and myself, so far as I can recall.

Q What did they do? A My father laid out the \$1,000 first.

Q Was anything said? A He said it was a payment on the mortgage. 40

Q Your father said that? A Yes.

Objection by Mr. Pilch as to conversations held with men who are dead now.

Master. Same ruling as in Mr. Jones' objection.

Blanche Sitniski, direct.

Q What did John Krueger say? You said your father paid \$1,000 on the mortgage? Did he pay anything else? A Interest due to John Krueger and a debt to John Prill and a debt to Mike Prill.

10 Q How do you know that a thousand dollars was paid on the mortgage alone? A It was.

Q Did he count out the interest separate? A Yes.

Q They were counted out separate? A Yes.

Q What did he say, "Here is the interest?" A Yes.

Q Did he say what was due on the mortgage then? A \$2,000.

Q Who said that? A My father.

Q Was Krueger there then? A Yes.

Q Did he give him a receipt? A I don't know.

Q They had a few drinks then? A I suppose so.

20 Q Did they, friendly, as is the custom, with your people? A Yes.

Q Then they went home? A Yes.

Q About when was that? A About the fall of the year, the exact date I don't know.

Q Of what year? A 1913.

Q You recall that pretty distinctly? A Yes.

Q After that time do you know of your own knowledge whether your father paid interest on this mortgage? A After the time he paid the \$1,000? Yes.

30 Q How do you know? A He asked me to figure out the amount of the interest.

Q Did you do it? A Yes.

Q Did he show you the receipts? A No.

Q Do you recall whether the amount was \$110 a year, or \$55 every six months? A I don't remember.

Q What amount did you figure on? A \$2,000.

Q Did you ever talk to John Krueger about it? A No.

Q After your father died, did you ever talk to John Krueger about it? A No.

40 Q You didn't stay at home? A I left home a month after my father died; I have been away ever since.

Q Do you know anything about what date your father paid interest up to? A No, I don't.

Q You never saw any of the receipts? A No.

Q Where did your father use to keep his valuable papers? A In the bureau drawer.

Mrs. Sitniski, direct.

Q What room? A In the bedroom.

Cross examination by Mr. Pilch.

Q Miss Sitniski, you have stated that you saw your father count out the \$1,000, and you are sure it was a \$1,000, and that it was paid on account of the principal, and you are also sure that in addition to that he paid some interest. Do you know what the interest was? A No, I don't. 10

Q How do you know it was a \$1,000? A It was mentioned.

Q And it was counted out, you saw it? A Yes.

Q You also saw him pay Mr. Prill? A I don't know the exact amount.

Q He paid some other debts at that time to Mike Prill? A I don't know the exact amount.

Q You are sure he paid a \$1,000 to Mr. Kapalezynski? A Yes. 20

Q You don't recall when he paid the last interest? A No, I don't.

Q But you used to figure out his interest for him? A Yes.

Q You are sure that it came to \$55.00 for 6 months? A Yes.

Q How is it you cannot tell when the last interest was paid if you cannot recall the date? A I cannot recall the exact date; every April and October my father asked me to figure out the interest.

Q The only thing you are sure about is the payment of the \$1,000? A Yes, I saw it and had the money in my hands. 30

Master. Did you count it yourself? A John Krueger counted it.

Q In your presence? A Yes.

Q Did you see him? A Yes.

Q It was counted twice? A Yes, in my presence.

Q Where did Mr. Sitniski get this money to pay these other debts? A There was \$2,000 came from the building and loan.

MRS. SITNISKI recalled.

Examination by Mr. Jones. 40

Q You are the widow of Frank Sitniski? A Yes.

Q You are his second wife? A Yes.

Q You married him, I think you testified, in 1911? A Yes, sir; October.

Mrs. Sitniski, direct.

Q After you married him was there any sum of money that you know of that he collected from any source? Did he get any money from the building and loan? A He got \$2,000.

Q About how long after you had married him? A After two years.

10 Q How do you know he got \$2,000? A Because he go every month to pay \$10 a month.

Q How do you know that he got \$2,000 all at once? A I saw the book. I didn't see the checks.

Q After he went and got the money? A I see the money on the table and this time he gave the money on the mortgage.

Q Do you know how much? A He told me how much he was going to get.

20 Q Did he bring some money home from the bank in the afternoon or evening? A In the same evening he called John Kapalczynski and he take the money from his pocket and put it on the table. I never see it before.

Q What did he do with the money? A He kept it some place.

Q In the evening something hopped, didn't it? John Kapalczynski and some other gentlemen came to your house? A John Prill, Mike Prill, and Mr. Sawicki and John Kapalczynski.

Q Was Blanche there? A She was in the house, too.

30 Q Was any money paid by Frank Sitniski to John Kapalczynski that night? A Yes.

Q How much? A He paid him first interest, and after he gave him the mortgage money.

Q What mortgage? How much? A I cannot tell you, but I think a thousand dollars; but I don't know exactly.

Q Was anything said as to the amount that was being paid, by Mr. Sitniski, Mr. Kapalczynski, or by any one as to the amount that was being paid on the mortgage? A I don't understand.

40 Q Did your husband say, "Here is so much money; I am paying you so much money"? A Yes, he did say that. Yes, he says that.

Q I want to know whether there was any conversation as to the amount? A I don't know.

Q Do you remember the conversation? What was said, if anything? A I don't know.

John Kapalczynski, direct.

Victor Sawicki, sworn as interpreter.

Q Were any words spoken by anybody on that night in October as to the amount that was being paid? A There was nothing said about interest.

Q What do you understand the interpreter said to you? A I just know my husband give interest first and after he give him that money. I am not sure; it looks to me that he gave him a \$1,000, but I don't know exactly. 10

Q Did anybody say at that time what amount was given?

(Witness cannot be made to understand question.)

Q Did anybody say how much was being paid? Did your husband or Mr. Krueger say anything? A I could not remember exactly that. I know he brings some money and he gave it to him. My husband counted it, and after he gave it to him (pointing to Mr. Kapalczynski). I don't remember exactly how much; I couldn't remember exactly. It looks like a \$1,000. 20

Q Did he ever say anything about a \$1,000 when Kapalczynski was present? A He has been there, Mr. Kapalczynski.

Q Mr. Kapalczynski was there, but did your husband say he would pay him a \$1,000 in your presence?

(Witness could not be made to understand the questions.)

Case adjourned until Thursday, October 16, 1919, at 10 o'clock. 30

Adjourned hearing held Thursday, October 16, 1919, at 10 o'clock in the forenoon.

Frederick H. Pilch appearing for complainant.

Charles Jones appearing for defendants.

Oath administered to Julius S. Brodowski, interpreter.

JOHN KAPALCZYNSKI, recalled. 40

Examination by Mr. Pilch.

Q Mr. Kapalczynski, you are the complainant in this matter. How much is due on the bond and mortgage? A Now they owe me \$2,215.

John Kapalczynski, direct.

Q Is that all they owe you? A Afterwards he took \$785, but he requested me not to tell any one.

Q Does he owe you any interest? A One year now and two years formerly is three years.

10 *Master.* On what amount? A $5\frac{1}{2}\%$ interest on \$2,215; the rest he would give me on the sly.

Q Did he pay you the balance of the money he owed you after awhile? A No.

Q How much does he owe you altogether?

Objection by Mr. Jones.

Objection overruled.

A About \$3,000.

20 Q When he came and borrowed this other amount, which you say he did, what took place then? A He came to the school and approached me and says, "Lend me some money," because it is kind of hard for him.

Q Is that all he says? A That is all—"Let it be on the bond and mortgage."

Q What did he say about the bond and mortgage? A He says, "Well, we will even it up, make it an even \$3,000."

Q Has he ever paid you anything? A He give me \$100 sometimes, sometimes \$10, \$15 or \$20; it might be less. I couldn't tell you.

30 Q Then you don't know what he gave you? A No.

Master. Was it more than a \$100 or less? A It might be more or less, I couldn't tell you. Coming from the shop he always said, "I give you some money," and he would hand me some money. Last time he gave me \$20.

Q How much did it all amount to that he gave you? A That I could not tell. I couldn't tell you that.

Q You don't know whether it was more than a hundred dollars? A It might be more or less, I couldn't tell you.

40 *Master.* Was it \$200? A No.

Q Did he pay you interest on this \$785? A Several times he had a few dollars, and he said, "Leave that between us."

Q Did he pay interest on \$785? A I am telling you when he had it he gave it to me.

John Kapalczynski, cross.

Q Did he pay interest on the \$2,215? A Yes.

Q When did he pay interest on that? A In the deed it says every six months; sometimes he didn't have it and paid by the year.

Q When did he last pay it? A I don't know but I think it was in 1916. I give him a receipt for every time he paid. I went to Cohn with him, and Mr. Sitniski always gave him a quarter for signing. 10

Q Was it in the fall of the year? You said sometime in 1916. A Yes, it must have been about this time, but I could not tell you the month.

Cross examination by Mr. Jones.

Q You recall the time that Frank Sitniski got the money from the building and loan association? A Yes.

Q Do you now recollect going to the bank with him and getting the money out with him? A Yes. 20

Q Did you understand what I said about that yesterday? A Yes, I understood, but I forgot that I signed the check.

Q And since seeing the check you now remember having gone to the bank? A Yes.

Q Do you remember on the night of the day that the check was cashed you went to Frank Sitniski's house? A Yes; three or four of us went over.

Q He asked you to go there for some purpose? A Yes.

Q What did he say he wanted you for? A He says, "We settle up; I may give you a little money." 30

Q Who was there? A John Prill, Mike Prill, Victor Sawicki and Mrs. Sitniski.

Q Was Blanche there? A I never seen her.

Q Wasn't Joe Krok there? A No.

Q Was Mr. Blum there? A No.

Q Frank had this money at home, in bills? A Yes, he had all that money there, and papers.

Q What room were you in, the dining-room? A Yes, in the dining-room. 40

Q The money was put out on the dining-room table, wasn't it? A Yes.

Q The first thing he did was to count out your interest, wasn't it? A That I couldn't tell you, for at that time I was nervous. At that time he gave me \$785.

John Kapalczynski, cross.

Q The question is, didn't he first give you the interest and then pay you something on the principal? A He put it down in one pile and I put it in my pocket.

Q Didn't he first say, "John, here is your interest"? A No, he didn't say that.

10 Q Do I understand you to say that he owed you any interest at that time? A Yes.

Q Did he pay you interest at that time? A Yes; he gave it to me.

Q How much was the interest? A I am not quite sure, but it was pretty near two years' interest.

Q What did you let it go so long for? A That was because we were too good acquaintance and he asked me to wait and wait.

20 Q Wasn't he in the habit of paying every six months? A No.

Q How much did the interest come to in dollars and cents? A That I don't know.

Q How much money did he give you all together? A He gave me, as I told you, \$785.

Q Did that \$785 include interest payment or principal? A That I couldn't tell you.

Q Don't you know whether he was paying all of that \$785 on account of principal, or was it to include both principal and interest? A It was everything; yes.

30 Q You don't recall receiving anything more than \$785 that night? A No, I can't recall.

Q What did you do with that \$785? A I held it in my pocket and hid it in the school. He came in a couple of times and I gave it to him.

Q When you left Frank's house that night, how much did you have in your pocket? A I counted up; I had \$780.

Q And you took that \$780 to the school? A Yes.

Q Then Frank came to you at the school about two weeks later? A Maybe two weeks; maybe less.

Q And you still had that \$780 or \$785? A Yes.

40 Q Didn't you pay John Prill \$200 out of that money you received? A Yes, I paid him. I don't know, but that was all the money I had.

Q You paid him \$200, didn't you? A I don't know whether I paid him then or not.

John Kapalczynski, cross.

Q You don't remember that? A No.

Q Don't you remember that John Prill was at that same dining-room table that night, and as soon as you received your money you counted out \$200 to John Prill? A That I cannot remember.

Q Have you talked to John Prill about it? A Yes, and he told me I gave it to him. 10

Q You gave it to him that night? A That I don't know.

Q If not that night, when did you pay him that \$200? A I cannot recollect.

Q If you didn't pay him that night, out of what did you pay him \$200? A I cannot recollect that.

Q Don't you know? Out of what fund, what money, did you pay the \$200 to John Prill? A I gave it to him, maybe the interest, maybe the whole debt, but how I gave it to him I don't know. 20

Q You didn't have \$200 in your pocket most of the time, did you? A Occasionally I had it.

Q If you paid John Prill at all, you probably paid him out of the money you received that night; if not, the next day? A I couldn't tell you that.

Q Don't you know when you paid John Prill? A No.

Q If you paid John Prill, maybe that night, maybe the next day, how could you have \$780 left to take to the school with you? A I might have had some of my own; I don't remember.

Q After this time, after this meeting at the house, you say that Frank Sitniski came up to the school, possibly two weeks later? A Yes. 30

Q Now, will you tell me, in your own words, just what you said to Frank Sitniski and what Frank Sitniski said to you on that occasion, and just all that was said? A He came up to me and says, "Brother, help me; loan me some money. We know each other for such a long time, and when I have money I will pay it back to you."

Q Is that all that was said? A Yes; that he would return it to me. 40

Q That is all that was said? A Yes.

Q And you said, "All right"? A Yes.

Q And you gave him how much? A \$785; just what he gave me; more, it might be; \$100 or a little over.

Q Not at that time? A Whenever he came to work.

John Kapalczynski, cross.

Master. Did he say anything about the mortgage at that time when you gave him the \$785? A He says, "In case I wouldn't be able to return it to you, it will be a full mortgage."

Q After that meeting at the school, at which you loaned him
10 either \$780 or \$785, you always kept that \$785 a separate matter; you kept it quiet between you? A Yes.

Q When he paid interest on the mortgage, he never paid you interest on the \$785, did he? A No.

Q Did you charge him interest on the \$785? A He told me if I have some I give it to you.

Q Was it understood that he was to pay you interest on the \$785? A Yes; he told me if I wouldn't pay it back to you, I will give you interest, and if I do not give it back, it will go on
20 the mortgage.

Q When he paid you interest on the mortgage, didn't you say something to him about the \$785? A I told him, "Frank, you never give me anything." He says, "I will give it to you next week; it will be all right."

Q John, as a matter of fact, is not this what happened? On the night in question you received \$1,000 on account of the principal and you paid John Prill \$200 out of that, leaving \$800? A I don't recall.

Q Is not it a fact that about two weeks later Frank came to
30 you and borrowed \$200 and not \$785? A I would have to sit down and remember that; I cannot carry those things in my head.

Q You would remember that, whether it was \$700 or \$200? A Yes; I remember that I gave it to him, but in what way I don't know.

Q Is it not a fact, as I now say, that \$200 had nothing to do with the mortgage, but was a matter that was to be returned within a few weeks? A No, no.

Master. When he came to the school to borrow money
40 from you, how much money did he borrow? A \$785.

Q Now, John, after this transaction, and after payment of some money on the mortgage, he afterwards paid you interest for a good many years, didn't he? A Yes; he was paying me interest.

John Kapalczynski, cross.

Q And every six months he used to give you \$60, didn't he?
A Yes, when he had it he gave it to me.

Q But that interest would be \$60 every six months, or \$120 a year? A Yes.

Q That is what you told us yesterday? A Yes.

Q And you always gave him a receipt? A Yes. 10

Q Did you ever increase the interest? A No.

Q Now, 5½% is \$60 on \$2,200 every six months? A Yes.

Q Can you explain how you came to be accepting \$60 on your mortgage for the interest if it was a larger sum? A Yes; what he gave me was what he took. It was \$2,215, but the \$15 I was not taking interest on.

Q He paid you interest on \$2,200? A Yes.

Q How was that \$2,200 made up; was that \$2,000 on the mortgage and \$200 outside the mortgage, or \$2,200 on the mortgage? A It was all on mortgage. 20

Q Why did you charge interest on \$785? A As I was telling you, as I was good friends I was not charging him interest on the \$785.

Q At the time, that night, when the money was paid you gave Frank a receipt for it? A Yes.

Q Did you sign it or did you make a cross on it? A That I couldn't tell you.

Q You remember pretty distinctly giving a paper acknowledging receipt of \$1,000 on account of the mortgage? A Yes.

Q Do you recall talking to John Blum about that afterwards?
A Yes, I remember speaking to him about it, and I told him Frank Sitniski gives me some money and he still owes me \$2,200. 30

Q Wasn't this conversation about the receipt? A No. He said, "Did he settle," and I said, "Yes, but he still owes me \$2,215."

Q Didn't someone come to you and tell you that the receipt was not satisfactory for some reason? A Yes; Frank Sitniski was there and he told me he was not satisfied; it was no good.

Q Why? A Do I know?

Q What did he say about it? A He says, "We will have to go to a real estate." 40

Q And as a result of that conversation you went to Peter Quinn's real estate office? A Yes.

Q And Peter Quinn drew up an affidavit? A Yes.

John Kapalczynski, cross.

Q And in that affidavit you acknowledged that a \$1,000 had been paid off on the principal of the mortgage? A No.

Q That affidavit which you signed at Peter Quinn's office was in relation to the amount that was paid that night? A Yes, but he owed me \$2,215.

10 Q He went with you to Peter Quinn's office? A Frank Sitniski and I.

Q Didn't you show that receipt to John Blum? A I didn't show it to him.

Q Who took the receipt away from Peter Quinn's office? A Frank Sitniski.

Q Did Frank tell you, when he complained that the former receipt was not good enough for him, he had told him about it? A I don't know; he didn't tell me anything, but he said himself it was not good.

20 Q Didn't he tell you he had discussed it with John Blum and John Blum said it was no good? A How should I know?

Q Did Frank Sitniski tell you so? A No.

Q Could Frank Sitniski read and write? A I don't know.

Q After Frank died; do you recall when Frank died? A Yes, because when he died I was home; we belonged to the same lodge.

Q It was about August? A That I cannot remember.

30 Q As a matter of fact, the record shows that it was August, two years ago? A Yes.

Q When do you recall your interest payments as being due? A When he had it he gave it to me—a month sooner or a month later.

Q When he was in the habit of paying it, he paid it up to date? A In this month.

Q You knew that he ought to have paid you the interest every spring and every fall? A Yes, I knew it.

Q He died in August? A Yes.

40 Q And in the April before he died he paid you the interest, did he not? A That I don't know, because he never gave it to me direct; we always went to Peter Quinn.

Q You know that in the spring, several months before he died, he gave you \$60 in cash and you gave him a receipt? A For one year he owed me interest and he still owes it.

John Kapalczynski, cross.

Q In the spring of the year that he died (he died in August) he went with you to Cohn's office and paid you there \$60, and Cohn wrote a receipt? A No.

Q When did he pay you the last interest? A That I don't remember, but I gave him a receipt and I cannot remember any more. 10

Q How much did he pay you the last time? A The last time: I don't remember if it was \$60 or more.

Q You remember that \$785 very distinctly, but things that happened later you don't remember at all; can you explain that?

A I gave him a receipt, and why should I make my head hurt me any more?

Q Did you have any other mortgages out besides this one? A No; that is the only one.

Q To you the sum of \$1,000 or \$785 is quite a large sum, is it not? A Yes; I work for it. 20

Q So that when anybody paid you a large sum like \$1,000 or \$785 it would make quite an impression on you, wouldn't it? A Yes.

Q About how much do you make a week? A \$18.00.

Q You would remember pretty distinctly, would you not, whether a man paid you \$60 or \$120? A That I don't know, but in school they pay me every two weeks.

Q You have told us that just before Frank Sitniski died he paid you a certain sum of money; it might have been a year's interest or it might have been a half-year's interest? A Yes. 30

Q Inasmuch as this is the only mortgage you have out, wouldn't it make a lasting impression on you whether he paid you \$60 or \$120? A I think he gave me \$100, but I couldn't swear to it.

Q After Frank Sitniski died, you went to the widow and had a talk with her? A Yes.

Q You told her how much was due on that mortgage, didn't you? A Yes.

Q And then you, a little while later, came with a written statement of the amount due? A Yes, and she should sign it. 40

Q And you said on the statement, "Mortgage \$2,000." A No, not \$2,000; \$2,215.

Q You told her that was all due on the mortgage? A Yes.

Q What else was on the statement that you said was due? A It was a payment of taxes, fire insurance.

John Kapalczynski, cross.

Q Not right after Frank's death, was there? A Yes; I approached her and I asked her what she was going to do about it, and she was in a family way, and she was short of money; so I told her I would wait.

10 Q That was not the question. Didn't you tell her \$2,000 or some other sum was due on the mortgage? A I didn't say anything.

Q Didn't you tell her on this statement that you brought to her how much was due on this mortgage? A \$2,215.

Q Didn't you put up a stone wall for her? A She spoke about it to me and I loaned the money.

Q You had a stone wall put up, didn't you? A I didn't work there.

Q The men who put up the stone wall were working for you, were they not? A They worked for her, not for me.

20 Q You arranged for the payment of that stone wall, didn't you? A I gave her the sum of \$200 right away.

Q Joe Krok was working on that wall, wasn't he? A I wasn't there; I didn't go there at all.

Q Who did you pay the \$200 to? A To Mrs. Sitniski.

Q After you took this statement, you had all these items on it, the amount you claimed, so much for so much—so much for back interest; how much did you say to her was due for back interest? A Well, she loaned of me, on the mortgage, and the loan, \$700 and tax.

30 Q How many years' interest did you tell her in that statement was due on the mortgage? A Then there was only two years.

Q This was right after Frank's death, wasn't it? A Yes.

Q And Frank has been dead two years now, has he not? A Yes; and right after a year she took a loan; now the two years is gone.

40 Q Now, John, as a matter of fact, is not this the conversation; you said on this statement, "You owe so much for principal, so much for back interest, taxes, insurance; I will put up this stone wall because I am going to own this property after awhile; I will foreclose and you can give me a mortgage for the whole amount? A No.

Q Now, John, when you went to the widow, with a statement of the amount you claimed due on the mortgage, did you say anything about this \$785? A No.

Q Why not? A He told me not to say nothing.

John Kapalczynski, re-direct.

Q So that when you went to the widow to tell her what was due to you from Frank, you said nothing about the \$785, did you? A No.

Q Well, you told us that you understood Frank to say that was to be added to the mortgage, if he didn't pay it? A That is the way I understood.

Q So that when Frank died, you understood that this \$785 was added to the mortgage, didn't you? A Yes.

Q That would make the mortgage \$3,000, wouldn't it? A Yes.

Q If that was your understanding, why did you tell the widow there was only \$2,200 due? A I only said that because he asked me not to say anything else, and I thought it was good that way.

Q As a matter of fact, you loaned him some money and the first you thought it was part of the mortgage was when you started to foreclose, a few months ago? A Yes.

Q You had a talk with John Blum, after Frank's death, about the amount due on this mortgage, didn't you? A Yes.

Q Didn't you tell John Blum there was \$2,015 due on this mortgage? A No, not \$2,000; \$2,215.

Q Don't you recollect John Blum said to you you need not worry about the \$15.00; that was a private loan? A No.

Q Don't you recollect some such conversation about the \$15? A No.

Q You have no explanation of why he gave you such an odd amount as the sum of \$785, rather than \$700, or \$800, when he had \$2,000 there? A That I don't know why.

Re-direct examination by Mr. Pileh.

Q How did you expect to get the \$785 back? A As I told you, he would give it to me or otherwise it would go on the mortgage.

Master.

Q What became of the receipts that you gave to Sitniski? A I gave them to Sitniski.

Q What became of them after that? A I don't know.

Mrs. Sitniski, direct.

Mr. Jones.

Q What did you tell Mr. Pilch became of them? A He brought a piece of paper and tore it and said, "That is the receipt; it is gone."

Q Where did he bring it? A To the school.

10

Mr. Pilch.

Q Didn't you tell me he tore up those receipts and said the mortgage remains as it was before, and threw them in the fire? A Yes. And he says, if I can return it to you, then if I can't, then the mortgage is full.

MRS. SITNISKI, recalled.

Examination by Mr. Jones.

20

Q We were talking yesterday about the night when your husband, Frank Sitniski, was paying off to John Kapalczynski, or John Krueger, as you call him, and you told us certain gentlemen were there? A Yes.

Q What was said on that night, either by Frank Sitniski or by John Krueger, as to the payment of money on the principal of this mortgage? A When I came they sat at the table—my husband says, "Mr. Kapalczynski, the first thing I do is to pay you interest for one year. After that went my husband paid off the interest; Mr. Kapalczynski took that interest and put it away. After Sitniski laid down the money that he promised to give him, a \$1,000.

30

Q How do you know it was a \$1,000? A I seen when my husband come and Mr. Sitniski counted, and I was sitting and looking at them. I couldn't quite remember what happened six years ago. I was excited all night; I was thinking, and now I am sure.

Q Is what you now say the result of what you heard that night or what you saw with your own eyes? A I say just what I saw that night, and what I heard, but word for word I cannot recall.

40

Q After your husband had paid the interest to John Kapalczynski and was paying down on the principal, was any word spoken to him as to what he was paying? A He was counting the money; he couldn't have time to say anything else because he was counting the money.

Mrs. Sitniski, direct.

Master. When the interest was paid, did he count the money? A Yes.

Q Did you see him count the interest money? A Yes.

Q How much interest money did he pay? A It was paid from \$3,000 for a year.

Q How much money was paid? A I don't quite remember, dollar for dollar, but it comes to about \$100. It was a whole year's interest. 10

Q Did you see this interest money counted and paid? A Yes.

Q Did Mr. Sitniski say how much the interest money was? A Yes, but I am not quite sure of the sum, but I know it was paid on \$3,000 for a year's interest.

Q The question I was asking is, which you did not answer, did you hear anybody present say how much money was paid on account of principal, outside of what you saw yourself? A No; I don't see why anybody should have to say. 20

Q Do you know whether John gave Frank a receipt? A Yes; I saw it.

Q Did you see this receipt? A Yes.

Q What did it say on it? A I seen Mr. Sawicki write it, and I seen my husband was giving this man a \$1,000.

Q Do you recall whether it said on the receipt what the \$1,000 was for? A That he was paying him off \$1,000 on the mortgage, and there remained a balance of \$2,000.

Q That was all on the receipt? A I don't know whether the balance stated \$2,000; that I don't remember. 30

Q You do remember that it said \$1,000 was paid on the mortgage on the receipt? A That I remember well; I always remember it well. It was in my hand.

Q Can you read? A Yes.

Q Mrs. Sitniski, do you recall what became of that receipt? A After my husband got the receipt a couple of days he went to Bloomfield and met Mr. Krueger.

Q Did you go to Bloomfield with your husband? A No, my husband was telling me that. 40

Q Did he bring back to you any other receipt? A No, I didn't see it.

Q Do you know anything about this receipt taken before Quinn? A My husband came back from Bloomfield and told me about it, but I never saw it.

Mrs. Sitniski, direct.

Q At the meeting this night did your husband pay anybody else any money? A Yes, he paid Mr. John Prill \$100; Mike Prill, \$50.

Q After the money was paid to John and Mike Prill, did John Kapalczynski pay John Prill any money? A Yes.

10 Q How much? A I don't know how much, but I am sure he gave him something.

Q Out of the money he received? A I don't know exactly the same money, but at the same time.

Q About two weeks later, do you know, of your own knowledge, whether Frank borrowed any money from John Kapalczynski? A I know that so well because my husband told me about it.

20 Q What did your husband tell you? A He says, "I am short money, because I have so much to pay for something else and I have to go to him back and ask him for a little money; I have to get \$200."

Q Did you see the \$200? A Not with my eyes, but just what he tells me, my husband.

Q Did you talk to John Kapalczynski about it? A No.

(Mr. Pilch produced two papers written in Polish, which had been handed to him and showed them to witness.)

30 *Mr. Pilch.* Do you recognize this paper? A Yes. This money was loaned me for a fence. I wrote it.

Q What does it say? A John Kapalczynski loaned \$200 to Anna Sitniski, witnessed by Joseph Krok, \$200. July 16, 1918.

Q That is after your husband died, wasn't it? A Yes.

Q That is the money for the stone wall he built for you? A Yes.

(The second paper was then shown witness, and as she could not read it entirely the interpreter read it, as follows:)

40

Oct. 16, 1918.

"I, the undersigned, am owing to John Kapalczynski \$716.28; loan \$200; tax and insurance \$516.28.

(Signed) "ANNA SITNISKI."

Mrs. Sitniski, direct.

Master. What is the \$516.28 for? A \$200 cash was the sum he loaned me for constructing that fence; \$500 includes taxes, fire insurance and other small matters that he counted up to himself, and interest.

Q After, you say your husband borrowed \$200 from John Kapalczynski, and after the transaction of this night did your husband continue to pay interest to John Kapalczynski? A Yes. 10

Q How often did he used to pay the interest? A As a rule, every six months; once I think it was for a year.

Q How much did he pay upon when he paid for the six months' period? A \$60; that I recall very well.

Q Did he have any receipts from John? A Yes.

Q Did you see those receipts? A Yes, I saw them myself.

Q Where are those receipts now? A I cannot remember exactly where I put them, but I saw them myself and every receipt got signed. Some receipts is signed by John Blum and some receipts are signed by Russell, in Bloomfield. 20

Q I asked you to look high and low for all those receipts of any kind last night, didn't I? A Yes. I looked all over and I cannot find them.

Q Your husband kept all his receipts and valuable papers in a certain bureau drawer, you told me? A Yes.

Q Didn't you show me an envelope last night? A Yes, I was showing you the envelope, but there is nothing in it. 30

Q Where is the envelope? A I don't know.

Q There was nothing in it? A No.

Q What did it say on the outside? A It stated "Kapalczynski receipts."

Q What did it say on the receipts? A That Sitniski paid his interest for six months.

Q Did it state how much? A \$60.00.

Q You saw several such? A Yes.

Q You say some were witnessed by John Blum? A Yes, I saw one or two. 40

Q After Frank had died did you have a conversation with John Kapalczynski? A Yes, on several occasions; he came up to me.

Q Did he discuss with you the amount due on the mortgage? A Yes.

Mrs. Sitniski, direct.

Q What did he say was due? A Yes; he says \$2,215.

Q Did he tell you how he arrived at the \$2,215? A Yes, he says \$1,000 he received and Mr. Sitniski took of him \$200, and that is the balance.

Q You say you saw a \$1,000 paid off that night, didn't you?

10 A Yes, I saw it.

Q Now, when he came to you after Frank died and he said \$2,215, didn't you say something about it? A Yes, I told him, I wasn't quite positive sure, but I know by the percentage that my husband paid.

Q So far as you were concerned, you thought \$2,000 was due?

A No, for a remembered that my husband told me to took \$200, so I knew there was over \$2,000 balance.

Q Did you figure up with Mr. Kapalczynski how the \$2,215 was arrived at? A We didn't get that far; he told me it was
20 so much, and I knew it was so much, and that is all.

Q In other words, in your mind there was \$2,000 balance of principal plus \$200, which he had borrowed later on the loan? A Yes.

Q Did he say anything to you about any \$785? A That absolutely I don't know anything about.

Q When did you first hear about that? A The first time I hear about that money is right here in court.

Q Did he discuss with you what he was going to do with this mortgage? A Yes; when he came to me, and I approached him, and I says, "How it is going to be with me now; I expect to have a baby shortly, and these children go away from me." Then he
30 told me the time is coming to pay interest, and I wanted to know what is to come of us, and I says, "You will have to do with us what you want to." I told him I couldn't pay him. I was alone like an orphan, with children.

Q At that time you were quite friendly with John? A We didn't have special friendship, but he was good because he didn't throw me out right away.

Q You were unfriendly with the children of Mr. Sitniski's former wife, were you not? A I don't know anything about
40 any unfriendliness.

Q And at that time that Mr. Kapalczynski came around to see you, you had some arrangement whereby the sum due on the mortgage was to be made as much as possible so these children could be cut off on foreclosure? A No.

Mrs. Sitniski, cross.

Cross examination by Mr. Pilch.

Q Mrs. Sitniski, how are you sure that the time this money was paid that there was a \$1,000 paid on principal? A Because I was sitting at the table and I saw it.

Q You didn't remember that yesterday, but you remember it today? A Yesterday I couldn't remember, but as I was counting and counting I heard that it was. 10

Q Yesterday you heard Blanche testify that she saw a \$1,000 paid off? A Yes, I heard the words she said.

Q Did that influence you in saying a \$1,000 was paid off? A I ain't looking to anybody's testimony.

Q Mrs. Sitniski, you were able to read this one receipt in your handwriting and you were not able to read this other receipt in somebody else's handwriting; can you explain that? A I don't know; I have no idea about the other receipt, and I have no memory about the other receipt. 20

Q How is it you have testified as to the interest receipts which you had read. You testified that you had read over the receipts of interest and that they said there was \$60 paid. In whose handwriting were those receipts? A The same as I stated before. A couple of them was made out by Blum, Russell, one by John Gott.

Master.

Q Why is it you can read those interest receipts and not this receipt shown you by Mr. Pilch? A I could distinguish the name of who signed it and the sum it was made out for. I could read the name Kapalczynski, the name Sitniski and the sum made out for. 30

Q What else was written there? A (Witness could not answer.)

Q Were these receipts in English or Polish? A Russell's was in English; John Blum's in English.

Q Can you read English? A The names that I know I can read them. 40

Q The figures are the same as in English? A Almost the same.

Q Can you read Polish? A Yes.

Q What is there about this receipt you cannot read? A Printing I can read; not that character.

John Blum, direct.

JOHN BLUM, sworn.

Examination by Mr. Jones.

Q You live in Bloomfield? A Yes, sir.

Q And you are a police officer of the Town of Bloomfield?

A Yes, sir.

10

Q What relation, if any, are you to Frank Sitniski? A His first wife was my sister.

Q You are no relation to this last witness? A No.

Q You know John Kapalczynski? A Yes, sir.

Q You remember the time, some money was paid to John Kapalczynski by Frank Sitinski on account of his mortgage?

A I was not in Bloomfield steady and I came out on the car from work and he told me he had drew the \$2,000, and he showed me the receipt for \$1,000 written in Polish, received the sum of \$1,000 on mortgage of \$3,000.

20

Q Signed by whom? A John.

Q You know his signature? A Yes. I said to Frank: "If I were you I would have that receipt signed by a Notary Public." So he and Frank went to a Notary and had a new receipt.

Q Did you see the new receipt? A No, sir.

Q Do you know when that was? A As near as I can figure out it must have been six years ago.

Q What time of year was it? A It was in the fall.

Q He was married eight years and I think two years after he got from the building and loan and it was paid off.

30

Q After that, do you know of your own knowledge of any transactions between the two men? A I guess the same night Frank died, or the following night, John told me Frank had borrowed \$200, and a few weeks later \$15. I said we wouldn't dispute the \$15. "As long as it is coming to you, you will get it." Frank didn't tell me about the \$200, but Kapalczynski did.

Q At separate time? A At separate times. \$15 at one time and \$200 later. I don't know which.

Q After Frank died, did John Kapalczynski discuss with you the amount due on the mortgage? A Yes, he said \$2,215.

40

Q You had seen the receipt with a \$1,000 paid off? A Yes.

Q Did you raise any question? A He told me he needed it in business and borrowed \$200; that he didn't have much work.

Q Did you remind him of the \$1,000 that was paid off at that time? A No, he said \$2,000. \$200 he borrowed and \$15.

John Prill, direct.

Q He explained it himself? A Yes.

Q Do you know anything about the payment of interest on this sum? A Nothing at all.

Q You saw the receipts? A She is mistaken. When he bought that property I was with him. We were the two witnesses on the bond and mortgage, and she may have seen my name there. 10

Q Did you have any other conversation with John Kapalczynski about this; for instance, at the time the fence was fixed, up at the house? A Yes; he told me he was going to fence that up. I said, "If I was you I would not fix it up, the place don't belong to you."

Q Nothing was said about the amount due at that time? A No.

Q Is there anything else you know that would throw any light on this mortgage? A No, that is all I ever heard or that was mentioned. 20

Q Didn't John say something to you about how he spent the money that he had received that night from Frank Sitniski? A I don't know that John said it or Frank said it.

Cross examination by Mr. Pilch.

Q You have testified with great clearness as to the amount of \$2,215, and how that was made up. That was six years ago. Is there any special reason why you should remember? A Why, yes; his coming up with the receipt. It was about two years ago about the other \$215. I stood in front of the fire house, when he came out and spoke to me. I said "There is no doubt you will get your \$15." 30

JOHN PRILL, sworn.

Examination by Mr. Jones.

Q You live in Bloomfield? A Yes.

Q You know about this Sitniski mortgage, don't you? A I know about the mortgage from what they were telling me. 40

Q You were present one night about six years ago at the house of Frank Sitniski, when some money was paid by Frank Sitniski to John Kapalczynski? Yes or no? A Yes, I was present.

Q And your brother, Mike, was present? A Yes.

John Prill, direct.

Q And Frank Sitniski was there? A Yes.

Q And John Kapalczynski? A Yes.

Q And Blanche? A I didn't see her.

Q Did you see Mrs. Sitniski there? A She was there.

Q This was in the dining-room? A She was not there steady; at the end she came in.

10 Q There were some bills passed that night; money? A Yes.

Q Mrs. Sitniski was there when the money was passed, wasn't she? A She was walking through when there was a shortage of \$50 to pay Mike Prill. And she says, "There is enough money there to pay off the whole amount." Mr. Kapalczynski received interest, or something, \$60, and he had it in his pocket. Then they counted and they couldn't count enough money, so Mrs. Sitniski saw counting, and he says "Brother-in-Law, you have some extra money." He says, "Yes." When
20 he looked in his pocket he found the money there and it was right.

Q On that night when you were there, Frank Sitniski paid John Kapalczynski some money, didn't he? A Yes.

Q Listen carefully. Did he pay it in one amount, which purported to be interest, or in two amounts, purporting to be principal and interest, or in one amount? A No, first he paid the interest.

Master.

30 Q How much? A That I don't know.

Q Who was there when he paid the interest? A Us three— John Kapalczynski, Mike Prill and I.

Q Was Mrs. Sitniski there? A She was there, too.

Q Was Blanche there? A Blanche, I don't know.

Q After he had paid the interest Frank paid John some on account of principal, did he not? A Yes.

Q Do you know how much he paid him? A That I don't know. It was none of my business.

40 Q Was anything said as to the amount that he was paying? A Not that I know of; I don't know what the sum was.

Master.

Q Did any one say what the sum of money was? A That I didn't hear any one say.

Q Was Mrs. Sitniski there when this particular sum of money was paid? A She was not present then, but they began

Mike Prill, direct.

to talk about shortage. She was in the store and she came in.

Q Was Blanche there? A I didn't see Blanche.

Q You were there because you were interested in getting some money yourself? A Yes, I received from Sitniski \$100.

Q Did you get this before this other money was paid or afterwards? A He gave it to me before. 10

Q So that after you got your money you didn't pay particular attention? A I was sitting on the side by the table.

Q You got this \$100 from Frank? A Yes, from Frank; from Kapalczynski I received \$200.

Q Frank owed you \$100 and he paid you before he paid this money on the mortgage? A Yes.

Q Then, after Frank paid John some money, John paid you some money? A Yes, John Kapalczynski paid me that after he got it from Frank.

Q John Kapalczynski owed you some money? A Yes. 20

Q How much did he pay you? A \$200, because he loan \$200 of me.

Q Do you know anything more about the amount that was paid that night? A It didn't concern me.

MIKE PRILL, sworn.

Examination by Mr. Jones.

Q You live in Bloomfield? A Yes.

Q You are a brother of John Prill? A Yes. 30

Q You were present on the night when Frank Sitniski paid Frank Kapalczynski some money, were you not? A Yes.

Q That was at Frank Sitniski's house? A Yes.

Q In the dining-room? A Yes.

Q There was a table where they ate? A Yes.

Q Who else was there besides Frank Sitniski and John Kapalczynski? A I, Sawicki, Kapalczynski, my brother—nobody else was there.

Q Was Mrs. Sitniski there? A She was going through the room occasionally. 40

Q How about Blanche? A I didn't see her.

Q Blanche was a little girl then, wasn't she? A There was a little girl in the kitchen.

Q Is the dining-room and kitchen one room? A No, an extra room.

Roman Bockwackzi, direct.

Q Did this little girl come into the room? A No; I didn't see her.

Q The rooms adjoin each other, don't they? A Yes, just a door.

10 Q The door was open? A Yes, Mrs. Sitniski was walking through.

Q How was the money paid out by Frank Sitniski to John—in one payment or two payments? A It was paid the same as my brother said.

Q Do you recall whether he paid the interest in one payment and the principal in another, or in one lump payment? A He paid up; I didn't understand what it was paid for.

Q You were interested in getting \$50 yourself? A Yes.

Q Frank paid you that? A Yes.

20 Q Do you know how much interest money was paid? A I don't know.

Q Do you know how much principal money he paid? A That I don't know, either.

ROMAN BOCKWACKZI, sworn.

Q You live in Bloomfield? A In New York, now.

Q Did you live in Bloomfield during the lifetime of Frank Sitniski, or shortly after his death? A Yes.

Q Do you know where Frank Sitniski lived? A Yes.

30 Q Were you in his house shortly after the death of Frank Sitniski? A Yes, I was at his funeral.

Q Shortly after the death of Frank Sitniski and just before the birth of Mrs. Sitniski's child, you were present at the house, were you not? A Yes.

Q Did you meet anybody there? A The birth of the child was the time the people were there. John Kapalczynski, John Prill—

Q Did you have any talk with John Kapalczynski? A I spoke myself to John Kapalczynski and John Prill; I met them on the front porch.

40 Q What was the conversation? A Conversation was that Sitniski owes him. He asked me to approach her and ask for the signature of some kind of a note, and I will give you some money and it will go on the whole mortgage. There was a lot of other conversation there.

John Kapalczynski, direct.

Q Was there any designation as to the amount due on the mortgage given by Frank Sitniski to John Kapalczynski? A Yes, \$2,200. He says he has paid the tax and other little items which I have no recollection about, and I am going to still loan money, up to the sum of \$3,000, and that is as far as I am going.

Q Did he tell you \$2,000 was due? A Yes, on the street, too. 10

Master.

Q What did he say about going up to \$3,000? A He says, "With all my interest and the loan as far as I am going to go is up to \$3,000," but he would not go over \$3,000 loan.

Q Did he discuss with you how the \$2,200 was arrived at? A No, he didn't speak to me on that question. The time was short, but Mrs. Sitniski told me how the sum was arrived at. I was there every week or two weeks. 20

Master.

Q Did Mr. Kapalczynski say he was going to increase the loan up to \$3,000 and then stop there? A No, he didn't say that but he told us for us to go to Mrs. Sitniski, that she should give her signature that she would not go over \$3,000 with all the loans.

Q Did Mr. Sitniski pay off his loan? A No, it is standing today.

Q This conversation you had on the porch was with John Kapalczynski and this other man? A Yes. 30

Q As I understand, you were complaining because Sitniski owed you \$100 or more, and you wanted to figure out how you could get it? A Yes.

Master.

Q Did he say how much was then due on the mortgage? A Yes, he said then it was a mortgage due of \$2,200. He had receipts which he showed me, to pay taxes and all that. The new born had come so I walked out of the house. 40

JOHN KAPALCZYNSKI recalled.

Examination by Mr. Pilch.

Q Did you ever have any conversation with Mr. Blum as to the amount due on this mortgage? A No.

Victor Sawicki, direct.

Q Didn't you tell him there was \$1,000 paid off on this mortgage? A No.

Q When you were present at this time, Mr. Kapalczynski, when this money was paid to you, did you see Blanche Sitniski there? A No.

10 VICTOR SAWICKI recalled.

Examination by Mr. Pilch.

Q You were present when this money was paid to Mr. Kapalczynski? A Yes.

Q You have already testified you didn't know how much money was paid at that time? A I know it was paid, but the sum I don't know.

Q You have no better recollection now than yesterday? A No, all I know interest was paid and some part of the whole, but what part I don't know.

Q Did you see Blanche Sitniski there at the time? A She might have been there, but she was such a small little girl; no one paid any attention to her.

Q Did you see her there? A I didn't see her. She may have been there.

Mr. Jones.

Q You did see the sum paid in two payments? A It was paid in three different portions.

30 Q One portion was the interest? A That I don't know.

Q Do you recall whether the interest was paid in one payment, first the interest then afterward the sum on account of principal? A Yes, but which is paid first, I don't remember.

Q You wrote the receipt out, did you not? A Yes, but that didn't interest me.

Q Did you write a receipt for \$1,000 paid on account of principal? A It might have been a \$1,000; it might have been another sum. I don't recall the sum.

Conclusions of Master.

CONCLUSIONS.

This is a case on a bill to foreclose a mortgage made by one Frank Sitniski in his lifetime. From the evidence it appears that Frank Sitniski died August 7, 1917, and left him surviving his widow and seven children. No letters of administration have been granted, and no guardian appointed for the minor children. 10

The complainant prays that taxes for the year 1917, amounting to \$78.22; taxes for the year 1918, amounting to \$78.88; fire insurance premium on policy #22031, New Jersey Fire Insurance Company, issued to estate Frank Sitniski, amounting to \$15.54, and fire insurance premium on policy #1268, Newark Fire Insurance Company, issued to Estate of Frank Sitniski, amounting to \$16.28, all covering the premises in question, making a total of \$188.92, which he says that he advanced, be made a lien on the property, and at the hearing it was admitted that he had made these payments and was entitled to reimbursement. 20

The only other question in dispute is whether or not Frank Sitniski, in his lifetime, paid the complainant any sum on account of the principal of the mortgage, and, if so, what sum. The evidence centers on a meeting held at the house of Frank Sitniski on November 17, 1913. The defense claims that at that time Sitniski paid complainant interest to date and \$1,000 on the principal. The evidence is very conflicting and seems to be largely recollection and not founded on any documentary proof whatever. Blanche Sitniski, who seems to be an intelligent young woman, testified that she was present at this conference and saw the interest money paid, and also \$1,000 paid on account of principal. Every other person present at the conference denies that Blanche was there. I am constrained to believe, therefore, that she was mistaken in saying she was there, and I disregard her testimony entirely. The witnesses are all uneducated and speak only the Polish language, and it was very difficult to get them to understand the questions and to make proper replies. However, their testimony is that there was a meeting and that some sum of money was paid to complainant; no one of the witnesses knows how much or what it was for. Mrs. Sitniski said on her first examination (page 24) that she did not know the sum paid, and was not sure whether it was \$1,000 or some other sum. The next day she was recalled to the stand and says she remembered distinctly (page 48) that \$1,000 was paid on account 30 40

Conclusions of Master.

of the principal. I am constrained to believe that she remembered that after hearing Blanche's testimony and talking the matter over with Blanche during the adjournment. She said she saw and read receipts which her husband gave to the complainant, but when receipts in the Polish language were presented to her to read she could not do so (pages 44-49). She admits
 10 that some of the receipts were in English and admits that she cannot read English. John Prill, who was present at the conference, says (pages 53-54) that Mrs. Sitniski merely walked through the room and was not there when the money was paid to the complainant. His brother, Michael Prill, who was also there, says (on page 55) that Mrs. Sitniski walked through the room once or twice. John Blum (page 49) says he saw a receipt for \$1,000, which was shown him by the complainant. No receipts of any kind were introduced in evidence (page 45), and defend-
 20 ant's solicitor declared they could not be found. The only possible evidence is that of the complainant himself. On pages 8, 9 and 10 of his testimony, he sets forth his understanding of the transaction. He swears that Sitniski gave him \$785, which he carried around in his pocket for a week or two, and then Sitniski borrowed the money from him again. On page 40, he says Sitniski brought the receipt which complainant gave him on November 17, 1913, re-borrowed the \$785 and tore up the receipt, saying that the mortgage now stood in its original sum. He says (on page 37) that he received interest on the balance of the sum; that is, \$2,215, and that from time to time Sitniski paid him
 30 on account of the \$785. On page 32 he says that it was agreed that the \$785 should be considered as part of the principal. On page 27 complainant says that some sum of money was paid; he does not know the exact sum. He says it was more than \$100, but he does not think it was \$200. His explanation of the fact that he received interest on two different sums is that Sitniski did not wish it to become known that he had borrowed back the \$785, which was supposedly paid on the mortgage on November 17, 1913. In view of the conflicting testimony, I feel that I should accept that which is the most direct, which is that of the com-
 40 plainant, especially as there is absolutely no documentary proof, except the bond and mortgage themselves, which should stand unless clear and sufficient evidence is presented to alter its terms.

I am of the opinion, therefore, that there is due on the bond and mortgage the sum of \$3,000. As to the interest, on pages

Conclusions of Master.

4 and 10 of complainant's testimony, he says that there was one year's interest due on October 13, 1917, and that no interest has since been paid; that is, I so understand the testimony. I, therefore, find that there is interest due on the sum of \$3,000 from October 13, 1916, to date. There should be an allowance against the sums computed as above of \$200, which is the sum, as near as I can arrive at it from the testimony, which complainant admits he received, either on account of principal or interest; he is not sure which. 10

If solicitor for complainant will prepare a form of decree and submit it to the solicitor for the defendant, for his approval as to form, I will advise it.

A. CHURCH,
A. M.

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Decree.

DECREE.

Filed December 15, 1919.

This cause coming on to be heard before Alonzo Church, Advisory Master, in the presence of Frederick H. Pilch, of counsel with the complainant, and Charles Jones, of counsel with the defendants, Blanche Sitniski, Stella Sitniski and Edmund Sitniski, the complainant's bill having heretofore been taken as confessed against the defendants, Anna Sitniski and Leon Jaworski, and the pleadings and proofs having been read and the arguments of the respective counsels having been heard and considered, and the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court that there is due to the complainant on the said bond and mortgage taxes for the year 1917 amounting to \$78.22, paid by complainant; taxes for the year 1918, amounting to \$78.88; fire insurance premium on policy #22031, New Jersey Fire Insurance Company, issued to Estate Frank Sitniski, amounting to \$15.54, paid by complainant, and a fire insurance premium on policy #1268, Newark Fire Insurance Company, issued to Estate of Frank Sitniski, amounting to \$16.26, paid by complainant; all covering the premises described in the mortgage which is being foreclosed herein, making a total of \$188.92, and that in addition there is due to the complainant on his bond and mortgage the sum of \$3,000, with interest thereon from October 13, 1916, at the rate of 5½%, amounting to \$3,729.42, and that there should be an allowance against the sums computed as above of \$200, making the total amount due to complainant on his said mortgage, the sum of \$3,529.42.

Whereupon, it is on this 15th day of December, in the year of our Lord one thousand nine hundred and nineteen, at a Court of Chancery, held at Trenton, by EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, ORDERED, adjudged and decreed that the complainant is entitled to have said sum of \$3,529.42, with lawful interest thereon computed from the date of this decree, together with his costs of this suit to be taxed, raised and paid out of the mortgaged premises.

AND IT IS ACCORDINGLY FURTHER ORDERED, adjudged and decreed, that so much of the estate and premises in the said mortgage contained as will be sufficient to raise and satisfy the said debt,

Decree.

interest and costs be sold, and that a writ of *feri facias* do issue for that purpose out of this court, directed to the Sheriff of the County of Essex, commanding him to make sale, according to law, of so much of the said mortgaged premises as will be sufficient to satisfy the said debt, interest and costs, and that he pay the same to the complainant or his solicitor, and that in case more money should be raised by the sale than shall be sufficient to answer such payment, such surplus money be brought into this court and deposited with the clerk to abide the further order of this court, unless otherwise disposed of by the order of the Court; and that the said Sheriff make return to this court of his proceedings by virtue of the said writ. 10

AND IT IS FURTHER ORDERED, adjudged and decree, that the defendants stand absolutely debarred and foreclosed of and from all equity of, redemption of, in and to, so much of the said mortgaged premises as shall be sold, as aforesaid, by virtue of this decree. 20

AND IT IS FURTHER ORDERED, adjudged and decreed that the sum of \$200 be allowed and paid to the solicitor of the complainant, instead of the retaining fee now allowed the counsel by statute and that the same be included in the taxed bill of costs and collected with the other items of said bill.

E. R. WALKER,
C.

JESSE R. SALMON,
Clerk. 30

Respectfully advised,
A. CHURCH,
A. M.

Petition of Appeal.

PETITION OF APPEAL.

Filed.

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

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The petition of Anna Sitniski, and of Blanche Sitniski, Edmund Sitniski, Chester Sitniski, Mary Sitniski, Adolph Sitniski and Beatrice Sitniski, by Jesse R. Salmon, their guardian, *ad litem*, the appellants in the above-stated cause, respectfully show that your petitioners find themselves aggrieved by the final decree made in the Court of Chancery by his Honor, EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, bearing date the 15th day of December, 1919, wherein the said John Kapalczynski was complainant, and the said Anna Sitniski, Blanche Sitniski, Stella Sitniski, and Edmund Sitniski, Chester Sitniski, Mary Sitniski, Adolph Sitniski and Beatrice Sitniski were defendants.

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That the said decree adjudged "That the complainant is entitled to have the sum of \$3,529.42, with lawful interest thereon," whereas a much less sum was due on said mortgage; and your petitioner humbly appeals from that part of the decree of the Chancellor which orders, adjudges and decree the sum of \$200 be allowed and paid to the solicitor of the complainant instead of the retaining fee now allowed counsel by statute, and that the same be included in the taxed bill of costs upon the ground that the same is erroneous and contrary to the rules of the Court.

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Your petitioners conceive that they are further aggrieved by the admission of illegal evidence to prove the amount due on the mortgage.

Your petitioners pray that said decree may be in the particulars aforesaid reversed and set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this honorable Court shall seem meet.

JAMES P. MYLOD,
Solicitor of Defendants.

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Exhibits.

EXHIBIT P. 1.

Mortgage,

Frank Sitniski,

Widower,

to

John Kapalczynski.

Dated Oct. 13, 1911.

Recorded Oct. 16, 1911.

Bk. D 28-320.

Secures \$3,000, 1 yr., 5½%.

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Covers premises in Town of Bloomfield as described in bill of complaint. Contains tax and insurance clauses.

EXHIBIT P. 6.

THE ESSEX COUNTY BUILDING & LOAN ASSOCIATION.

J. M. Hague, Secretary.

20

No. 12820.

Bloomfield, N. J., Nov. 17th, 1913.

THE BLOOMFIELD NATIONAL BANK.

Pay to the order of Frank Sitneska.

Two thousand Dollars. In full for 23 series matured.

\$2000.#

Charles L. Seibert,

Treasurer.

Chas. J. Murray,

Vice President.

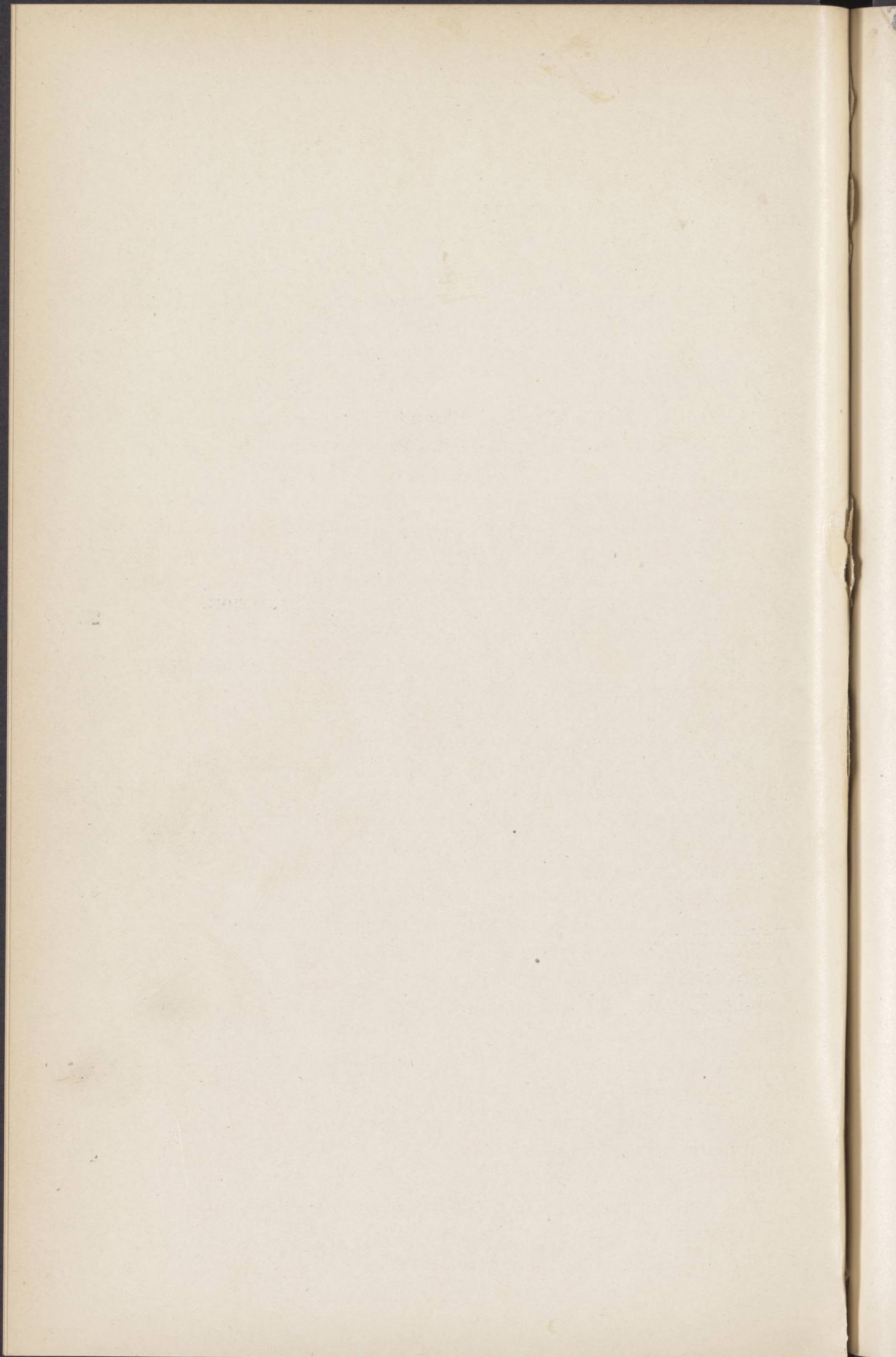
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Endorsement.

Frank Sitneska.

John Kapalczynski.

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New Jersey Court of Errors and Appeals

Between

JOHN KAPALCZYNSKI,
Complainant-Respondent,

and

ANNA SITNISKI, *et als.,*
Defendants-Appellant.

On Bill, etc.

*On Appeal from
Chancery.*

BRIEF FOR RESPONDENT.

The complainant below, John Kapalczynski, brought this action to foreclose a mortgage, executed by Frank Sitniski on October 13, 1911, to the complainant, together with his bond bearing even date therewith.

The Advisory Master before whom the cause was heard, found that there was due the complainant the sum of \$3,529.42, for principal and interest on his said bond and mortgage.

Facts.

On October 13, 1911, Frank Sitniski executed a bond and mortgage to John Kapalczynski, in the sum of \$3,000, payable in one year with interest at 5½% payable semi-annually, covering premises in the Town of Bloomfield, N. J. On August 7, 1917, Frank Sitniski died intestate, leaving him surviving, his widow and seven minor children (C., 7, ll. 2-20).

No letters of administration were taken out on his estate (C., 7, ll. 24-25). No guardian of the minor children was appointed (C., 7, ll. 21-22).

Both the complainant and the Sitniskis are uneducated people of Polish birth or extraction.

The evidence at the hearing was very conflicting, which undoubtedly was due in no small degree to the ignorance of the witnesses.

The complainant produced the bond and mortgage in evidence and proved the bond (C., 6, ll. 30-38).

No payments of any amount were noted on the bond.

The defendants attempted to show that some time in November, 1913, there was paid off on the principal sum due on the bond and mortgage, the sum of \$1,000. The complainant denied that there was \$1,000 paid, but admitted that there was paid \$785 (C., 13, ll. 9-12; C., 9, l. 42), which he claimed was reloaned to Frank Sitniski within a week or two (C., 12, ll. 7-10; C., 15, ll. 5-10), and that the money so reloaned was to be secured by the original bond and mortgage (C., 27, ll. 34-46; C., 82, ll. 3-6; C., 33, ll. 5-14).

FIRST POINT.

The testimony admitted by the Advisory Master as to the conversations between the complainant and Frank Sitniski, was competent.

The defendants are the heirs-at-law of Frank Sitniski. They are not sued in a representative capacity. The cases of *Crimmins v. Crimmins*, 43 N. J. Eq. (16 Stew.) 86; *McKinley v. Coe*, 66 N. J. Eq. (21 Dick. Ch.) 71; *Cowdrey v. Cowdrey*, 71 N. J. Eq. (1 Buch.) 353, affirmed in 72 N. J. Eq. (2 Buch.) 951, and *Shotwell v. Stickle*, 83 N. J. Eq. (13 Buch.) 188, are directly in point.

In *Crimmins v. Crimmins*, it was held in a suit brought by a widow against the heirs-at-law of her deceased husband, the object of which was to set aside the conveyance or conveyances on the ground of fraud, that the widow was a competent witness to testify to transactions with her husband, and statements made by him.

In *McKinley v. Coe*, Vice-Chancellor Emery, referring to the case of *Hodge v. Coriell*, 15 Vroom, 456, affirmed 17 Vroom, 354, and *Palmateer v. Tilton*, 13 Stew. Eq. 555, and *Crimmins v. Crimmins*, 16 Stew. Eq. 86, stated as follows (p. 74): "These cases were considered as settling the rule that the evidence was admissible where the defendants were sued not in a representative capacity, but for property to which they held title, descended to them from their father." See also *Vreeland v. Vreeland*, 8 Dick. Ch. Rep. 387, 390.

In this case the Vice-Chancellor also considered the decisions of *Joss v. Mohn*, 26 Vr., page 407, and *Greenwood v. Henry*, 7 Dick. Ch. Rep. 447, and stated as follows (p. 76), referring to those cases: "In *Greenwood v. Henry*, it was decided that the testimony, if within the statute, was admissible under an excep-

tion expressly made by the statute, and in *Kempton v. Bartine*, the Court, on appeal, expressly declined to consider the question, because it was not involved. I must therefore be governed by the Crimmins and Vreeland decisions, and their construction of the effect of the previous decisions on appeal, and especially so as the Vreeland case was decided subsequent to *Greenwood v. Henry*. And as to the effect to be given to *Joss v. Mohn* as qualifying or affecting the previous decisions of the Court of Errors and Appeals or in Chancery, it should also be stated that Vice-Chancellor Reed, who, as associate justice, delivered the opinion of the Court in *Joss v. Mohn*, has subsequently, in *Wyckoff v. Norton*, 15 Dick Ch. Rep. 474, 477 (1900), given his view of the effect of the former decision and his conclusion that the decision in *Joss v. Mohn* has not affected the admissibility of evidence against devisees in cases where the devisees are sued merely as the owners of land upon which, or in relation to which, equitable rights are claimed."

In *Cowdrey v. Cowdrey*, 71 N. J. Eq. (1 Buch.) 353, (affirmed in 72 N. J. Eq. (11 Buch.) 951), Vice-Chancellor Pitney, after an exhaustive survey of all cases on the subject, held that in an action by a widow to recover land under a writing by her deceased husband, from his heirs, whom she did not attempt to hold personally liable, the widow is a competent witness as to transactions with her husband.

In *Shotwell v. Stickle*, 83 N. J. Eq. 188, it was held that in a suit by the heirs of a wife to partition land, where the husband answered and claimed the land under a resulting trust because he had furnished the purchase money, the husband was not incompetent to testify as to statements by, and transactions with, the deceased wife, under the Evidence Act of March 23d, 1900 (P. L. 1900, p. 363, par. 4), since there was no representative relation between the heirs and the deceased wife.

SECOND POINT.

The only satisfactory evidence as to the amount of money paid on account of the principal of the mortgage was that furnished by the complainant himself, who admitted that \$785.00 had been paid.

The testimony of Blanche Sitniski was specific as to the amount of money paid to the complainant on account of the principal sum due on his mortgage. She even testified that she had the money in her hands (C., 21, ll. 28-29). She did not recall what was paid to the other persons who were present at that time and to whom Frank Sitniski paid money at that time (C., 21, ll. 15-18). None of the other witnesses remembered seeing her there, although they recalled the other persons who were present at that time. Mrs. Sitniski testified merely that Blanche was in the house (C., 22, l. 28). Victor Sawicki testified that he did not see Blanche at the time the money was paid (C., 46, ll. 26-27). The complainant testified that he did not see Blanche Sitniski at the time the money was paid (C., 46, ll. 17-19). John Prill, a witness produced by the defendants, testified that he did not see Blanche Sitniski at the time the money was paid (C., 43, l. 6). Mike Prill, another witness produced by the defendants, testified that he did not see Blanche in the room at the time the money was paid (C., 44, ll. 4-5). He testified that "there was a little girl in the kitchen, which was an adjoining room" (C., 43, ll. 41-46).

Mrs. Sitniski, on her first examination, testified that she did not know the amount paid to the complainant (C., 22, ll. 33-45; C., 23, ll. 25-26). It was only on the second day of the hearing that she was able to recall that \$1,000 had been paid to the complainant (C., 35, l. 24). She was then very positive (C., 39, ll. 6-15). This was after she had heard the testimony of Blanche (C., 39, ll. 12-13) and had thought about it all night (C., 40, ll. 32-36). Mrs. Sitniski testified that she had read interest receipts which were in Polish (C., 37, ll. 18-25). Yet she was unable to read interest receipts in Polish (C., 36, ll. 38-45; C., 39, ll. 29-47).

John Blum, the other witness relied on to prove the payment of \$1,000 of principal money on account of the mortgage, is an uncle of three of the defendants. His testimony is that *six* years before he had seen a receipt for \$1,000. His testimony is contradicted flatly by the complainant (C., 45, ll. 46-47; C., 46, ll. 4-8).

No receipts were produced by the defendants (C., 37, ll. 18-38), although it was admitted that the complainant gave Frank Sitniski receipts for all payments made by him (C., 35, ll. 22-23; C., 35, ll. 32-34).

No explanation is made by the defendants for the non-production of the receipts. The only explanation is that furnished by the complainant himself. He says that Frank Sitniski destroyed them in his presence (C., 33, ll. 40-43; C., 34, ll. 6-15).

The complainant testified that but \$785 was paid off on account of the principal sum due on the mortgage (C., 9, l. 42; C., 11, ll. 37-39). He testified further that he paid the same sum back to Frank Sitniski within a week or two (C., 14, l. 40 *et seq.*).

There was evidence that interest had been paid on this mortgage at the time the complainant received a payment on account of principal (C., 9, ll. 39-43; C., 46, ll. 19-21).

The payment of \$200 which was made to John Prill about this time could have been made out of the interest money which the complainant received, or out of the money which the complainant received from the Essex County Building and Loan Association (C., 15, ll. 39-45).

THIRD POINT.

The testimony clearly showed that Frank Sitniski desired to repledge the original bond and mortgage for the reloan of the \$785.00.

The testimony of the complainant, which was unimpeached by the defendants, clearly showed that it was the intention of the parties that the bond and mortgage should be repledged for the reloan of the \$785 which had been paid off (C., 24, ll. 19-26; C., 28, ll. 5-8; C., 28, ll. 16-20; C., 33, ll. 35-38).

In *Robinson v. Urquhart*, 12 N. J. Eq. 515, this Court held "If the mortgage debt is paid and if there be no intervening encumbrance, the mortgagor may use the mortgage again and may pledge it for another debt."

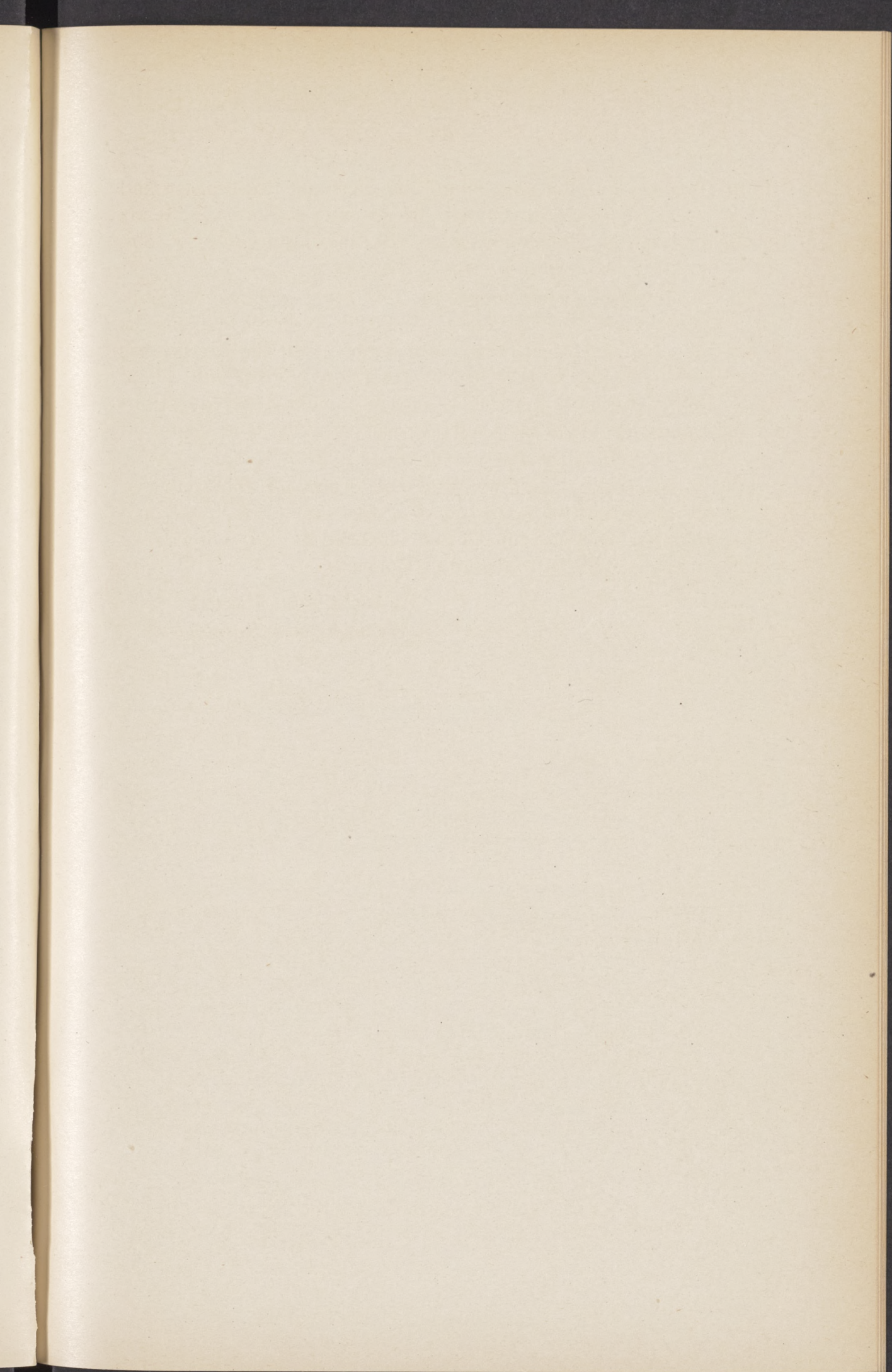
"A mortgage which has been satisfied may be given a new vitality by a re-delivery by the mortgagor to the mortgagee or a third person, upon a new consideration, or for a purpose different from that for which it was made. * * * But to give such effect to the mortgage the repledging must be made by the authority of the person whose estate is sought to be held for

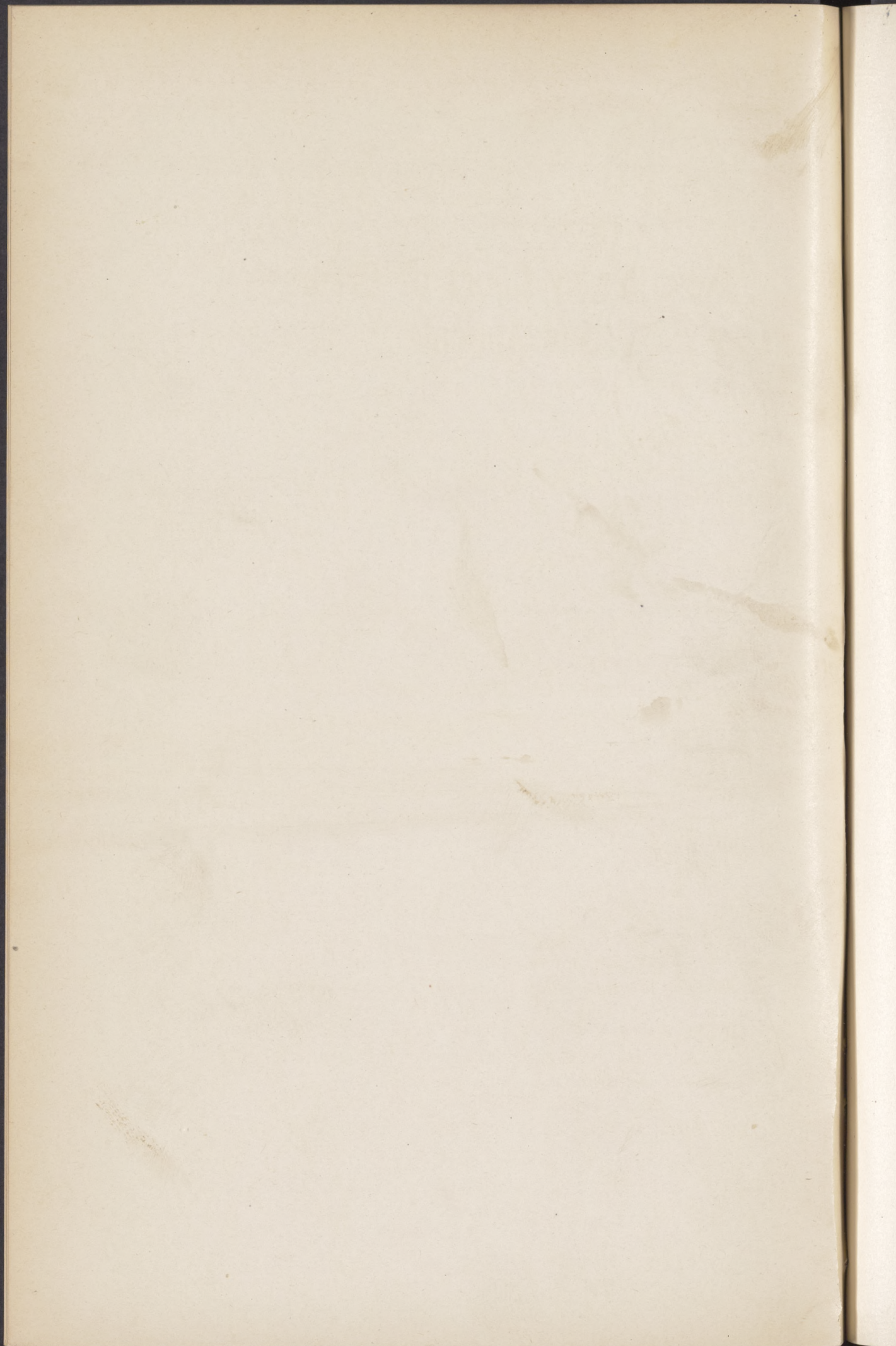
the performance of the new obligation (husband in this case had no power to repledge a mortgage on his wife's estate)." Knox on Real Property Mortgages, page 279, quoting *Atwater v. Underhill*, 22 Eq. 603 (Err. & App. 1872).

This Court decided in the case of *Emsen v. Lawrence*, 33 N. J. Eq. (6 Stew.) 286, that a decree of the Trial Court will not be reversed on appeal because of mere doubt as to the correctness of such decree, and in the case of *Hartman v. Hartman*, 71 A. 417, 74 N. J. Eq. 851, that where a case involves only questions of fact, and the Appellate Court agrees with the conclusions of the Vice-Chancellor, the decree should be affirmed.

It is respectfully submitted that the decree of the Court of Chancery awarding to the respondent the sum of \$3,529.42 and costs, together with a counsel fee of \$200, to the solicitor of complainant, should be in all things affirmed.

FREDERIC H. PILCH,
Of Counsel with Respondent.





New Jersey Court of Errors and Appeals

JOHN KAPALCZYNSKI,
Complainant-Respondent,
and
ANNA SITNESKI, et als
Defendants-Appellant.

10

BRIEF FOR APPELLANTS.

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FACTS.

This is an appeal from a Decree in a foreclosure in Chancery based on the conclusion of the Advisory Master.

Frank Sitneski executed his bond and mortgage to complainant October 13, 1911, for \$3,000.00 payable in one (1) year with interest at 5½% payable semi-annually; said mortgage covers property situated in the Town of Bloomfield, Essex County. Frank Sitneski died intestate October 7th, 1917, leaving a widow, Anna Sitneski and seven minor children, the defendants herein.

On April 9th, 1919, complainant filed his bill praying for the foreclosure of his mortgage and alleging that there was due him \$3,000.00 in interest from October 13th, 1915, and certain taxes and insurance. Defendants answered contending that in the middle of No-

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vember, 1913, \$1,000.00 was paid by Frank Sitneski on account of the principal of said mortgage and that interest was paid up to April 13, 1917. The testimony as to the payment on account of principal is conflicting.

Complainant's story is that on a certain evening in November, 1913, he met Frank Sitneski by appointment at the latter's home. Sitneski had just been paid \$2,000 by the maturing of his shares in a local Building and Loan Association and had that sum in cash. 10 The meeting was in the dining room; several were present; Sitneski paid complainant \$785.00 in bills on account of the principal of the mortgage; that complainant carried this money around in his pocket for a couple of weeks; that at the expiration of that time Sitneski came to complainant at his school (he was a school janitor) and asked him to loan it to him "on the quiet"; that he stated that if he did not repay the money it was to be "put back" on the mortgage. Complainant says he re-loaned the money; no one was 20 present; no one but the deceased and complainant knew of the arrangement and neither of them ever spoke of it to anyone until long after the death of Frank Sitneski and until this suit was started. That after the payment of this money on account of the principal Sitneski paid only \$60.00 each six months thereafter; after Sitneski's death complainant stated to the widow and several interested parties that the amount due to him was \$2,215.00. There was paid back to complainant by Frank Sitneski on account of this alleged re-loan various amounts which the Master found 30 to be \$200.00.

Defendant's story differs. They say that on the evening in question they met as complainant states; that Frank Sitneski then and there made him a payment of two sums; that he first paid the interest; then he paid \$1,000 in cash on account of the principal and took a written receipt for such payment; that several people saw this receipt; that complainant thereupon paid one John Prill \$200.00 which he owed Prill out 40 of the money that he received from Frank Sitneski;

and they say that thereafter \$60.00 was paid to complainant each six months and receipts given; that in the confusion of moving around and after the lapse of several years the receipts have been lost; that complainant, after the death of Frank Sitneski stated to the widow and several disinterested parties that \$2,000.00 was due on the mortgage and \$215.00 on a personal loan of which \$200.00 was loaned at one time and \$15.00 at another time.

10

FIRST POINT.

ILLEGAL TESTIMONY WAS ADMITTED AND CONSIDERED BY THE ADVISORY MASTER IN ARRIVING AT HIS CONCLUSIONS.

Even taking complainant's evidence, Frank Sitneski paid him \$785.00 on the mortgage (Case p. 9, li. 41, also p. 11, li. 40).

The only way the Court could conclude that this money was later re-loaned and added to the mortgage would be by considering the conversations and transactions of complainant with Frank Sitneski who died October 7th, 1917. Complainant says he carried this money about in his pocket for two weeks or hid it in the school (Case p. 13, li. 39-45), then Frank Sitneski came and borrowed back \$785.00; that no one was there; no note or memorandum was made; (Case p. 15, li. 1-10), he even asked complainant not to mention it to anyone (Case p. 24, li. 1-2).

Just a few excerpts from the testimony that must have been considered:

Page 16, Line 15.

"Q. What did you do with the money you got from Frank Sitneski? A. I told you I carried it in my pocket.

"Q. How much did you give him when he came back? A. \$785.

"Q. Not \$200? A. Not \$200.

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"Q. Did he ever pay you any interest on that \$785? A. Sometimes he give me, sometimes not. He says, 'Just keep quiet.'"

Line 31.

"Q. He didn't pay you any money on the \$785? A. Only on the quiet."

Page 17, Line 31.

10 "Q. After this time, Mr. Sawicki, did you ever have a conversation with Mr. Sitneski?

"Objection by Mr. Jones.

"Objection overruled.

"A. Yes, a couple of times. Once he speak about a mortgage and asked me to change the mortgage, and I told him to change it. He said he would, and after he say 'No,' I haven't changed the mortgage because we have settled again.

20 "Q. What do you mean by asked to change the mortgage?"

Page 24, Line 1.

"Q. Is that all they owe you? A. Afterwards he took \$785, but he requested me not to tell any one."

Line 19.

30 "Q. When he came and borrowed this other amount, which you say he did, what took place then? A. He came to the school and approached me and says, 'Lend me some money,' because it is kind of hard for him.

"Q. Is that all he says? A. That is all—"Let it be on the bond and mortgage.'

40 "Q. What did he say about the bond and mortgage? A. He says, 'Well, we will even it up, make it an even \$3,000.'

“Q. Has he ever paid you anything? A. He give me \$100 sometimes, sometimes \$10, \$15 or \$20; it might be less. I couldn't tell you.

“Q. Then you don't know what he gave you?
A. No.”

Line 41.

“Q. Did he pay you interest on this \$785. A. Several times he had a few dollars, and he said 10
'leave that between us.'”

Page 28, Line 1.

“Master. Did he say anything about the mortgage that time when you gave him the \$785? A. He says, 'In case I wouldn't be able to return it to you, it will be a full mortgage.'”

Line 16.

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“Q. Was it understood that he was to pay you interest on the \$785? A. Yes; he told me if I wouldn't pay it back to you, I will give you interest, and if I do not give it back, it will go on the mortgage.

“Q. When he paid you interest on the mortgage, didn't you say something to him about the \$785? A. I told him, 'Frank, you never give me anything.' He says, 'I will give it to you next week; 30
it will be all right.'”

It is just such a case it seems to Counsel that our rule of evidence was designed to meet. Frank Sitneski's lips are sealed. Outside of this (as we contend, illegal testimony) there is not the slightest proof that Frank Sitneski borrowed back one cent, much less agreed to have it added to the mortgage.

These defendants are heirs and are being sued in a representative capacity within the meaning of the 40

statute for a debt of their father. The testimony should not be considered.

Colfax vs. Colfax, 5 Stew. page 207.

Joss vs. Mohr, 26 Vr. page 407.

Greenwood vs. Henry, 7 Dick page 447.

SECOND POINT.

10 THE WEIGHT OF THE TESTIMONY IS TO THE
EFFECT THAT \$1,000.00 WAS PAID ON ACCOUNT
OF THE PRINCIPAL OF THE MORTGAGE.

This being an appeal from Chancery the Court considers the entire testimony anew.

It is admitted that on November 17th, 1913, Frank Sitneski drew \$2,000.00 in cash (See exhibit P-6). That at the time of the payment of money by Frank Sitneski to complainant there were besides complainant, Frank Sitneski, John Prill, Mike Prill, Anna Sitneskie and one Sawicki. The Master had disregarded all of Blanche's testimony by simply saying that she was mistaken in saying that she was present. Blanche says that she was there (Case p. 19, li. 36). As to her presence there complainant says (Case p. 11, li. 10. "Q. This young lady was there?—pointing to Blanche Sitneski. A. I never saw here.") Mrs. Sitneski says she was there (Case page 22, li. 28).

30 John Prill, who was there, says (Case p. 42, li. 3) "I didn't see her," later on (Case page 42, li. 34), Q. "Was Blanche there?" A. "Blanche, I don't know." Mike Prill, who was there, says (Case p. 43, li. 40), Q. "How about Blanche?" A. "I didn't see her; there was a little girl in the kitchen."

40 As against the clear and positive statements of Blanche's "by far most intelligent of all the witnesses," that she was there, it is unfair to disregard her testimony as the Master did. It must be remembered that she was then a school girl between 14 and

15, a time of life when curiosity is uppermost, a time when a transaction involving a large sum of money to people in humble circumstances would make a lasting impression.

In Case page 20 she said her father paid \$1,000 on principal and another payment for interest and that he paid two other men money,—afterwards corroborated. On page 21, line 30-40, that the money was counted twice in her presence and she knows it was \$1,000.00.

Anna Sitneski, the widow (Case p. 34, li. 35 et seq and top of p. 35) says clearly that \$1,000 and one year's interest was paid and a receipt was given. The Master apparently disregarded her testimony assuming that she had talked to Blanche, but a careful reading of her testimony on the first examination will show that she had difficulty in understanding English, or in understanding the questions. But this testimony which she gives is born out by Blanche and the written receipt is admitted by the complainant (Case p. 29, li. 24-32). 10 20

John Blum, a disinterested witness saw the receipt for \$1,000 on account of the principal the day after it was made (Case page 40, li. 15-20) and raised some question as to its sufficiency without a Notary witnessing it and complainant admits that he subsequently went to a Notary with Frank Sitneski to have this corrected.

Victor Sawicki, a witness called by the complainant (Case page 17, li. 28-30) thinks that the amount paid on the evening in question was not quite \$1,000, he also states that he was the person who wrote the receipt (Case p. 46, li. 36-38). 30

Complainant's testimony is this. On the night in question Sitneski paid him \$785.00 (Case page 9, li. 42). It was on account of the principal of the mortgage (Case p. 11, li. 35). He gave Sitneski a receipt; he recalled Blum having seen this receipt (Case p. 13, li. 12-16). He admitted paying John Prill \$200.00 in cash that he owed him, but wasn't positive whether 40

it was on the evening he received the money from Frank Sitneski (Case p. 26, li. 40-45), but John Prill and the others present are not in doubt (p. 42, li. 12-20). He says that on the very evening in question the complainant paid him (John Prill) \$200.00 out of the money he had just received from Frank Sitneski. Now, complainant says he had \$785 when he left the house and kept it in his pocket and hid it up in the school and subsequently paid the precise \$785.00 back to Frank (Case p. 14, li. 40 et seq.)

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It must be kept in mind that complainant was making about \$18.00 a week (Case 31, li. 24); that this was his only mortgage. It seems quite plausible that \$1,000.00 was paid him; that out of it he paid John Prill \$200.00 leaving in his pocket about the sum he mentioned.

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There is another peculiar feature. When Frank Sitneski died, complainant told Blum that there was due to him \$2,215.00—\$2,000.00 on the mortgage, \$200.00 Frank had borrowed at one time and \$15.00 at a different time (Case p. 40, li. 40-45). He told the widow the same thing (p. 38, li. 2 et seq.).

Complainant admits that he stated \$2,215.00 was due (Case p. 33). It is further admitted that after the payment was made on account of the mortgage, payments were made and receipts were given each six months for \$60.00 interest (apparently interest on \$2,200.00 for six months at 5½%).

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The borrowing of the \$200.00 as a sort of personal loan is from complainant's own lips. Defendants knew nothing about it until after Frank's death but the semi-annual interest checks indicate either that the interest was increased by mutual consent to 6% or else that he did borrow \$200.00. The \$200.00, however, the Master found in his conclusion was paid off by Frank Sitneski (Case p. 48, li. 34) and the Master arrived at this sum after complainant had admitted that he did not know and had kept no record of how much Frank had paid him (Case p. 24, li. 26 et seq.).

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THIRD POINT.

HAVING ADMITTED PAYMENT OF PART OF THE MORTGAGE THE BURDEN RESTED ON THE COMPLAINANT TO PROVE A RE-LOAN ON THE SECURITY OF THE SAME MORTGAGE.

When questioned on the first day of the hearing about this loan alleged to have been made to Frank Sitneski at the school-house, he gave the version contained at the bottom of page 13, page 14, lines 40-50 and top of page 15. At the second hearing, after some urging by Counsel, he says that Frank Sitneski told him, "Let it be on Bond and Mortgage" (Case p. 24, li. 24). It is this and similar testimony of a conversation with Frank Sitneski upon which the Master bases the fact that the mortgage was restored from \$2,000.00 or \$2,250.00 to \$3,000.00. If the conversations with the deceased are not permissible, this proof fails utterly. But, leaving this out of consideration for the moment, the Court must find from this flimsy testimony that a new mortgage of \$3,000.00 was created. While, of course, it is conceded that collateral held for one purpose, may in certain cases be extended so as to be held for another, the proof must be very clear and convincing.

What have we here. (a) The unsupported statement by the INTERESTED party as to what a man now dead said six years ago. (b) The statement that he never thought of the money he says that he loaned as being part of the mortgage until he started foreclosure (Case p. 33, li. 19-21). (c) The fact that after Sitneski died he stated to the widow and John Blum that \$2,215.00 was due. \$2,000.00 on the mortgage; \$200.00 borrowed at one time and \$15.00 borrowed at another time and the fact that he told several people that the amount due on the mortgage was \$2,215.00. In view of his present insistence that the mortgage was restored to \$3,000.00 these admissions

right up to the very time of the foreclosure seem unexplainable. (d) We have complainant's explanation that Frank Sitneski asked him to say nothing about it (Case p. 33, li. 15) If that is the true explanation, why wasn't this seal of silence removed by Frank's death; or did he have to keep silent for two years and for the first time reveal it when he started foreclosure.

Can such flimsy evidence—every part contrary to human experience—become the basis on which the Court will say that he has sustained the preponderance of evidence?

Respectfully submitted,

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