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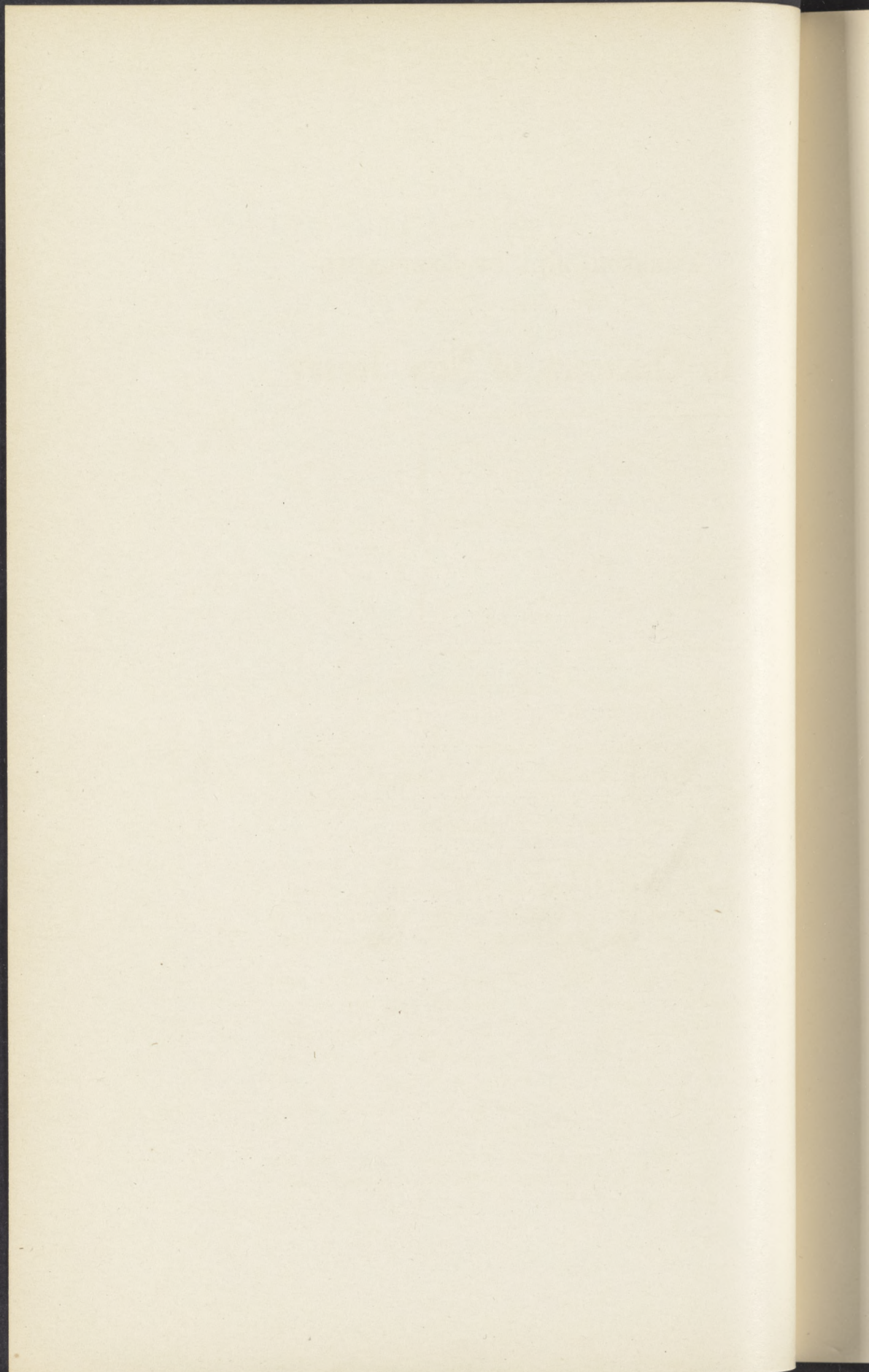
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AMENDED BILL OF COMPLAINT.

Filed May 30, 1928.

In Chancery of New Jersey

JOSEPH GRUNT, trading as West
Side Plumbing Supply Com-
pany,

Complainant,

vs.

JOSEPH A. WEISSMAN, *et als.*,
Defendants.

On Bill, &c.

*Amended
Bill of
Complaint.*

10

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

20

The complainant, Joseph Grunt, trading as West Side Plumbing Supply Company, of the City of Newark, County of Essex and State of New Jersey, respectfully shows:

1. On and prior to October 11, 1927, and October 20, 1927, Joseph A. Weissman, the defendant herein, was indebted to the complainant in the sum of Nine Thousand Dollars and upwards.

30

2. On and prior to October 11, 1927, the said defendant Joseph A. Weissman was the owner in fee simple of an undivided fourteen-fifteenths interest in and to certain lands and premises commonly known and designated as Nos. 461-463 South Tenth street, Newark, New Jersey, more particularly described as follows:

"BEGINNING on the westerly side of South Tenth Street at a point therein distant 256.53 feet southerly from the corner formed by the

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Amended Bill of Complaint.

intersection of the same with the southerly side of Fifteenth Avenue, and from thence running (1) along said side of South 10th Street south 15 degrees, 16 minutes west 51.09 feet; thence (2) North 73 degrees, 19 minutes west 111.68 feet; thence (3) North 16 degrees, 18 minutes East 51.35 feet; and
 10 thence (4) south 73 degrees 12 minutes east 110.78 feet to said side of South Tenth Street and the place of BEGINNING."

3. On and prior to October 20, 1927, the said Joseph A. Weissman, the defendant, was the owner in fee simple of an undivided one-half interest in and to lands and premises commonly known and designated as No. 159 Isabella avenue, Newark, New Jersey, more particularly described as follows:

20 "BEGINNING at the southwest corner of Isabella Avenue and Grove Terrace; thence running westerly along the southerly line of Grove Terrace one hundred feet; thence southerly parallel with Isabella Avenue 37.5 feet; thence easterly parallel with the first course 100 feet to Isabella Avenue; thence Northerly along the same 37.5 feet to the place of BEGINNING.

Being the northerly one-half of lot #13 and all of lot #14 on Map of Melrose Manor."

30 4. On or about the eleventh day of October, 1927, Joseph A. Weissman executed a deed for an undivided fourteen-fifteenths interest in the land and premises on South Tenth street, described in paragraph 2 of this bill of complaint, to one Abraham Weiss, which conveyance is recorded in the Register's Office of Essex County, in Book I-77 of Deeds for said County, page 218.

40 5. Said conveyance was voluntary and without the support of an adequate valuable consid-

Amended Bill of Complaint.

eration, and was fraudulent as against complainant, who was and is a creditor of the said Joseph A. Weissman.

6. The said conveyance was made by Joseph A. Weissman to Abraham Weiss while the said Joseph A. Weissman was in insolvent circumstances. 10

7. The said conveyance was made with the intent to defraud creditors and to conceal his assets from his creditors.

8. That the said Abraham Weiss accepted a deed for the said fourteen-fifteenths interest in the said premises, without any consideration therefor, knowing that the said Joseph A. Weissman was in insolvent circumstances and with the intent of assisting Joseph A. Weissman in defrauding his creditors. 20

9. Complainant charges that the said Abraham Weiss holds the said interest in said property in trust for Joseph A. Weissman.

10. On October 20, 1927, Joseph A. Weissman executed a deed for the undivided one-half interest in and to the premises on Isabella avenue, described in paragraph 3 of this bill of complaint to one Evelyn V. Kraemer, a step-sister of the said Joseph A. Weissman, which said conveyance is recorded in the Register's Office of Essex County in Book N-77 of Deeds for said County, page 89. 30

11. Said conveyance was voluntary and without the support of an adequate, valuable consideration, and was fraudulent as against complainant who was and is a creditor of the said Joseph A. Weissman. 40

Amended Bill of Complaint.

12. That said conveyance was made by Joseph A. Weissman to Evelyn V. Kraemer while the said Joseph A. Weissman was in insolvent circumstances.

10 13. That said conveyance was made with the intent to defraud creditors, and to conceal his assets from his said creditors.

14. That the said Evelyn V. Kraemer accepted a deed for an undivided one-half interest in and to said premises without any consideration therefor, knowing that the said Joseph A. Weissman was in insolvent circumstances, with the intent of assisting Joseph A. Weissman in defrauding his creditors.

20 15. Complainant charges that the said Evelyn V. Kraemer holds the said interest in said property in trust for Joseph A. Weissman.

30 16. Complainant charges that the defendant, Joseph A. Weissman, by these conveyances, has attempted to render himself impecunious and judgment-proof, and although complainant is about to commence a suit at law for the recovery of a judgment for the money due him from the defendant Joseph A. Weissman, nevertheless, complainant fears that unless the alienation of the foregoing interests in said property is prevented by the order and decree of this Honorable Court, complainant's claim against Joseph A. Weissman will be defeated.

40 17. Complainant is informed by the answers heretofore filed by Evelyn V. Kraemer and Joseph A. Weissman and therefore charges that one Lena Kraemer Weissman claims that the aforementioned Evelyn V. Kraemer holds the title to the aforescribed Isabella avenue property in trust for her.

Amended Bill of Complaint.

18. Complainant charges that the said Lena Kraemer Weissman paid no consideration for the said property, but the conveyance by the defendant Joseph A. Weissman to Evelyn V. Kraemer and/or Lena Kraemer Weissman was made with the design of defrauding his creditors, and that the said Evelyn V. Kraemer and/or Lena Kraemer Weissman holds the said property in trust for Joseph A. Weissman. 10

Complainant is without adequate remedy in the Court of Law and therefore prays:

1. That Joseph A. Weissman, Abraham Weiss, Evelyn V. Kraemer and Lena Kraemer Weissman, who are the defendants in this suit, may answer this bill of complaint and each statement therein made. 20

2. That the said defendants may make discovery of who has possessed and occupied said lands and premises and received rents, issues and profits thereof, since the said pretended conveyances hereinabove set forth were made.

3. That the said fraudulent conveyances by the said Joseph A. Weissman to Abraham Weiss and Evelyn V. Kraemer and/or Lena Kraemer Weissman may be set aside and held to be without an adequate consideration and fraudulent, and declared null and void; and that Abraham Weiss and Evelyn V. Kraemer and/or Lena Kraemer Weissman hold the said interest in said properties in trust for Joseph A. Weissman. 30

4. That a decree may be made that the said interests in said lands and premises be held to answer any judgment which the complainant may recover in the law court for moneys due him from Joseph A. Weissman. 40

Amended Bill of Complaint—Interrogatories.

5. That in the meantime and until the further order of this Court the said defendants be enjoined and restrained from selling, transferring, conveying, mortgaging, encumbering, or in any other way affecting the interests in the premises described herein, or any part thereof.

10

6. That a receiver be appointed to collect the rents, issues and profits of the said premises.

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

20

8. That the complainant may have such other and further relief in the premises as the nature of the case may require, and as shall be agreeable to equity and good conscience.

9. To the defendants Joseph A. Weissman, Abraham Weiss and Evelyn V. Kraemer:

You are hereby required to answer, under oath, fully, directly and responsively, confining each answer to the interrogatory proposed, those of the following interrogatories respectively addressed to each of you:

30

INTERROGATORIES ADDRESSED TO
JOSEPH A. WEISSMAN AND
ABRAHAM WEISS.

1. What amount, if any, was paid by the defendant Abraham Weiss to Joseph A. Weissman for premises conveyed by the latter to the former on the 10th day of October, 1927, which premises are described in paragraph two of the bill of complaint?

40

2. If a money consideration was paid was it by cash or by check? If the latter whose check and on what bank was it drawn? If in cash, where was the money obtained, when,

Amended Bill of Complaint—Interrogatories.

and under what circumstances and from whom?

3. If the defendant, Abraham Weiss, purchased said premises, did he transfer the insurance, collect the rents, pay the taxes, insurance and interest, and immediately notify the tenants of the change of ownership? If not, why? 10

4. If the defendant, Abraham Weiss, purchased said premises, did he transfer the shares of stock in the Building and Loan Association to his name? If not, why?

5. Are there any other encumbrances against this property besides the mortgage held by the 14th Ward Building and Loan Association? If so, state what they are in detail.

6. Has the defendant, Joseph A. Weissman, any other real property outside of those set forth in paragraphs two and three of the bill of complaint? If so, give full details. 20

INTERROGATORIES ADDRESSED TO
JOSEPH A. WEISSMAN AND
EVELYN V. KRAEMER.

1. What amount if any was paid by the defendant, Evelyn V. Kraemer, to the defendant, Joseph A. Weissman, for premises conveyed to her on October 20, 1927, which premises are described in paragraph three of the bill of complaint? 30

2. What relationship exists between the defendants, Joseph A. Weissman and Evelyn V. Kraemer?

3. If a money consideration was paid for the aforementioned conveyance was it by cash or check? If the latter, whose check and on what bank was it drawn? If in cash, where was the money obtained, when, and under what circumstances and from whom? 40

Amended Bill of Complaint—Interrogatories.

4. If the defendant, Evelyn V. Kraemer, purchased said premises, did she transfer the insurance, collect the rents, pay the taxes, insurance, interest and immediately notify the tenants of the change of ownership?

10 5. If the defendant, Evelyn V. Kraemer, purchased said premises, did she transfer the shares of stock in the Building and Loan Association to her name as owner? If not, why?

6. Has the defendant, Joseph A. Weissman, any real or personal property in addition to the parcels described in paragraphs two and three of the bill of complaint?

20 7. What relationship exists between the defendants Joseph A. Weissman, Abraham Weiss and Evelyn V. Kraemer?

10. And petitioner further prays that he may be permitted to amend his said bill of complaint by adding to the prayers thereof the following paragraphs:

To the defendants, Lena Kraemer Weissman and Abraham Weiss:

30 You are hereby required to answer under oath, fully, directly and responsively, confining each answer to the interrogatory proposed, those of the following interrogatories respectively addressed to each of you:

INTERROGATORIES ADDRESSED TO
LENA KRAEMER WEISSMAN.

40 1. What amount if any was paid by Joseph A. Weissman to you for premises conveyed by the said Joseph A. Weissman to Evelyn V. Kraemer on October 10, 1927, which premises are described in paragraph two of the bill of complaint?

Amended Bill of Complaint—Interrogatories.

2. If a money consideration was paid, was it by cash or by check? If the latter, whose check and on what bank was it drawn? If in cash, where was the money obtained, under what circumstances was it obtained and from whom?

3. If your answer is that Joseph A. Weissman was indebted to you in the sum of \$4207.12 for money advanced by you to him, state how and in what form the money was advanced, and when it was advanced. If it was advanced in one lump sum, give the date thereof and where and from what bank and when you obtained it; if the money was advanced at different times, with full particularity, state the precise dates and the amounts given on each date and set forth the names and addresses of the banks and the amounts of money which you drew from each.

4. If your answer is that you paid \$950.00 to the said Joseph A. Weissman, state whether it was in cash or by check; when you did so, where, under what circumstances, and when you drew the money and from what banks?

5. Did you personally transfer the insurance, collect the rents, pay the taxes, insurance, and interest, and immediately notify the tenants of the change of ownership, and transfer the shares of stock in the Building and Loan Association to your name? If not, why not? If you did not do it personally, who did it for you?

6. What relation do you bear to Joseph A. Weissman, Evelyn V. Kraemer and Abraham Weiss?

7. If your answer is that Evelyn V. Kraemer holds the property in trust for you, state when the trust was created, how, under what circumstances; if the trust agreement was an instrument in writing, set it forth completely and in detail.

Amended Bill of Complaint—Interrogatories.

INTERROGATORIES ADDRESSED TO
ABRAHAM WEISS.

- 10 1. If you paid no money consideration for the conveyance but claim that the consideration therefor was the discharge of an antecedent indebtedness of \$5650.00, itemize with particularity the various dates on which you claim you advanced the money and state the amount given on those respective dates; was the money advanced by you in cash or by check? If in cash, state from what bank or banks you obtained the funds and give the respective dates and amounts thereof; if by checks, when and in what amount and on what bank or banks and to whose order were those checks drawn?

And your petitioner will ever pray, etc.

20

MICHAEL G. ALENICK,
Solicitor for and of Counsel with Complainant.

30

40

Answer of Joseph A. Weissman.

ANSWER.

Filed June 19, 1928.

Answer of the defendant Joseph A. Weissman:

The defendant, Joseph A. Weissman, answering the amended bill of complaint filed herein, says that: 10

1. Paragraph one is denied.
2. Paragraph two is admitted.
3. Paragraph three is admitted.
4. Paragraph four is admitted.
5. Paragraph five is denied.
6. Paragraph six is denied. 20
7. Paragraph seven is denied.
8. Paragraph eight is denied.
9. Paragraph nine is denied.
10. Paragraph ten is admitted.
11. Paragraph eleven is denied.
12. Paragraph twelve is denied.
13. Paragraph thirteen is denied. 30
14. Paragraph fourteen is denied.
15. Paragraph fifteen is denied.
16. Paragraph sixteen is denied.
17. Paragraph seventeen is admitted.
18. Paragraph eighteen is denied.

Answer of Joseph A. Weissman.

FIRST AFFIRMATIVE DEFENSE.

10 Defendant Joseph A. Weissman says that on or about the 20th day of October, 1927, the complainant Joseph Grunt was paid in full for all indebtedness then due and owing from said Joseph A. Weissman by the check of Joseph Cagan.

SECOND AFFIRMATIVE DEFENSE.

20 1. On or about the 11th day of October, 1927, the defendant Joseph A. Weissman was indebted to the defendant Abraham Weiss in the sum of Six Thousand (\$6,000) Dollars and upwards for money advanced and merchandise delivered by the said defendant Abraham Weiss to the said defendant Joseph A. Weissman, as evidenced by certain promissory notes on demand.

2. On or about the 11th day of October, 1927, the said Joseph A. Weissman executed the deed referred to in paragraph 4 of the amended bill of complaint to the said Abraham Weiss in consideration of the discharge of the said indebtedness and in further consideration of the surrender of the said promissory notes.

30 3. Defendant Joseph A. Weissman says that the defendant Evelyn V. Kraemer was not the legal owner of her one-half interest in the premises described in paragraph 3 of the amended bill of complaint but that the said defendant Evelyn V. Kraemer held the same in trust for her mother, Lena Kraemer Weissman, whose ownership is evidenced by a certain declaration of trust executed on May 8, 1926, by the said defendant Evelyn V. Kraemer.

40 4. Defendant says that on or about October 20, 1927, he was indebted to the said Lena

Answers to Interrogatories.

Kraemer Weissman in the sum of \$4,207.12, for money actually advanced to the said defendant Joseph A. Weissman, and the said defendant Joseph A. Weissman executed the conveyance set forth in paragraph 4 of the amended bill of complaint to the defendant Evelyn V. Kraemer in trust aforesaid in consideration of the discharge of the said indebtedness and in further consideration of the sum of \$950.00. 10

5. Defendant Joseph A. Weissman denies that he was in insolvent circumstances on or about the 11th day of October, 1927.

He prays that the bill may be dismissed.

The defendant Joseph A. Weissman further answering the amended bill of complaint says that as to him the bill of complaint does not set forth a cause of action cognizable in equity and there is no equity in the bill so far as he is concerned. 20

POTTER & BERRY,
Solicitors of the Defendant,
Joseph A. Weissman.

ANSWERS TO INTERROGATORIES. 30

Answers to interrogatories annexed to the amended bill of complaint filed herein addressed to the defendants *Joseph A. Weissman and Abraham Weiss*.

Answer to First Interrogatory: There was no actual money consideration. The conveyance was made in consideration of the cancellation of an antecedent debt in the sum of Five Thousand Six Hundred and Fifty (\$5,650) Dollars with interest 40

Answers to Interrogatories.

from the various dates upon which money was advanced.

Answer to Second Interrogatory: Answered in answer to first interrogatory.

10 Answer to Third Interrogatory: Through inadvertence the insurance was not transferred. The rents were collected by Abraham Weiss or by his agent. No taxes have as yet been paid upon the property since the conveyance. No insurance has as yet been paid upon the property. The interest was paid either by Abraham Weiss or his agent. The tenants were notified on or about October 11, 1927, of the change of ownership.

20 Answer the Fourth Interrogatory: The shares of stock were not transferred although slips were made out and the secretary of the building and loan was notified of the change of ownership.

Answer the Fifth Interrogatory: No.

Answer to Sixth Interrogatory: No.

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

JOSEPH A. WEISSMAN, being duly sworn according to law, upon his oath deposes and says:

1. I am one of the defendants in the above-entitled cause, and the defendant to whom the interrogatories to which the foregoing answers are made were addressed, and the foregoing answers to said interrogatories annexed to the amended bill of complaint and addressed to me are true.

JOSEPH A. WEISSMAN.

Answers to Interrogatories.

Sworn and subscribed to before
me this 8th day of June, 1928.

ARTHUR J. CONNELLY,
An Attorney at Law of New Jersey.

10

ANSWERS TO INTERROGATORIES.

Answers to interrogatories annexed to the amended bill of complaint filed herein addressed to the *defendants Joseph A. Weissman and Evelyn V. Kraemer.*

Answer to First Interrogatory: Evelyn V. Kraemer paid nothing for this conveyance. She was merely the trustee for her mother, Lena Kraemer Weissman.

20

Answer to Second Interrogatory: Step-brother and step-sister.

Answer to Third Interrogatory: The sum of \$950.00 was paid by the said Lena Kraemer Weissman to the said Joseph A. Weissman and the further consideration for the conveyance was the cancellation of an antecedent debt in the sum of \$4,207.12, for moneys advanced to the said Joseph A. Weissman by the said Lena Kraemer Weissman and drawn from the Springfield Avenue Trust Company.

30

Answer to Fourth Interrogatory: Evelyn V. Kraemer purchased the premises as trustee for her mother, Lena Kraemer Weissman. Insurance remained the same. Rents were collected as before by Lena Kraemer Weissman or her agent. Taxes were paid by Lena Kraemer Weissman or her agent, as were insurance and

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Answers to Interrogatories.

interest. The tenants were immediately notified of the change of ownership.

10 Answer to Fifth Interrogatory: Shares of stock were not transferred but slips were made out and the secretary of the building and loan association was notified of the change.

Answer to Sixth Interrogatory: No.

Answer to Seventh Interrogatory: Joseph A. Weissman is a cousin of Abraham Weiss and a step-brother of Evelyn V. Kraemer.

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

20 JOSEPH A. WEISSMAN, being duly sworn according to law, upon his oath deposes and says:

1. I am one of the defendants in the above-entitled cause, and the defendant to whom the interrogatories to which the foregoing answers are made were addressed, and the foregoing answers to said interrogatories annexed to the amended bill of complaint and addressed to me are true.

JOSEPH A. WEISSMAN.

30

Sworn and subscribed to before
me this 8th day of May, 1928.

ARTHUR J. CONNELLY,
An Attorney at Law of New Jersey.

Answer of Lena Kraemer Weissman.

ANSWER.

Filed June 19, 1928.

*Answer of the defendant, Lena Kraemer
Weissman.*

10

The defendant, Lena Kraemer Weissman, answering the amended bill of complaint filed herein says:

1. Defendant has no knowledge or information sufficient to form a belief as to statements contained in paragraph one.

2. Paragraph two is admitted.

3. Paragraph three is admitted.

20

4. Defendant has no knowledge or information sufficient to form a belief as to statements contained in paragraph four.

5. Defendant has no knowledge or information sufficient to form a belief as to statements contained in paragraph five.

6. Defendant has no knowledge or information sufficient to form a belief as to statements contained in paragraph six.

30

7. Defendant has no knowledge or information sufficient to form a belief as to statements contained in paragraph seven.

8. Defendant has no knowledge or information sufficient to form a belief as to statements contained in paragraph eight.

9. Defendant has no knowledge or information sufficient to form a belief as to statements contained in paragraph nine.

40

Answer of Lena Kraemer Weissman.

10. As to paragraph ten, defendant admits so much thereof as alleges that a deed was executed and recorded but denies that an undivided one-half interest therein passed to the said defendant Evelyn V. Kraemer, and the defendant further admits all the other allegations of paragraph ten.
11. Paragraph eleven is denied.
12. Paragraph twelve is denied.
13. Paragraph thirteen is denied.
14. Paragraph fourteen is denied.
15. Paragraph fifteen is denied.
16. Paragraph sixteen is denied.
- 20 17. Paragraph seventeen is admitted.
18. Paragraph eighteen is denied.

FIRST AFFIRMATIVE DEFENSE.

1. The defendant Lena Kraemer Weissman says that she is the true owner of a one-half interest in the premises described in paragraph three of the amended bill of complaint and that the defendant Evelyn V. Kraemer holds the same in trust for her and that her ownership is evidenced by a certain declaration of trust executed on May 8, 1926, by the said defendant, Evelyn V. Kraemer.
- 30

2. Defendant says that on or about October 20, 1927, the defendant Joseph A. Weissman was indebted to her in the sum of \$4207.12, for money actually advanced to the said Joseph A. Weissman and that the said Joseph A. Weissman executed the conveyance set forth in paragraph four of the amended bill of complaint to
- 40

Answers to Interrogatories.

Evelyn V. Kraemer in trust aforesaid, for the defendant Lena Kraemer Weissman in consideration of the discharge of the said indebtedness and in further consideration of the sum of \$950.00.

3. Defendant Lena Kraemer Weissman denies that she had any knowledge of the insolvency, if any, of the defendant Joseph A. Weissman on October 20, 1927.

10

She prays that the bill may be dismissed.

Defendant, Lena Kraemer Weissman further answering the amended bill of complaint says that as to her the bill of complaint does not set forth a cause of action cognizable in equity and that there is no equity in the bill so far as she is concerned.

20

POTTER & BERRY,
Solicitors of the Defendant
Lena Kraemer Weissman.

ANSWERS TO INTERROGATORIES.

Answers to interrogatories annexed to the amended bill of complaint filed herein addressed to the *defendant Lena Kraemer Weissman*.

30

Answer to First Interrogatory: The sum of \$950 was paid by the said Lena Kraemer Weissman to the said Joseph A. Weissman and the further consideration for the conveyance was the cancellation of an antecedent debt in the sum of \$4207.12 for moneys advanced to the said Joseph A. Weissman by the said Lena Kraemer Weissman and drawn from the Springfield Avenue Trust Company.

40

Answers to Interrogatories.

Answer to Second Interrogatory: The money consideration was paid in cash drawn from the savings account of the said Lena Kraemer Weissman in the Springfield Avenue Trust Company, Eighteenth avenue and South Tenth street, Newark, New Jersey, and the money was
 10 obtained from the depository in order to advance the same to the said Joseph A. Weissman.

Answer to Third Interrogatory: The money was advanced to Joseph A. Weissman in cash in the following sums and on the following dates:

	July 1, 1926.....	600.00
	July 13, 1926.....	100.00
	July 30, 1926.....	61.73
	Aug. 21, 1926.....	75.00
20	Sept. 1, 1926.....	50.00
	Nov. 1, 1926.....	175.00
	Dec. 14, 1926.....	100.00
	Mar. 7, 1927.....	40.00
	Mar. 21, 1927.....	100.00
	May 16, 1927.....	125.00
	May 21, 1927.....	100.00
	May 27, 1927.....	100.00
	May 31, 1927.....	230.00
	June 18, 1927.....	200.00
30	June 20, 1927.....	200.00
	June 27, 1927.....	25.00
	July 18, 1927.....	155.00
	July 30, 1927.....	100.00
	Aug. 2, 1927.....	50.00
	Aug. 15, 1927.....	350.00
	Aug. 22, 1927.....	50.39
	Aug. 29, 1927.....	270.00
	Sept. 8, 1927.....	200.00
	Sept. 10, 1927.....	200.00
40	Sept. 17, 1927.....	150.00

Answers to Interrogatories.

Sept. 20, 1927.....	150.00
Sept. 20, 1927.....	100.00
Oct. 1, 1927.....	150.00

All this money was withdrawn from the savings account of the said Lena Kraemer Weissman in the Springfield Avenue Trust Company, Eighteenth avenue and South Tenth street, Newark, New Jersey. 10

Answer to Fourth Interrogatory: The cash items were paid as follows:

Nov. 2, 1927.....	50.00
Nov. 10, 1927.....	350.00
Nov. 21, 1927.....	80.00
Dec. 10, 1927.....	120.00
Dec. 19, 1927.....	350.00

under circumstances and upon the same bank as set forth in answer to the second interrogatory. 20

Answer to Fifth Interrogatory: The insurance remained the same. Rents were collected as before by Lena Kraemer Weissman or her agent. Taxes were paid by Lena Kraemer Weissman or her agent as were insurance and interest. The tenants were immediately notified of the change of ownership. Defendant is advised by counsel that the remainder of this interrogatory is improperly addressed and therefore does not answer the same. 30

Answer to Sixth Interrogatory: Joseph A. Weissman is a step-son of Lena Kraemer Weissman, Evelyn V. Kraemer is a daughter, Abraham Weiss is no relation.

Answer to Seventh Interrogatory: The trust was created by a written declaration of trust dated October 20, 1927, which declaration was 40

Answers to Interrogatories.

executed to fix and determine the actual ownership of the said premises in Lena Kraemer Weissman although the title thereto was held in trust by Evelyn V. Kraemer.

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

LENA KRAEMER WEISSMAN, being duly sworn according to law, upon her oath deposes and says:

1. I am one of the defendants in the above-entitled cause, and the defendant to whom the interrogatories to which the foregoing answers are made were addressed, and the foregoing answers to said interrogatories annexed to the
20 amended bill of complaint and addressed to me are true.

LENA KRAEMER WEISSMAN.

Sworn and subscribed to before
me this 18th day of June, 1928.

SAMUEL SCHWARTZ,
Attorney at Law of New Jersey.

30

40

Answer of Abraham Weiss.

ANSWER.

Filed June 8, 1928.

Answer of the defendant Abraham Weiss.

The defendant, Abraham Weiss, answering the amended bill of complaint filed herein says that: 10

1. Defendant has no knowledge or information sufficient to form a belief as to statements contained in paragraph one.

2. Paragraph two is admitted.

3. Defendant has no knowledge or information sufficient to form a belief as to statements contained in paragraph three.

4. Paragraph four is admitted. 20

5. Paragraph five is denied.

6. Paragraph six is denied.

7. Paragraph seven is denied.

8. Paragraph eight is denied.

9. Paragraph nine is denied.

10. Defendant has no knowledge or information sufficient to form a belief as to statements contained in paragraph ten. 30

11. Defendant has no knowledge or information sufficient to form a belief as to statements contained in paragraph eleven.

12. Defendant has no knowledge or information sufficient to form a belief as to statements contained in paragraph twelve.

13. Defendant has no knowledge or information sufficient to form a belief as to statements contained in paragraph thirteen. 40

Answer of Abraham Weiss.

14. Defendant has no knowledge or information sufficient to form a belief as to statements contained in paragraph fourteen.

15. Defendant has no knowledge or information sufficient to form a belief as to statements contained in paragraph fifteen.

10

16. Paragraph sixteen is denied.

17. Defendant has no knowledge or information sufficient to form a belief as to statements contained in paragraph seventeen.

18. Defendant has no knowledge or information sufficient to form a belief as to statements contained in paragraph eighteen.

FIRST AFFIRMATIVE DEFENSE.

20

1. On or about the 11th day of October, 1927, defendant Joseph A. Weissman was indebted to this defendant in the sum of Six Thousand (\$6,000) Dollars and upwards for money advanced and merchandise delivered by this defendant to the defendant Joseph A. Weissman, as evidenced by certain promissory notes on demand.

2. On or about the 11th day of October, 1927, the said Joseph A. Weissman executed the deed referred to in paragraph 4 of the amended bill of complaint to this defendant in consideration of the discharge of the said indebtedness and in further consideration of the surrender of the said promissory notes.

30

3. The defendant Abraham Weiss denies that he had any knowledge of the insolvency, if any, of the defendant Joseph A. Weissman, on October 11, 1927.

40

He prays that the bill may be dismissed.

Answers to Interrogatories.

The defendant Abraham Weiss further answering the bill of complaint says that as to him the bill of complaint does not set forth a cause of action cognizable in equity and there is no equity in the bill so far as he is concerned.

POTTER & BERRY,
Solicitors of the Defendant Abraham Weiss.

10

ANSWERS TO INTERROGATORIES.

Answers to interrogatories annexed to the amended bill of complaint filed herein addressed to the defendants Joseph A. Weissman and Abraham Weiss.

Answer to First Interrogatory: There was no actual money consideration. The conveyance was made in consideration of the cancellation of an antecedent debt in the sum of Five Thousand Six Hundred and Fifty (\$5,650) Dollars with interest from the various dates upon which money was advanced. 20

Answer to Second Interrogatory: Answered in answer to first interrogatory.

Answer to Third Interrogatory: Through inadvertence the insurance was not transferred. The rents were collected by Abraham Weiss or by his agent. No taxes have as yet been paid upon the property since the conveyance. No insurance has as yet been paid upon the property. The interest was paid either by Abraham Weiss or his agent. The tenants were notified on or about October 11, 1927, of the change of ownership. 30

Answer to Fourth Interrogatory: The shares of stock were not transferred although slips 40

Answers to Interrogatories.

were made out and the secretary of the building and loan was notified of the change of ownership.

Answer to Fifth Interrogatory: No.

Answer to Sixth Interrogatory: No.

10 Answer to additional interrogatory in the amended bill of complaint addressed to Abraham Weiss.

20 The antecedent indebtedness was as follows: \$2,000 in cash on September 17, 1926, \$250 in cash on October 2, 1925, \$500 in cash on December 16, 1925, the sum of \$1,100 in cash advanced in amounts, the exact number and amounts of which are now unknown to this deponent, but which aggregated on May 1, 1926, the sum of \$1,100. The first three items of cash were with-
30 drawn from the Springfield Avenue Trust Company the the \$1,100 in cash was drawn from personal funds in small amounts from the petty cash account of this deponent's business. \$1,800 represented by personal property which was sold by Abraham Weiss to Joseph A. Weissman in the following manner: October 18, 1926, one wrist watch, December 18, one platinum diamond engagement ring, March 21, 1927, one platinum
diamond studded wedding ring, April 17, one
cameo pin with diamond.

Answers to Interrogatories.

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

ABRAHAM WEISS, being duly sworn according to law, upon his oath deposes and says:

1. I am one of the defendants in the above-entitled cause, and the defendant to whom the interrogatories to which the foregoing answers are made were addressed, and the foregoing answers to said interrogatories annexed to the amended bill of complaint and addressed to me and the additional interrogatory contained in the amended bill of complaint and addressed to me are true. 10

ABRAHAM WEISS.

Sworn and subscribed to before me this 8th day of June, 1928. 20

HARVEY A. STEVENSON,
 A Master in Chancery of New Jersey.

30

40

Answer of Evelyn V. Kraemer.

ANSWER.

Filed June 19, 1928.

Answer of the defendant Evelyn V. Kraemer.

10 The defendant, Evelyn V. Kraemer, answering
the amended bill of complaint filed herein, says
that:

1. Defendant has no knowledge or information
sufficient to form a belief as to statements con-
tained in paragraph one.

2. Paragraph two is admitted.

3. Paragraph three is admitted.

4. Paragraph four is admitted.

20 5. Defendant has no knowledge or informa-
tion sufficient to form a belief as to statements
contained in paragraph five.

6. Defendant has no knowledge or informa-
tion sufficient to form a belief as to statements
contained in paragraph six.

7. Defendant has no knowledge or informa-
tion sufficient to form a belief as to statements
contained in paragraph seven.

30 8. Defendant has no knowledge or informa-
tion sufficient to form a belief as to statements
contained in paragraph eight.

9. Defendant has no knowledge or informa-
tion sufficient to form a belief as to statements
contained in paragraph eight.

10. Paragraph ten is admitted.

11. Paragraph eleven is denied.

40 12. Paragraph twelve is denied.

Answer of Evelyn V. Kraemer.

13. Paragraph thirteen is denied.
14. Paragraph fourteen is denied.
15. Paragraph fifteen is denied.
16. Paragraph sixteen is denied.
17. Paragraph seventeen is admitted. 10
18. Paragraph eighteen is denied.

FIRST AFFIRMATIVE DEFENSE.

1. The defendant Evelyn V. Kraemer says that she was not the legal owner of her one-half interest in the premises described in paragraph 3 of the amended bill of complaint but that she held the same in trust for her mother, Lena Kraemer Weissman, whose ownership is evidenced by a certain declaration of trust executed on May 8, 1926, by the said defendant Evelyn V. Kraemer. 20

2. Defendant says that on or about October 20, 1927, the defendant Joseph A. Weissman was indebted to the said Lena Kraemer Weissman in the sum of \$4,207.12, for money actually advanced to the said Joseph A. Weissman, and the said defendant Joseph A. Weissman executed the conveyance set forth in paragraph 4 of the amended bill of complaint to her in trust aforesaid in consideration of the discharge of the said indebtedness and in further consideration of the sum of \$950.00. 30

3. The defendant Evelyn V. Kraemer denies that she had any knowledge of the insolvency, if any, of the defendant Joseph A. Weissman on October 20, 1927.

She prays that the bill may be dismissed.

Answers to Interrogatories.

The defendant Evelyn V. Kraemer further answering the amended bill of complaint says that as to her the amended bill of complaint does not set forth a cause of action cognizable in equity and there is no equity in the bill so far as she is concerned.

10

POTTER & BERRY,
Solicitors of the Defendant
Evelyn V. Kraemer.

ANSWERS TO INTERROGATORIES.

Answers to interrogatories annexed to the amended bill of complaint filed herein addressed to the defendants Joseph A. Weissman and Evelyn V. Kraemer.

20

Answer to First Interrogatory: Evelyn V. Kraemer paid nothing for this conveyance. She was merely the trustee for her mother, Lena Kraemer Weissman.

Answer to Second Interrogatory: Step-brother and step-sister.

Answer to Third Interrogatory: The sum of \$950.00 was paid by the said Lena Kraemer Weissman to the said Joseph A. Weissman and the further consideration for the conveyance was the cancellation of an antecedent debt in the sum of \$4,207.12, for moneys advanced to the said Joseph A. Weissman by the said Lena Kraemer Weissman and drawn from the Springfield Avenue Trust Company.

30

Answer to Fourth Interrogatory: Evelyn V. Kraemer purchased the premises as trustee for her mother Lena Kraemer Weissman. Insurance

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Answers to Interrogatories.

remained the same. Rents were collected as before by Lena Kraemer Weissman or her agent. Taxes were paid by Lena Kraemer Weissman or her agent, as were insurance and interest. The tenants were immediately notified of the change of ownership.

Answer to Fifth Interrogatory: Shares of stock were not transferred but slips were made out and the secretary of the building and loan association was notified of the change.

10

Answer to Sixth Interrogatory: No.

Answer to Seventh Interrogatory: Joseph A. Weissman is a cousin of Abraham Weiss and a step-brother of Evelyn V. Kraemer.

20

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

EVELYN V. KRAEMER, being duly sworn according to law, upon his oath deposes and says:

1. I am one of the defendants in the above-entitled cause and the defendant to whom the interrogatories to which the foregoing answers are made were addressed, and the foregoing answers to said interrogatories annexed to the amended bill of complaint and addressed to me are true.

30

EVELYN V. KRAEMER.

Sworn and subscribed to before
me this 8th day of June, 1928.

HARVEY A. STEVENSON,
A Master in Chancery of New Jersey.

40

*Replications to Answers.***REPLICATION TO AMENDED ANSWER OF
JOSEPH A. WEISSMAN.**

Filed July 6, 1928.

10 Complainant, replying to the amended answer
filed by the defendant, Joseph A. Weissman, says
that:

1. He denies the allegations contained in the
first and second affirmative defenses and joins
issue thereon and on the amended answer.

MICHAEL G. ALENICK,
Solicitor of Complainant.

20 **REPLICATION TO ANSWER OF DEFEND-
ANT, LENA KRAEMER WEISSMAN.**

Filed August 26, 1928.

Complainant, replying to the answer filed by
the defendant, Lena Kraemer Weissman, says
that:

1. He denies the allegations contained in the
first affirmative defense and joins issue thereon
and on the answer.

30 MICHAEL G. ALENICK,
Solicitor of Complainant.

Replications to Answers.

**REPLICATION TO AMENDED ANSWERS OF
DEFENDANTS, JOSEPH A. WEISSMAN
AND EVELYN V. KRAEMER.**

Filed July 6, 1928.

Joseph Grunt, complainant, replying to the
amended answers filed by the defendants Joseph 10
A. Weissman and Evelyn V. Kraemer, joins
issue with said answers and the separate defenses
set up in them.

MICHAEL G. ALENICK,
Solicitor of Complainant.

**REPLICATION TO ANSWER OF DEFEND- 20
ANT, ABRAHAM WEISS.**

Filed June 15, 1928.

Complainant, replying to the answer filed by
the defendant, Abraham Weiss, says that:

1. He denies the allegations contained in the
first affirmative defense and joins issue thereon
and on the answer.

MICHAEL G. ALENICK, 30
Solicitor of Complainant.

Replications to Answers.

**REPLICATION TO AMENDED ANSWER OF
EVELYN V. KRAEMER.**

Filed July 6, 1928.

10 Complainant, replying to the amended answer
filed by the defendant, Evelyn V. Kraemer, says
that:

1. He denies the allegations contained in the
first affirmative defense and joins issue thereon
and on the amended answer.

MICHAEL G. ALENICK,
Solicitor of Complainant.

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TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH GRUNT, trading as
West Side Plumbing Sup-
ply Company,

Complainant,

and

JOSEPH A. WEISSMAN, *et als.*,
Defendants.

10

Transcript of testimony taken in the above
cause before Hon. Maja Leon Berry, Vice-Chan-
cellor, at the Chancery Chambers, Newark,
N. J., on Monday, May 13, 1929, at 10 A. M.

20

Appearances:

For complainant: Michael G. Alenick, Esq.,
and Milton M. Unger, Esq.

For defendants: Thomas Potter, Esq., of Pot-
ter & Berry.

The Court: Are you admitting the facts
stated by Mr. Unger, as set forth in the papers,
for the consideration set out in the papers?

30

Mr. Potter: Yes.

The Court: He only says that the deeds
recite a consideration of one dollar?

Mr. Potter: Yes.

A judgment at law was recovered upon the
bond which is the subject matter of the last
case, of Weissman *vs.* Grunt. That bond was
executed on October 20, 1927.

40

Opening.

The conveyances which they seek to set aside by the present bill, one was dated October 11, 1927, and the other was dated October 20, 1927.

We expect to show that the grantees in those two conveyances which are now sought to be invalidated, did not know at the time of Joseph Grunt as a debtor of Joseph Weissman, the grantor; that they did not know that he owed any sum of money to Joseph Grunt at that time. We also expect to show that both deeds were executed for a valuable consideration: the one, in the first place, to the defendant Weiss, was in consideration of the cancellation of a pre-existing indebtedness as to Grunt, at the then value of the property.

The deed to Evelyn V. Kraemer perhaps demands a little more development. It is true that the deed to Evelyn V. Kraemer was without consideration as to her. She, however, took the property as trustee for her mother, who owned the other interest in the property, which was a half interest, I believe it was, in the property at that time. In 1924, Mrs. Weissman, who was also a defendant, and Mr. Weissman, her step-son, a defendant, purchased this piece of property and jointly built a house upon it. From that date until October 20, 1927, Joseph A. Weissman, the defendant, gradually fell into a deeper and deeper financial trouble. As he did so, he sold off his half interest in this land; in every instance he sold it off to his step-mother, Mrs. Weissman, but the title was taken in each case in the name of Evelyn V. Kraemer, who is the daughter of Mrs. Weissman. We expect to show the whole transaction, to show in each case a trust deed executed, and in every case the property was taken by Evelyn V. Kraemer

Joseph A. Weissman, direct.

as trustee only. We also expect to show that valuable consideration was paid for it at that time.

The Court: You may proceed with your proof.

JOSEPH WEISSMAN, sworn for defendants. 10

Direct examination by Mr. Potter.

Q You are a defendant in this case? A Yes.

Q And where do you live? A 159 Isabella avenue.

Q Were you the owner of that property on October 20, 1927? A Up to that date, yes.

Q What business are you engaged in? A Plumbing business. 20

Q How long were you engaged in that business? A Since 1914.

Q Do you carry on that business as an individual? A I do.

Mr. Potter: In my proof of the consideration of these two conveyances, I should also like to bring out at the same time the transaction which Mr. Weissman had with the complainant, Mr. Grunt, inasmuch as that is a part of our defense. 30

The Court: I don't know anything about it. If it tends to prove your defense, you may bring it out. I cannot decide in advance.

Mr. Potter: The last time you restricted us to the proofs merely of the transaction at that time, because the point was settled that there was only one point at issue in the other case, and our testimony was re- 40

Joseph A. Weissman, direct.

stricted to that one point, and later on, I believe, the actual point in issue was changed, and we were deprived of our proof of the other point; so I bring it up at this time.

10 The Court: My recollection of what occurred at the other hearing is now very hazy. You may proceed.

Q Do you know the complainant, Mr. Joseph Grunt? A I do.

Q When did you first meet him? A I think I have known him since 1914.

Q What business is Mr. Grunt in? A Plumbing supplies.

20 Q Have you bought any plumbing materials from Mr. Grunt? A I did.

Q And over what period of years? A Since 1922.

Q What properties did you own, Mr. Weissman, on October 11, 1927? A 461-463 South Tenth street, 159 Isabella avenue.

Q And did you own all of those properties? A One-half on Isabella avenue and fourteen-fifteenths on 461-463 South Tenth street.

30 Q Who owned the other interest in Isabella avenue property? A Mrs. Kraemer.

Q Who is she? A A step-mother of mine.

Q When did you acquire that interest in that property? A In 1924, when we were in the apartment and building the houses for selling purposes.

40 Q Tell us how you purchased the property at that time. A I remember going down to a lawyer named Pine and meeting my mother at the American National Bank. I withdrew some of the savings, whatever I had in the American

Joseph A. Weissman, direct.

National Bank, and she withdrew a thousand dollars or so of hers, and we made a deposit on the lots to a man named John Latis, real estate man, which acquired the lots at that time.

Q Was that vacant land at that time? A Yes. 10

Q Was there a house constructed on that land? A Yes.

Q Are you talking of Isabella avenue? A Yes.

Q Who constructed that house? A A man named James Blum.

Q Who paid for the building? A Everything passed through my hands.

Q Who paid for the construction of the building? A Mrs. Kraemer's money went into it, and the rest came through the building—and the balance came through working out James Blum's contracts. 20

Q Did you sell any part of that property on May 10, 1926? A I did.

Q I show you a certified copy of deed from yourself to Evelyn V. Kraemer, and ask you if that is the piece of property you sold at that time? A It is.

Q What did you receive from Evelyn V. Kraemer for this deed? A Nothing. 30

Q If you received nothing from Miss Kraemer, why did you deed the property to her? A I understood she was trustee for her mother.

Q Did you receive anything from her mother? A A thousand dollars in cash.

Mr. Potter: I offer this deed for 159 Isabella avenue in evidence.

Mr. Unger: We are not attacking the transfer of 163 at all. 40

Joseph A. Weissman, direct.

The Court: I understand that. Mr. Potter wants to show that the deeds which you do complain of are one or two of a series.

Mr. Potter: That is right.

The Court: You may proceed.

10 Mr. Potter: I offer deed from Joseph A. Weissman to Evelyn V. Kraemer, dated May 10, 1926.

(Marked Exhibit D. 1.)

Q Did you owe Mrs. Lena Kraemer Weissman any money on October 20, 1927? A I did.

Q Do you know how much you owed her?

A I think it was around \$4200.

Q And what did that money represent? A The money represented cash that I withdrew for her.

20 Q And did you receive it all at once? A No, sir.

Q Do you remember how you received it? A In whatever sums I requested it.

Q What did you use that money for? A Carrying on the plumbing business.

Q Did you ever give Lena Kraemer Weissman any notes for this money? A I did.

30 Q Did you give her notes for all of this money which you borrowed? A Only upon request.

Q Did she request notes for all of the money? A At times she did, yes.

Q I show you a note dated August 5, signed by yourself, to—

Mr. Unger: What year?

Mr. Potter: The year is left out.

40 Q (Continuing) —payable to Mrs. Lena Kraemer Weissman, for \$1,000, and ask you if

Joseph A. Weissman, direct.

you ever gave that note to Mrs. Lena Kraemer Weissman? A I did.

Q That is your signature? A Yes.

Mr. Potter: I offer that in evidence.

Mr. Unger: I object unless the time is fixed. 10

Mr. Potter: We will prove the delivery of that to Mrs. Kraemer when she is on the stand.

The Court: The date of delivery?

Mr. Potter: It says August 5.

The Court: Mr. Unger's objection is well taken, unless you can show when it was delivered.

Mr. Potter: I can show that both through Mrs. Kraemer and Mr. Weissman; I would rather show it through Mrs. Kraemer. I will ask to have it marked for identification. 20

(Marked Exhibit D. 2 for identification.)

Q I show you a note dated September 9, 1927, payable on demand, to the order of Lena Kraemer for one thousand dollars, signed by yourself, and ask you if that is your signature? A It is. 30

Q And what did you receive for that note? A Cash.

Q And did you deliver this note to Mrs. Kraemer? A I don't quite understand.

Q When you received the thousand dollars in cash, did you deliver this note to her? A Yes.

Mr. Potter: I offer the note in evidence.
(Marked Exhibit D. 3.) 40

Joseph A. Weissman, direct.

Q Lena Kraemer Weissman is sometimes known as Lena Kraemer? A Yes.

Q I show you a note dated September 9, 1927, ninety days after date, to the order of Lena Kraemer, signed by Joseph A. Weissman, and ask you whether that is your signature? A It is.

Q What did you receive for this note? A Cash.

Mr. Potter: I offer that note in evidence.

(Marked Exhibit D. 4.)

Q When did you receive this note back from Mrs. Weissman? A When I deeded the property to her.

Q And when was that? A That was October 20, about 10 A. M.

Q What property was that, Mr. Weissman? A That was 159 Isabella avenue.

Q I show you deed which purports to be a deed from you to Evelyn V. Kraemer, dated October 20, 1927, and ask you if you executed that deed? A I did.

Mr. Potter: I offer that deed in evidence.

(Marked Exhibit D. 5.)

Q I ask you, Mr. Weissman, if this deed was given in cancellation of an indebtedness to Mrs. Weissman, why did you convey the property to Evelyn V. Kraemer? A I understood she was trustee for her mother.

Q Who requested you to do that? A Mrs. Kraemer.

Joseph A. Weissman, direct.

Q Did you receive anything from Evelyn Kraemer for that deed? A No, sir.

Q Do you know Abe J. Weiss? A I do.

Q What relation is he to you? A A cousin.

Q How long have you known him? A We were raised together. 10

Q Have you ever borrowed any money from him? A Yes.

Q How long have you been borrowing money from Mr. Weiss? A Since I came back from the army.

Q Did you owe him any money on October 11, 1927? A Yes.

Q Do you know how much? A I think around six thousand.

Q Can you tell us what that six thousand dollars represented? A It represented some cash and some jewelry that was taken from him on a credit. 20

Q How much in cash? A I think around—I don't know exactly whether four thousand or so.

Q You say some of it represented jewelry? A Yes.

Q What business was Mr. Weiss in? A Jewelry salesman. 30

Q Did you ever buy any jewelry from him? A Yes.

Q Tell us what jewelry it was. A It was a platinum diamond wedding ring, platinum diamond engagement ring, and some smaller articles.

Q Did you ever pay him for them? A No, sir.

Q In what sums did you receive this four thousand dollars from Mr. Weiss? A I think 40

Joseph A. Weissman, direct.

there was one for about two thousand, and one for eleven hundred, two hundred and fifty or something.

Q Did you ever give Mr. Weiss any notes for this amount? A Yes.

10 Q I show you a note dated September 17, 1925, signed by yourself, to the order of Abe J. Weiss, for \$2,000, and ask you if that is your signature? A Yes, it is.

Q And what did you receive for that note? A Cash.

Mr. Unger: About when?

20 Q Did you receive it on the day this note is dated? A Yes.

Mr. Potter: I offer the \$2,000 note in evidence.

(Marked Exhibit D. 6.)

(Note dated May 1, 1926, Joseph A. Weissman to Abe J. Weiss, for \$1,100, offered and marked Exhibit D. 7.)

30 (Note dated October 2, 1925, Joseph A. Weissman to Abe J. Weiss, for \$250, offered and marked Exhibit D. 8.)

(Note dated December 16, 1925, Joseph A. Weissman to Abe J. Weiss, for \$500, offered and marked Exhibit D. 9.)

The Court: When did you get these notes back?

The Witness: When I deeded the property to him.

40 The Court: They were surrendered at that time?

Joseph A. Weissman, direct.

The Witness: Yes.

The Court: So the full amount of the notes represented your debt to Mr. Weiss at that time?

The Witness: Yes, sir.

Q Did you convey any property to Abraham Weiss on October 11, 1927? A Yes, sir.

10

Q I show you a deed, yourself to Abraham Weiss, and ask you if that is the deed? A Yes.

Mr. Potter: I offer the deed in evidence.
(Marked Exhibit D. 10.)

Q What did you receive for executing this deed? A Cash and jewelry.

20

Q What did you receive at the time you executed this deed? A I didn't get anything for it.

Q Did you get the notes back? A Yes.

Q What about the indebtedness for your jewelry; did this deed have anything to do with it? A I had no other way to pay it.

Q I am not asking you that. A Yes.

Q What did it have to do with it? A That was the only way to square my account.

30

Q Did this square your account? A Yes, sir.

Q You mean by what you have said, that you conveyed the property in satisfaction of the amount due on these notes and in satisfaction of the amount which you owed Mr. Weiss for jewelry, whatever that amount was? A Yes.

Q And he accepted it in settlement of his claims for the notes and for the jewelry? A Yes.

40

Joseph A. Weissman, cross.

Q When you conveyed the property to Evelyn Kraemer on October 20, 1927, did you receive at that time anything beside the notes which Mrs. Weissman held? A \$950 in cash.

Q Did you receive it at the time the deed was executed? A No, sir.

10 Q When did you receive it? A Between that date and Christmas; that is, in small amounts.

Q Did you deed that property to Evelyn V. Kraemer as trustee for Mrs. Weissman in settlement of the indebtedness which you owed her? A I did.

Q Have you ever paid her anything since then? A No, sir.

20 *Cross examination by Mr. Unger.*

Q The first property you talked about was 159 Isabella avenue? A Yes.

Q You had a half interest in that and Evelyn Kraemer, your step-sister, had the other half interest? A No, mother had it, and I didn't have any half interest; I worked out that half interest gradually.

30 Q You did have a half interest in the property up to October 1927? A Yes.

Q Standing in your own name? A Yes.

Q And Evelyn Kraemer, your step-sister, had the other half interest standing in her name? A Yes.

Q I am right so far? A Yes.

Q You say that Mrs. Kraemer's money had gone into this building? A That is right.

40 Q You had borrowed money from her from time to time? A I did.

Joseph A. Weissman, cross.

Q Do I understand that when you gave her the first note, which is dated August 5th— A That is August 5, 1924.

Q Now, you remember it, do you, August 5, 1924? A That is payment of the thousand dollars she withdrew from the American National Bank as payment on the lot.

10

Q When did you buy the lot? A 1924; sometime in June, 1924.

Q She bought the lot and paid for it? A That was towards her half interest in the lot.

Q She had a half interest with you? A She gave me that money to help me along financially; in other words, I borrowed the thousand dollars from her to start a little business.

Q That was in August, 1924? A Yes.

20

Q That is the date which should be on this record under Exhibit D. 2 for identification? A Yes.

Q And she gave that thousand dollars in the form of a check or cash to you? A It was in cash.

Q In cash and delivered the money to you? A Yes, in the American National Bank.

Q And that money went into the building? A That went to buy the lot.

30

Q Did you put in money to buy the lot? A Only a few hundred.

Q How much did the lots cost? A Altogether about \$2,300.

Q And her share was half of that? A There was assessments of about \$700.

Q Whatever it was, her share was to be half? A It amounted to \$1,700 at that time.

Q How much money did you put in? A About \$600, or whatever it was.

40

Joseph A. Weissman, cross.

Q And then she advanced you a thousand dollars toward your half? A Not towards my half, until I paid off the half in the building.

Q To help you buy your half? A Yes.

Q Did you ever give her interest on this money? A Always.

10 Q How did you pay the interest? A Cash.

Q Did you have a check account? A My check account expired with the buying of the lot.

Q You never had a check account after 1924?

A No.

Q Stopped at that time? A Yes.

Q Never had one since? A No.

Q At what time did you pay interest on this note? A Whenever it was due.

20 Q How often would that be? A Whenever she demanded it—every six months, or nine months, or three months, or a year.

Q And when next did you get any money from her? A Whenever I needed to pay off the mechanics on the job.

Q When was it? A I don't really know.

Q You know you owe her? A I know I owe her money, but I cannot say—

30 Q You say in the papers that you owe her \$4,200— A Yes.

Q —about, at this time, and I want to know from you when next you received any money from her? A As requirements were needed I got the money from her.

Q Won't you tell us what year it was? A I started borrowing money from her in 1926, that I paid back.

40 Q When was the next time that you borrowed from her? A Right along until 1927. Up to 1927, October sometime.

Joseph A. Weissman, cross.

Q October, what year? A 1927.

Q You borrowed money of her in that month?

A Yes.

Q How much did you borrow? A Around \$4,200.

Q You borrowed \$4,200 in the month of October, 1927? A For a year or year and a half. 10

Q I am talking about the next time you made any loans of her, the next time you borrowed money of her; you say that was in September, 1927—September or October, 1927? A In 1926, I say, I started borrowing money from her that made the debt—

Q Did you keep any account of how much money you borrowed from her in 1926? A No.

Q Did you give her any note in 1926 for what you borrowed of her at that time? A Yes. 20

Q You gave her a note in 1926? A Whenever she mentioned about the thousand dollars or the sum she demanded, I gave her notes.

Q Did you borrow less than a thousand? A It might have been two hundred or three hundred.

Q What was it, not "might have been"? A Sure.

Q When you borrowed these sums of her, did she give you them as cash? A Always cash. 30

Q You didn't give her any note at the time? A I probably gave her a note.

Q And did she continue to hold the note? A No, we enlarged the notes as we went along.

Q You increased them as they went along? A Yes.

Q What became of the notes eventually? A Tore them up, those that were discontinued.

Q All of them? A Yes.

Q All of the notes making up the \$4,200? A No, some notes are here. 40

Joseph A. Weissman, cross.

Q What was this note of September 9, 1927, given for, Exhibit D. 4? A That was for cash taken.

Q On what day? A No day, probably were small sums made into that bigger sum.

10 Q A while ago your attorney asked you what was given, and you said for cash? A Yes, that is true.

Q You don't want us to understand, then, that you got cash that day on which this note was given? A I got cash, in other words, that amounted to that one particular note.

Q On that day? A No, on various dates.

Q Do you know on what dates? A As I needed it for payroll or business.

20 Q You told us that about ten times. A That is the only way out of it.

Q You don't remember on what dates you received the cash for which you gave the note of one thousand dollars, dated September 9, 1927? A No; that doesn't represent cash of a thousand dollars on that particular date.

Q It represents a number of advances up to that time? A Yes, to eliminate smaller notes.

Q Did you keep any books in which these loans to you were entered? A No.

30 Q You didn't keep any? A No.

Q And you have no bank account to show where anything was deposited? A No, sir; I never had a bank account since 1924.

Q So that when this note was given on September 9, 1927, that represented the various moneys which she had loaned to you up to that time, and you consolidated them all in one note of a thousand dollars? A Yes, that is right.

40 Q And that one note of a thousand dollars represented all the smaller advances up to that time? A Yes.

Joseph A. Weissman, cross.

Q No doubt about that? A Yes.

Q And that is all you owed her? A I owed her a total of \$4,200.

Q You said, if I understand you correctly, that all the advances which she had made to you up to that time were consolidated in this one-thousand-dollar note dated September 9, 1927, and I want to know from you if that is correct? 10

A You will have to repeat it.

(Question repeated.) A Well, now, from 1927—

Q Can't you answer that without going into any explanation?

The Court: The question is perfectly simple.

The Witness: Yes, it is simple when you carry an account. 20

The Court: Answer it your own way, then. You can say "yes"—

The Witness: And mean Mr. Unger saying "yes"?

The Court: When you are answering "yes," you are saying it. If that isn't what you mean, don't say it.

The Witness: I haven't got any other way to determine it. 30

Q Suppose I make it a little plainer and go over what you have told me, and that is this, that on September 9, 1927, Mrs. Kraemer did not give you a thousand dollars on that day at one time? A No.

Q But at that time you figured up all the loans which she had made you from time to time, and they had grown to one thousand dollars, and you put them into the form of this note 40

Joseph A. Weissman, cross.

dated September 9, 1927; is that right so far?

A Yes.

Q So that that one-thousand-dollar note of September 9, 1927, represented all that you owed her at that time? A Oh, no, there was some notes taken in the year 1926 and 1927.

10 Q Have you a 1926 note? A There certainly was money taken in 1926.

Q Have you any note of 1926? A Whatever notes there are here.

Q There doesn't appear to be any note so far; was there a note given in 1926? A Yes, right along since I have known her.

Q You said you waited until the amounts had gotten up to a thousand dollars? A Yes, and I gave notes, probably bigger ones, but in the year 1926 I had money of her. I had \$2,600 in a few months' time.

20 Q Did you owe \$4,200 on the 19th of September? A I owed \$4,200, yes.

Q Did she have notes for that amount? A I don't know if she had them all.

Q Did she have all? A She had some.

Q Did you get those notes back from her when you made the deed to her? A Whatever she handed me, there they are.

30 Q Did these notes represent all you owed her at that time? A I didn't look them over.

Q You cannot say whether the notes delivered to you at the time you made the deed to Evelyn Kraemer were all the notes that you had given her? A No.

Q There were other notes? A Yes.

Q You were not careful about how many notes were outstanding? A No, I know the hands I gave them to.

40 Q You had transactions back and forth with her; she loaned you money and took a note,

Joseph A. Weissman, cross.

and then you paid it back and didn't get the note? A Oh, no, it wasn't necessary; I could get cash without notes.

Q What was this entire note of September 9, 1927, given for? A The note on white paper for a thousand dollars, what was that given for? For cash money received.

10

Q When? A When they totaled up a thousand dollars and she got the note.

Q You have another note here dated September 9, 1927, totaling up to a thousand dollars. How do you account for that? A That is where the money came in and it totaled up—

Q Why didn't you put the two notes in one? A What is the difference whether it is one thousand or two thousand? If I carried a hundred notes and they were consolidated into one, that would be a different story.

20

Q These notes were given the same day? A They probably were.

Q Were they or were they not? A If they are dated the same, they must be.

Q And did you sign at the same time? A They must have been.

Q I see one is written in nice heavy black ink and one in pale green ink. A We can give you half a thousand inks in the house.

Q You signed them with different pens? A I don't know. There are lots of pens in the house.

30

Q Who made out the note of September 9, marked D. 3, in black ink? A I think that is my handwriting.

Q Who made out the one of September 9, 1927, in light green ink, marked D. 4? A This is Mrs. Kraemer's handwriting.

Q So that you made out one and someone else made out the other? A Yes.

40

Joseph A. Weissman, cross.

Q Do you recall the transaction when you signed these two notes? A I don't put anything indelible in the head.

Q How much did you owe on September 9, 1927, when these two notes were signed? A I don't know exactly what I owed.

10 Q You don't know now what you owed on that day? A No.

Q Did you owe more than two thousand dollars? A I know I owed \$4,200 at the time of the delivery of the deed.

Q I spoke of September. A I don't know; I have no record of it.

Q No record at all? A No record whatever.

Q Did these two notes of September 9, 1927, represent everything you owed to Mrs. Kraemer at that time? A They represented everything
20 I owed then for cash that she gave me.

Q They represented all you owed her at that time? A Two thousand dollars, all I owed her? It must have been a little more.

Q What was it? A It certainly must have been.

Q How do you know that? A September 9, and October the property was deeded for \$4,200, so it couldn't be two thousand dollars.

30 Q That is how you figure it out? A Withdrawing money over a period of a couple of years, there is no other way to figure it.

Q You have two notes here, each for one thousand dollars, on September 9, 1927; what about these notes of August 5, 1924; was that owing at that time? A Was that owing in 1924?

Q No, in September, 1927. A No.

Q That was paid at that time? A Yes.

40 Q So that was out of it? A I think it was out.

Joseph A. Weissman, cross.

Q And when did you get this note of August 5, 1924? A That was only found two weeks ago at her daughter-in-law's house.

Q You didn't have it? A No, her daughter-in-law had it.

Q You were wrong when you said before that that note was returned to you when you gave the deed? A I said this note was returned? I beg your pardon, then, because this was in the daughter-in-law's possession since 1924. 10

Q You didn't get it a couple of weeks ago? A Two weeks ago.

Q But it was paid before? A Yes.

Q And paid prior to September, 1927? A All my debts were cancelled at the time of the deeding of the house.

Q I asked you whether this note of August, 1924, was paid when you paid these \$3,000 worth of notes? A I believe it was. 20

Q How do you make out that you owed \$4,200 at the time the deed was given, when all you have shown are two notes of one thousand dollars each, dated September 9, 1927? A She has got a bank book, that will show.

Q I am asking you. A I had her bank book as record; I had no other record.

Q You are depending on what she tells you? A No, but I depend on the way she withdrew it. She settled with me from that bank book. 30

Q You made this deed to Miss Kraemer in October, 1927; is that right? A Yes.

Q These notes were not due yet, were they? A Which notes?

Q The notes of September 9, 1927, were not yet due? A She wanted the money.

Q They are payable ninety days after date? A She wanted the money, so I paid her. 40

Joseph A. Weissman, cross.

Q What made her want the money? A My demand for some money.

Q You made a demand for some money at that time? A Yes.

Q And that induced her to call for these moneys? A That induced me to sell her the
10 property in order to get more money.

Q Although it had three months yet to run? A Yes, because I was short of money.

Q Did you get any cash at all at the time the deed was made on October 20, 1927? A No, there was an understanding and received \$950 in cash outside of what I owed her.

Q Did you get that \$950? A Yes.

Q When did you get that? A Between October 20 and Christmas.

Q You didn't get that until after October 20? A I got it in sums as required up to that date, which totaled \$950.

Q At the time you made the deed to Miss Kraemer, you didn't get \$950 at that time? A No.

Q You got it a few days later? A Yes.

Q And all at one time? A No, small sums.

Q Any reason why you should get small sums when you had turned over the title to this property and paid the consideration? A Was there
30 any reason why?

Q Was there any reason why you should get small sums? A That is the way she felt towards it.

Q Who did? A There was an understanding that I was to receive the cash providing I would square up the account.

Q After you gave the property up on the twentieth of October, 1927, did you continue to live in it? A Why, sure; I am a boarder; why
40 not?

Joseph A. Weissman, cross.

Q Is it a two-family house? A Yes.

Q You lived there just as you had done before? A Yes; I paid rent.

Q There was a building and loan mortgage on this property at that time? A Yes.

Q Did you deliver an assignment of shares of the property to the purchaser? A I will tell you; my father had charge of that transaction, so he will tell you more. 10

Q This was your property? A I know, but I never bothered with it in all the years I had it; he handled the rental.

Q You didn't deliver an assignment of shares in the Building and Loan? A No.

Q When did you deliver them? A I was down there about three months later and they told me to see Mr. Pollard, and I waited for Mr. Pollard in the Building and Loan; he didn't come in. 20

Q When was that? A About three months after.

Q After this suit was started? A I think it was after October 20.

Q A great deal longer than a few months after? A No, you are greatly wrong on that.

Q I understand you to say you have no books of records showing any particular time when you received the cash? A No. 30

Q Coming down to this other property, 461-463 South Tenth street, Newark, I understand you to say that you owed Abe Weiss \$6,000? A Yes.

Q \$4,000 of that was cash? A Yes.

Q And Abe Weiss is your cousin? A Yes.

Q And he is in the jewelry business? A Yes.

Q And when had he given you the \$4,000 in cash? A Whenever I requested it. 40

Joseph A. Weissman, cross.

Q I want to know something about dates. A I cannot recall dates.

Q Have you any idea at all in what year he gave you \$4,000? A It might have been 1925.

Q \$4,000 to start in 1925. How much did you get in 1925? A About \$2,000.

10 Q And did you pursue the same course so far as Weiss is concerned until it grew to a thousand dollars? A Yes.

Q And then took a thousand dollar note and gave it to him? A Yes.

Q You didn't bother with notes smaller than a thousand dollars? A There might have been smaller notes.

Q I ask you what it actually was. A It remained small if it never grew bigger.

20 Q Did you borrow the money from him in sums of a thousand dollars or less? A Two thousand I received in cash.

Q When did you get that? A Sometime in 1925.

Q Did you get that at one time? A I did.

Q And did you take cash? A Yes.

Q He was a manufacturing jeweler? A No, he was not; he is a salesman.

Q For a wholesale house? A Yes.

30 Q And did he have a check account? A I never mentioned it.

Q He handed you the money in cash? A Yes.

Q You had no bank account at this time? A 1925? No.

Q And you took the cash? A Yes.

Q When was that two thousand given; what year? A 1925, I believe.

Q You are sure about that? A Yes.

40 Q And did you give him a note for it at that time? A I did.

Joseph A. Weissman, cross.

Q It wasn't in 1926, was it? A It might have been, other notes.

Q I am talking about a thousand dollars.
A Two thousand in 1925.

Q In your answer to the interrogatory, you say he gave you two thousand dollars in cash on September 27, 1926? A It might have been 1926. 10

Q You are not very careful about your dates?
A No.

Q It doesn't make much difference to you whether it was 1925 or 1926? A No; they are paid.

Q Whenever it was, did you give him a note for that? A I did.

Q When did you pay that note? A When I deeded the property to him. 20

Q You never paid it in cash or any other way? A No.

Q Did you ever pay him any interest on that note? A I did.

Q When did you pay him interest last? A The interest was paid last when it was due?

Q When was that? A It might have been sometime—it was paid up in full October 11.

Q That squared it up? A Yes.

Q Did you figure up at that time how much interest you owed him? A No; he was glad to accept whatever he could get for it. 30

Q Why was he glad? A He wanted his money; that is why.

Q He hadn't been worrying since September 17, 1925, about it, had he? A I don't know; I am not in his mind; I cannot tell you.

Q You hadn't paid him anything on account of the two thousand dollars in September, 1925?
A Only interest. 40

Joseph A. Weissman, cross.

Q Did you keep any record of the receipt of two thousand dollars in September, 1925? A No.

Q No record to show when it was given? A No.

10 Q That is two thousand dollars; when next did he give you any cash? A I don't know the dates.

Q What year? A It might have been 1926.

Q What year? A I don't know the dates exactly. I know the sum started with 1925 when I paid a woman a sum of money that I owed for about one thousand or fifteen hundred, I am not sure.

20 Q How soon after you had given him that two-thousand-dollar note in September, 1925, did you borrow any more money from him? A I cannot recall the dates.

Q Did you get \$250 in October, 1925? A It may be.

Q Don't you know? A I cannot recall dates.

Q Look at this note and see if you got any money at that time? A If the note has my signature, it is right.

Q You may be right, but did you get anything on it? A Yes.

30 Q Is that the only way you have of checking up to find out whether you got money, by looking at the note? A Yes.

Q And the way you know that is, because if you see a note given on a certain day for a certain amount, you know you got that money that day? A Yes.

40 Q Although it is true that the notes that you gave to Weiss were made up of loans which were gathered up from day to day and were put in the form of one note when they got to

Joseph A. Weissman, cross.

a certain amount? A No, only that \$1,100 note was made that way. The rest were outright notes.

Q That that one note that— A Secured all small sums to \$1,100.

Q When was that? A The last loan.

Q That was the one of May 1, 1926? A Yes. 10

Q Is this the note here, Exhibit D. 7? A That is right.

Q When were these loans made? A You have the notes here—May 1, 1926.

Q You say that this note is different than the others; that this is made up of— A Made up of small sums, and the rest were outright notes.

Q When were these small sums loaned? At various times? A I cannot tell you exactly when, but it amounted to that amount when it consolidated itself. 20

Q What did Weiss, your cousin, have to show that you owed him these small sums up to the time you had given him the \$1,100 note? A He had notes that showed; he tore up the other notes; that is, his notes to show.

Q Smaller notes were torn up, and this is the final note. When you gave him this \$1,100 note, did you pay interest up to that time? A I did. 30

Q That was taken in cash? A Everything was in cash.

Q Was this May 1, 1926, note of \$1,100 made up of all smaller notes that you owed him up to that time? A Yes.

Q Did it include this note of December 16, 1925, for \$500? A No, those were outright notes; the rest were smaller sums.

Q Now, that you see the \$500 note, that didn't go into the \$1,100 one? A No. 40

Joseph A. Weissman, cross.

The Court: How do you know that?

The Witness: We tallied up the notes and that checked up with that.

Q You think because you have that note here today, that it wasn't given with the \$1,100 note?

10 A No.

Q Why didn't you do that? A That particular day we did business that way; every day is not alike.

Q Who had these notes until today? A Mr. Potter had them in his possession.

Q After what date? A All these notes are made out to Mr. Weiss.

The Court: From what date?

20 Q Who had these notes up to today? A I had them for a while before Mr. Potter had them.

Q When did you get the notes? A When I deeded the property to him.

Q When was that? A October 11.

Q Then you had a settlement with him? A Yes.

30 Q How much did these notes amount to on that day? A I don't know. I didn't tally up how much it amounts to.

Q Don't you know how much you settled with him for on that day? A About \$6,000, completing everything.

Q There is not \$6,000 worth of notes? A No; it consisted of jewelry also, which was included.

Q The jewelry was how much, you said? A Over \$2,000.

Q And when had you bought that jewelry?

40 A In the year 1926-1927.

Joseph A. Weissman, cross.

Q Had you given any notes for that jewelry? A No, sir.

Q Why didn't you give a note for the jewelry? A Because he is my cousin and he trusted me.

Q You were also cousins when he loaned you this money? A That was a cash consideration. 10

Q What was? A These notes were.

Q The jewelry was worth money? A Yes, but he trusted me with the jewelry.

Q And when were you to pay him for the jewelry? A I never paid him.

Q When were you to? A When I would get money.

Q You bought it in 1926? A Yes; I started buying in the year 1926.

Q Whom did you buy it for? A For a girl I was supposed to marry. 20

Q You didn't marry her? A No.

Q What became of it? A She has it. I never asked for it. She has got it and she is keeping it.

Q You never gave him any note for this jewelry? A No, sir.

Q He didn't have a scrap of paper from you to show that he had sold you two thousand dollars worth of jewelry? A No. 30

Q And he is a salesman for a wholesale jewelry house? A Yes.

Q Was this his jewelry or did it belong to his firm? A No, sir.

Q What? A No, he owns that on memorandum from other concerns.

Q So, he owed it to some wholesaler? A You will have to ask him that.

Q Anyway, you didn't buy it from him personally? A Yes, I did. 40

Joseph A. Weissman, cross.

Q You bought it through him? A I bought it from him; I don't know anybody else.

Q Where did he get it from? A I don't know; I bought it from him.

10 Q Where did you pick it out? A Where was it picked out? He brought samples to the house, which the girl selected.

Q Then you agreed to give him two thousand dollars for the jewelry? A I didn't make any price, but that is the total, I suppose.

Q Did you agree to pay him anything? A I didn't pay anything.

Q Did you agree to pay anything? A It was given to me on credit.

20 Q How much was the credit? A I told you two thousand dollars, maybe.

Q That was the price of the jewelry? A Yes.

Q Did you write that down in any item, that you owed him two thousand dollars? A No.

Q You gave him no note for it? A No.

Q Did he give you a receipted bill for the stuff? A No.

Q Nothing at all? A No, that was proof in itself.

30 Q Was it just two thousand dollars? A I cannot say that to the penny.

Q Was it within one hundred dollars of that? A I don't know; I didn't tally up on it.

Q In your interrogatory here, you say it was eighteen hundred. A It might be eighteen hundred and maybe two thousand.

Q I don't know; I didn't buy it. A Whatever it said in black and white, it must be.

40 Q What makes you so sure it must be right, if it is in black and white? A These are the figures that Mr. Weiss handed me.

Joseph A. Weissman, cross.

Q That is what he told you? A That is his figure for the jewelry.

Q In your answer to the interrogatory you say you got two thousand dollars in cash on September 17, 1926. Are you right about that; it seems to be in writing here. A Is that the date of the note?

10

Q No, it is not. A It is two thousand dollars in cash I received; there isn't any doubt about it.

Q Do you refer to the two thousand dollar note of September 17, 1925, when you say you got two thousand dollars in cash on September 17, 1926? A That was the only sum of two thousand dollars I received.

Q So in that paper it should be '25? A Yes; I think it was 1925.

20

Q It should be 1925? A Yes.

Q What was it that induced you to make these deeds on these particular dates: one on the eleventh and one on the twentieth of October, 1927? A I needed more money to carry on business.

Q You had just been relieved of Grunt's debt by signing a bond on the twentieth of October, 1927? A Yes.

Q That wasn't pressing you at that time? A The bond?

30

Q Yes. A No.

Q What is it that made you need money on that day? A I wasn't collecting any payments.

Q How did you need money to pay on the eleventh of October? A I had to complete that bankrupt building.

Q On the eleventh of October, 1927? A Yes.

40

Joseph A. Weissman. cross.

Q And then did you want some funds; were you in need of cash? A Yes, to pay for labor.

Q Is that what you needed? A Yes, and expenses.

Q Was that the situation on October 20, 1927? A Yes.

10 Q You were in need of cash? A No; I had credit; I needed cash.

Q What cash did you get from either Miss Kraemer or Mr. Weiss when you gave them these deeds on that day? A What cash did I get?

Q Yes. A I didn't get any cash.

Q So the giving of the deeds didn't help out your immediate needs? A No, not until I needed it.

20 Q You were not to get any cash from them in the future? A I told you I got nine hundred and fifty dollars in cash.

Q Outside of that? A Yes.

Q That came to you in dribs and drabs? A No, when I needed it for the payroll.

Q How long would nine hundred and fifty dollars carry you on a payroll? A I had small outstanding accounts which I absorbed also.

Q Yet you didn't get that on October 20? A No; payments are very peculiar.

30 Q You got it in small bits? A As I needed it.

Q Have you any record of that? That is only a little over a year old. A No.

Q Did you get it in cash or by check? A The nine hundred and fifty dollars?

Q Yes. A All cash.

40 Q Do you know what month you got it in? A I told you from October 20 to Christmas—right after Christmas, that was the finish of the nine hundred and fifty.

Joseph A. Weissman, cross.

Q Before or after Christmas? A I cannot say.

Q You got one payment of fifty dollars, didn't you? A It may be right.

Q On November 2, 1927? A Yes.

Q I suppose that relieved your situation very much? A At that particular moment. 10

Q Although you had your deeds—one of them twelve days before and one almost twenty days before— A Yes.

Q —that fifty dollars was a great help to you? A Yes.

Q Then on November 21, 1927, you got eighty dollars; I suppose that helped you along a great deal, too? A Yes, even a dollar.

Q During the time you were in this plumbing contracting business you bought at the supply houses? A Yes. 20

Q And you had accounts running back and forth with them? A Yes.

Q How did you pay your bills? A That is a very interesting problem now.

Q I mean the manner—did you pay in cash or check? A I paid with customer's checks.

Q You would take a check from a customer? A And turn it directly over to Mr. Grunt; he had the authority to collect it himself. 30

Q Did you buy of anybody else outside of Mr. Grunt? A No.

Q You always used his checks to pay your bills? A Yes, I took one of the members of the firm along with me.

Q When you paid your men or your subcontractors on the job, did you always give them cash? A Yes.

Q Do you keep books in your business? A No. 40

Joseph A. Weissman, cross.

Q No books at all? A No, there weren't any sometimes to keep.

Q You couldn't tell at any time what your financial condition was? A No; I could feel it by the inflow or outflow.

10 Q Did you ever use the checks of Miss Kraemer, or Mrs. Weissman, for the transaction of any of your business? Did you resort to their checks? A They never gave me a check.

Q Did you give them cash so they could draw the checks for you? A They never had a check account; how can they draw it?

Q None of them ever used a bank account? A No.

Q Whatever was done was strictly cash business? A Yes.

20 Q When these two properties were conveyed, who represented you? A On the Isabella avenue Mr. Potter, my attorney, represented me, and on the Tenth street, Miss Kraemer; she is an attorney also.

Q Who represented Mr. Weiss, the purchaser? A Mr. Weiss was represented by Miss Kraemer.

Q So that the same one was representing both? A Yes.

30 Q And did you have any closing statement? A I am not familiar with the real estate business.

Q Did you figure out how much your property on Isabella avenue was worth to see whether you were getting stuck, or she was, on this transaction? A The house would have been worth \$40,000, and it is only worth \$10,000 today, which doesn't enter into it.

40 Q What valuation did you put on when you settled? A I figured the house was worth twenty thousand, so I wanted my share of it.

Joseph A. Weissman, cross.

Q Worth twenty thousand, and the mortgage on the whole thing was what? A Ten thousand.

Q How much had been reduced by the payments made on account of the building and loan shares? A I demanded that sum in order to square up.

10

Q You figured that your valuation was ten thousand dollars? A If I could have held it, it was worth it.

Q That was your half interest in it? A Yes.

Q And your equity would be how much? A I don't know; I didn't figure it up.

Q Didn't you take the trouble to find out how much you had reduced that mortgage? A No, I was too anxious to square up my accounts.

20

Q Were you so anxious that you were willing to sacrifice three or four thousand dollars? A You sacrifice a lot when you are in a pinch.

Q Were you willing to sacrifice as much as five thousand dollars? A If you cannot help yourself, you have got to.

Q You had been going along with these people a few years, and they had not started suit on any of the notes against you? A No.

30

Q They hadn't threatened to sue you at this time? A No. They constantly asked for money, but didn't threaten suit.

Q They didn't ask for a mortgage on the property? A No.

Q Your equity in this property was, in cash, somewhere between nine and ten thousand dollars? A The equity in it?

Q Yes, your equity. A I don't know; I didn't figure it out.

40

Joseph A. Weissman, cross.

Q From what you know about the property?

A I don't know; you have the black and white figures.

Q You said your half interest was worth ten thousand dollars? A I said I demanded ten; I don't know whether it was worth it, but I
10 wanted that in order to release. It may be worth ten thousand today, but it cost twenty to build it.

Q For the purpose of getting through this transaction, you were demanding that the valuation of your interest be put at ten thousand dollars? A All I demanded was nine hundred and fifty in cash and call the account squared regardless of sums.

Q That is what happened eventually, but
20 didn't you care a bit whether you were getting a good or bad deal of this? A No.

Q You were always to go on with the property? A I was willing to pull out of it.

Q What made you so anxious to pull out? A The expenses were too high; I couldn't keep it up.

Q Is that the reason you wanted to get rid of it? A I couldn't keep up that much.

Q Is that the reason you wanted to get rid of it? A Yes, one of the big reasons.

30 Q Not because you were in immediate need of funds? A I absolutely was.

Q You were so anxious to get rid of this, that you let your equity of nine or ten thousand dollars in this property go for the amount which was due to Miss Kraemer at this time, and for which you produce here two one-thousand-dollar notes? A How do you figure out nine or ten thousand dollar equity in that on my share? There is ten thousand dollars of building and

40 loan; I told you the cost of the building was

Joseph A. Weissman, cross.

twenty thousand dollars; take ten from twenty, is how much?

Q That is ten? A And half of that is how much?

Q You said your half interest in the property was worth ten thousand dollars? A I did not.

10

Q Am I wrong in assuming you said that? A You must be, on those figures.

Q Didn't you say twenty thousand dollars was the value? A I said the cost was twenty thousand.

Q What do you say the value of the house is? A I figure it is worth twenty thousand dollars.

Q And your mortgage on there was originally— A Then thousand dollars.

Q And had been reduced to exactly seventy-seven hundred dollars? A You have the figures now.

20

Q That is what Mr. Axtell testified, the last time. And that would give you a total equity in the property of upward of twelve thousand dollars; half of that would be six? A Yes.

Q That would be upwards of six thousand dollars? A According to those figures.

Q And then all the notes that you produced here as owing by you to Miss Kraemer at that time aggregated two thousand dollars? A You have the bank book that will tally up with the notes, if that is one piece of paper.

30

Q The bank book is a piece of paper, also, yes. Passing the Isabella avenue property a moment, you own fourteen-fifteenths in the property 461-463 South Tenth street? A Yes.

Q What was that worth? A I sold that fourteen-fifteenths share to Mrs. Kraemer. In other words, I had a loan and I couldn't pay back that loan—it was about eight hundred or

40

Joseph A. Weissman, cross.

a thousand dollars, in 1920 or 1921, and I signed away one-fifteenth share to cancel that debt.

Q That would make it about fifteen thousand dollars, the property? A At that time.

Q How much was it worth in October, 1927?

A I cannot tell you; probably it has no value; it might be sky-high or low, according to the tally.

Q Wasn't that discussed between you and the purchaser? A No.

Q You didn't have any talk about what it was worth? A We were satisfied to call it square.

Q Did you know what you were calling square when you turned it over? A I know I had six thousand dollars out of it; that satisfied me.

Q You knew you had six thousand dollars, because of the notes which were produced here?

A I owed her six thousand dollars.

Q Represented by these notes? A Notes and jewelry.

Q And for that you gave your half interest in the property, whatever it was? A Yes.

Q On that property you had a mortgage; you gave your fourteen-fifteenths interest in the property? A Yes.

Q And your mortgage on that was only sixty-three hundred at that time? A Sixty-three hundred.

Q That is what Mr. Axtell said the shares were—twelve hundred, originally seventy-five hundred dollars, or maybe sixty-three hundred dollars? A Yes.

Q And that is what you gave up the property for at that time? A Yes.

Q From Mr. Weiss you got no cash at that time other than the delivery up of these notes?

A That is all.

Joseph A. Weissman, cross.

Q And such cash as he did pay you came along a little later in the small amount that you told me about—nine hundred and fifty dollars came a little later? A That is Isabella avenue.

Q So that Mr. Weiss gave you nothing afterwards? A Nothing on that.

Q Simply cancelled the notes here? A Yes. 10

Q Did he give you any paper showing that you had paid for the jewelry then? A No.

Q He didn't give you anything at all? A No; we considered it square; he is a cousin; I trusted him.

Q You had no figuring up to find out how much the interest was? A I paid it as it went along.

Q You had no apportionments with him about taxes or insurance or water rents on the property? A He paid the taxes of 1927. 20

Q And the building and loan shares you did not deliver at that time? A The building and loan shares he paid from the date that he received it.

Q Who commenced to collect the rents from that property? A My father was appointed agent.

Q Who appointed him agent? A Mr. Weiss.

Q And Mr. Weiss didn't live in Newark? A He does; he is a travelling man. 30

Q Where does he reside? A In the next block from that same property.

Q He lets your father collect the rents? A Yes.

Q Did he pay your father for that? A He has a concession of a shop there in the rear of the premises.

Q Your father has a right to use the shop? A It hasn't any value for rental; he gives him the privilege to store stuff there. 40

Joseph A. Weissman, cross.

Q Your father collected the rents? A Yes.

Q What did he do with the rents after he got them? A You had better ask him; he is the agent.

Q You know something about it? A No; I know up to the time that I had it, but after
10 that I am not interested.

Q You don't know what your father did with the rent? A No.

Q Why didn't you collect the rents for your cousin? A You will have to ask him.

Q Why was it he appointed your father and not you? A He acted in the capacity of agent for him, and he was acquainted with the premises, dealing with the building and loan, so he left it to him.

Q Your father continued to collect the rents
20 as he had theretofore been doing? A Yes.

30

40

Joseph A. Weissman, cross.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH GRUNT, trading as
West Side Plumbing Supply
Company,

Complainant,

and

JOSEPH A. WEISSMAN, *et al.*,
Defendants.

10

Continuation of testimony taken in the above
cause before Hon. Maja Leon Berry, Vice-Chan-
cellor, at the Chancery Chambers, Newark, New
Jersey, on Wednesday, May 15, 1929.

20

Appearances:

Counsel as before stated.

JOSEPH A. WEISSMAN, resumes the stand for

Further cross examination by Mr. Unger.

Q Mr. Weissman, you know Morris Grunt, the
son of Joseph Grunt, complainant? A Yes.

Q You remember he had a talk with you last
year about paying the bill of his father. Did
he come to see you at your office, or rather, did
you go to see Grunt at his office, and were you
asked by the son what you intended doing about
paying the bill? A I told him I paid my bills.

30

Q Did he tell you on that occasion that he
was going to commence suit against you? A
No.

Q Didn't you tell him that you didn't care
whether any suit was commenced, that you had

40

Joseph A. Weissman, re-direct.

gotten rid of your property? A I don't know anything about it.

Q I asked you whether you said anything like that? A No.

Q You didn't say so? A No.

10 Q According to these dates, your property was gone in October, 1927, and you didn't own that property in January, 1928, any more? A No.

Q Do you remember in January, 1928, that you made a proposal that if Grunt would take \$5,000, that you would give him a mortgage on that property? A Not that I know of.

Q Didn't you have a conference with Grunt in January, 1928? A Where?

20 Q In Mr. Potter's office; Mr. Potter then representing both of you, as I understand it? A He didn't represent me.

Q Did you at that time make a proposal that you would pay \$5,000, to be secured by a mortgage on this property? A No.

Re-direct examination by Mr. Potter.

30 Q Mr. Weissman, I show you two notes marked Exhibits D. 3 and D. 4, and ask if those were the only notes that you received from Mrs. Weissman, when you deeded the property to Evelyn V. Kraemer? A No.

Q Were there other notes? A There were two more.

Q Do you remember in what amounts they were? A There was one thousand and twelve hundred.

Q And have you those notes? A No, sir.

40 Q Do you know what became of them? A I don't.

Joseph A. Weissman, re-direct.

Q How long have you been borrowing money from Mrs. Weissman? A Since I know her, about eight or nine years.

Q Have you ever received any other notes beside these four from her? A Yes.

Q Do you remember how many? A Whenever it would amount to a couple of hundred, I would give her a note, and then took it back when I paid her. 10

Q Have you any of the notes that you received back over that period? A The only one that you have there.

Q I show you this note, which is marked Exhibit D. 2 for identification, and ask you what you received when you gave that note? A \$1,000 in cash.

Q And when did you receive it? A 1924. 20

Q When did you get this note back? A That was about two weeks ago.

Q I show you four notes, marked Exhibits D. 9, D. 8, D. 7 and D. 6, and ask you if those are the only notes you received from Abe Weiss when you deeded the property to him? A Yes.

Q How long have you been borrowing money from Abe Weiss? A Since I came out of the Army.

Q When was that? A 1919. 30

Q Have you ever given any other notes beside these notes to Abe Weiss during that period? A When they would accumulate a few hundred dollars.

The Court: Hasn't this all been gone over?

Mr. Potter: Yes; my purpose is that these are not all the notes.

The Court: He testified to that. 40

Joseph A. Weissman, re-direct.

Q You testified you have been doing business with Mr. Grunt since 1921. How did you pay Mr. Grunt for the materials which you bought from him?

The Court: Always in cash.

10

A Up to the year 1924, it was cash; that is, the check account was up to the year 1924; after 1924 he collected customer's notes or checks.

Q Did you authorize Mr. Grunt to make these collections on the contracts since the year 1924?

A Since 1925, the early part.

Q Did you authorize Mr. Grunt to make a collection on your contract on the James Capula job? A I did.

20

Q What to your knowledge did Mr. Grunt do to collect that money? A He said he had a man that would advance the money.

Mr. Unger: Are we going back to the Capula transaction again, in which we got a judgment, which your Honor declined to interfere with?

30

Mr. Potter: On October 20, 1927, there was the sum of \$9,000 due on a book account; that is in the pleadings. I think we are entitled to show that.

The Court: Isn't that admitted? Don't you admit the money was due?

Mr. Potter: Not at that time. The judgment was obtained on a bond. The bond was not assigned to Mr. Grunt until June, 1928.

40

The Court: I understand that, but you are going back before that time to show there was nothing due; or, if there was anything

Abe Weiss, direct.

due, that it should have been paid by Grunt's own efforts. I don't see how that is material.

Re-cross examination by Mr. Unger.

Q You say this note of September 9th or this note of August 5th, for \$1,000, was given for cash? A It was given for cash. 10

Q And that cash was given to you by Mrs. Kraemer? A Mrs. Kraemer Weissman.

Q That was her name then? A Lena Kraemer, yes.

Q Now, do you say that this note was never repaid? A I said it was repaid.

Q Then this note is out of the picture? A Yes.

Q That was paid long before the deed was given? A That was paid. 20

Q That has no connection with the debt which existed, or which you say existed in October, 1927, when you made the deed? A No.

ABE WEISS, sworn for defendants.

Direct examination by Mr. Potter. 30

Q Are you one of the defendants in this action? A Yes.

Q Where do you live? A 499 South Tenth street.

Q Are you related to Mr. Joseph A. Weissman? A Yes, his cousin.

Q Do you know Joseph Grunt? A By sight, that is all; I don't think I ever spoke to the man. 40

Abe Weiss, direct.

Q How long had you known him by sight? A Passing by there where he has his place of business for maybe five or six years.

Q On October 11, 1927, did your cousin, Joseph A. Weissman, owe you any money? A Yes, he owed me some money then.

10 Q Did you keep any record of what money he owed you? A Yes, I kept a record.

Q What kind of a record? A A memorandum record, that is all.

Q What was this money that he owed you? A It comes about \$5,600, to be exact.

Q Tell us how Mr. Weissman happened to owe you this money? A Cash that he asked me for to run his business with, and jewelry that he had bought when he was keeping company with a girl.

20

Q Taking up the cash which you loaned him, first, do you remember what sums you loaned him, and when? A I know I gave him cash \$2,000 once, and once it was \$250 and \$500; then he got small amounts, for which he gave me one big note of \$1,100.

Q Where did you get this cash from? A I withdrew it from a savings account.

30 Q I show you savings account book No. 25092 of the Springfield Avenue Trust Company, and ask you if that is the bank book which you had? A Yes, that is the bank book.

Q Can you by consulting that book tell us the amounts and the dates of money which you advanced to Joseph Weissman? A Yes, the dates are right here when I withdrew them.

40 Q Tell us what they were. A September 17, 1925, \$2,000; October 21, 1925, \$250; December 16, 1925, \$500.

Abe Weiss, direct.

Q Did you when you advanced this money to Mr. Weissman receive any notes for it? A Yes.

Q I show you notes marked Exhibits D. 6, D. 7, D. 8 and D. 9, and ask you if those are notes which you received from Mr. Weissman? A Yes, those are the notes.

10

The Court: I think you mentioned three amounts from that book?

The Witness: Yes, three; these notes are for—one is for \$2,000, dated September 17, 1925; \$250, October 2, 1926.

The Court: How did you happen to get this \$250 note nineteen days before you loaned the money, do you know? The withdrawal is October 2nd; you say you loaned the money October 21st.

20

The Witness: I might have overlooked that number one, that is all. It might have been overlooked.

The Court: The date here is October 2nd in the bank book.

The Witness: It might have been overlooked.

Q I show you note dated May 1, 1925, for \$1,100, and ask you when you gave the money to Mr. Weissman which is covered by that note? A He got it in small amounts. He gave it all to me.

30

Q Do you remember the exact amounts? A There were various amounts, \$100, \$200, and he gave me a note for the whole amount later on.

Q Where did you draw the money from which you gave him? A I usually gave it to him out of my pocket in cash.

40

Abe Weiss, direct.

Mr. Potter: I offer the bank book in evidence.

(Marked Exhibit D. 20.)

Q What business are you in? A In the jewelry business.

10 Q In what capacity? A As salesman, traveling salesman. Local and traveling.

Q And what business were you in, in October, 1926? A In the jewelry business.

Q Did you ever sell any jewelry to Mr. Weissman? A Yes, I sold him jewelry.

Q Can you tell us what jewelry you sold him, and when? A I know I sold him a wrist watch, a diamond engagement ring and platinum wedding ring, a cameo brooch with a diamond in
20 and a diamond studded platinum wedding ring.

Q Do you recall the dates on which you delivered these items to him? A I cannot recall the exact dates. I will look over my book here. I think I have it. (After examining book.) October 18, 1926, a wrist watch for \$50; December 18, 1926, diamond ring for \$1,500; March 21, wedding ring for \$200; April 17, 1927, a cameo pin with a diamond in for \$50.

Q The total is what? A About \$1,800.

30 Q You said the exact amount of his indebtedness to you at the time this deed was given was \$5,600? A Yes.

Q \$5,650, isn't it? A It is not that total.

Q \$5,650? A Of course, I said around \$5,600.

Q You said, "to be exact, \$5,600." A I might have made a mistake on \$50. I didn't total it up right.

40 Q And do the prices which you have recited after these items of jewelry represent the prices

Abe Weiss, direct.

at which you sold this jewelry to Mr. Weissman?

A Yes.

Q Did he ever pay you any cash for that jewelry? A No.

Q Did he ever pay you any cash for any of these notes which I have shown you? A No.

Q Did you ever demand payment of these notes? A Yes, I asked him constantly that he should reduce it a little bit, but it seems that every job he had it seemed to go bankrupt on him. He kept promising and promising and he said he had to pay the supply houses, so he would keep working; so I said, "All right, let it go." It is, I think, as late as October 7, I was supposed to get some money, and he wrote the supply houses to come up and collect \$750 from a job he was working on. He said, "I will give you the house, I have enough equity in there"; so I took it. 10 20

Q What house was that? A 461-463 South Tenth street.

Q And did Mr. Weissman convey any property to you on October 11, 1927? A Yes.

Q I show you deed marked Exhibit D. 10, and ask you if that describes the property which was conveyed to you at that time? A That is the one.

Q What did you pay for that property? A I figured it was worth in the neighborhood of \$12,500 or \$13,000 at the top, the way real estate is. 30

Q Was there a mortgage on the property? A Yes, a building and loan mortgage.

Q In what amount? A Around \$6,000, six or seven thousand, around that, \$6,500.

Q Who was the holder of that mortgage? A A building and loan Fourteenth Ward Building and Loan. 40

Abe Weiss, direct.

Q I show you certified copy of a mortgage, Joseph A. Weissman, *et al.*, to the Fourteenth Ward Building and Loan, for \$7,500, dated in 1925, and ask you if that was the mortgage that was on that property? A Yes.

10 Mr. Potter: I offer that in evidence.
(Marked Exhibit D. 21.)

Q Did you give these four notes back to Mr. Weissman at the time you received the deed for the property? A Yes.

Q And did you cancel any other indebtedness in consideration of that deed? A I canceled all that he owed me, including the jewelry.

20 Q Does Mr. Weissman owe you anything today? A No.

Q Do you remember when you actually received the deed for that property? A October 11.

Q Who recorded that deed? A Evelyn Kraemer.

Q When did you get the deed for that? A I called at the office, but it wasn't ready, so I never called for it, and I left it there in the office. At the time I went, it wasn't ready.

30 Q After October 11, 1927, did you collect the rents on that property? A I left that to my uncle to collect.

Q Who is your uncle? A Harry Weissman.

Q Where does he live? A He lives on Isabella avenue.

Q And did you receive the rents from that property after October 11, 1927? A I received them, yes, and he took care of the building and loan; when it was due, he paid it for me.

40

Abe Weiss, cross.

Cross examination by Mr. Unger.

Q Are you in business with another man? A No, I am a salesman only.

Q For some jewelry house? A Yes.

Q How long have you been salesman? A Outside salesman for about eight years. 10

Q On a salary? A Salary and commission. Sometimes I sell a piece of jewelry.

Q Your source of income is from your salary? A Salary, and among the acquaintances wherever I can sell a piece of jewelry and make a profit.

Q Your income is all from your jewelry business? A Yes.

Q How long have you been loaning money to your cousin, Weissman? A Ever since he is back from the army. 20

Q How long is that? A Since 1919, since he is back from the army.

Q Small pieces at a time? A Yes.

Q Never took any note from him at all? A No, not at that time.

Q Where did you get the moneys from, as fast as you loaned it each time? A I had it in a savings account. Always carried some money with me. In this business I am in, there is always a chance to pick up a bargain. 30

Q I notice this bank account is carried in the name of Abe J. Weiss or Sarah A. B.? A Yes, that is in case I should drop dead.

Q This is all your money in here? A Yes.

Q Do I understand that all the moneys which you loaned to your cousin Weissman, which you say were totaled in October, 1927, came out of your savings account? A Savings, and as I say, I always carried money around with me as I get it. 40

Abe Weiss, cross.

Q Do I understand you to say that money you loaned him each time came out of the savings account? A Yes, and what I carried. I always carried around cash in my pocket.

10 Q The \$1,100 which he borrowed from you from time to time, did that come out of the savings account? A No, not exactly; money that I carried from time to time.

Q Did any part of it come out of the savings account? A No; I don't believe any of that came out of that particular savings account.

Q Did you keep any record when you advanced that \$1,100? A I kept record, yes.

20 Q Have you got a record here? A No. Just memorandum records, that is all. I wasn't afraid to trust him.

Q I don't care what the records are. A No, I have no records.

Q You have no record of any kind showing when or in what amount you advanced \$1,100? A No.

Q Did you ever take any notes from him for any part of this advance? A Once in a while he used to give me a small note and he bunched it together and gave me one big note.

30 Q That was May 1, 1925? A Yes.

Q And no part of that note of May 1, 1925, is made up of any withdrawals from your bank account? A I don't believe there is any.

Q And you had this bank account all through 1924 and 1925? A Yes.

Q You had no book or record which shows in any way how the \$1,100 was made up? A Other than I have a check account also.

Q You had a check account? A Yes.

40 Q Did you have that in May, 1925? A I had a check account then.

Abe Weiss, cross.

Q Did you use that? A I never carried much in the check account.

Q Did you use it for convenience? A That is all.

Q Did you use any of the checks, on that check account, to pay Weissman this money? A Any of those checks? 10

Q To pay him that money? A No, I used to give him that in cash.

Q You never used any of the checks for the purpose of making any payment to him? A No.

Q Any reason why you should not give him a check for advances? A It wasn't necessary. I didn't have that much money in the check account to give him. I had it in the savings account. 20

Q You didn't take it out of the savings account, though? A I always carried a hundred dollars or two hundred dollars with me when I go away.

Q I want to know why you wouldn't give him a check for that out of your check account, and you say that you carried it in the savings account. Is that what you mean? A He wanted cash; the money he had from me, he always told me he wanted it to take care of— 30

Q I didn't ask you what he wanted the money for; I am trying to find out how you paid it to him, at that time, 1925. Prior to that time you had both a check account and savings account; is that right? A Yes.

Q And that check account was used by you to pay your bills, was it? A Yes, small bills.

Q Have you preserved the checks from that account? A No, I haven't got any checks with me. 40

Abe Weiss, cross.

Q There are no checks drawn on that check account which paid Weissman any of those moneys, is that right? A I don't believe there is, outside of what I drew for myself.

Q Whatever you gave him was in the form of cash? A Yes.

10 Q And you have now no record showing how the \$1,100 was made up? A No, I have no record of that.

Q All you know is that you took this note, dated May 1, 1925, for \$1,100, which you say was the amount that he owed you at that time? A Yes.

Q Did he ever pay you any interest on that May 1, 1925, note? A Yes, he paid interest occasionally, and he did little jobs for me at the
20 house.

Q Did you credit that on the note? A No, we squared up on it when we went along.

Q I want to know whether you credited on this note any payments of interest or of principal? A No, he always paid me in cash.

Q Have you any record as to what he paid you on account of this \$1,100 note? A No, I haven't.

Q Do you know how much it was? A I
30 don't know the exact amount. As I say, he did work for me also in different amounts.

Q You now cannot say how much he paid on account of the \$1,100 note, either in the form of interest or by way of principal? A No, I cannot tell you the exact amount.

Q There is nothing that you have in your possession which will tell us that at all? A No.

Q But there was something paid on it? A Yes, there was interest paid on it.

40 Q And principal? A Interest.

Abe Weiss, cross.

Q And principal, too? A No principal.

Q What about the jobs? A He worked that off on the interest proposition.

Q What did he do for you? A It was just jobbing; it wasn't very big jobs; small jobs.

Q You don't know how much that was? A I can tell you approximately what one or two 10 jobs were.

Q Anyway, you kept the notes since May, 1925? A Yes, May, 1926.

Q What makes you say that? A That is when I got the note, in May, 1926.

Q Why are you sure about that? A I know I got the note then.

Q What makes you so sure about it? A I don't know what you mean.

Q I want to know how it is that you got it on May 1, 1926? A (Examining book.) There 20 is a memorandum here.

Q What is it; what does your memorandum show? A May 1, 1926.

Q What does it say? A That is all, just May 1, 1926.

Q Show it to me. (Witness does so.) It says "May 1, 1926, cash to Weissman, \$1,100 notes." A That is the note I got.

Q That is the note you got May 1, 1926; did you write that down on May 1, 1926? A No; 30 I simply—I never kept any records.

Q When did you write down "May 1, 1926"? A A couple of months ago.

Q Since this case was started? A You wanted a record of it. I cannot remember records. I didn't think I would be pulled to court.

Q You thought you were going to go to court? A After you served me with this notice. If I thought I would get into these difficulties, I wouldn't take it for \$5,000. I ain't 40

Abe Weiss, cross.

used to sitting up here and going to court for someone that I had done a favor for.

Q When you wrote this down on May 1, 1926, did you copy it from any other record? A I had the record from those notes.

10 Q You had the notes before you? A I had those notes, at the time I surrendered them, and I know the dates of the notes. I know the dates from my bank book.

Q I am not talking about that; I am talking about the time you wrote this memorandum down.

Mr. Potter: I object.

The Court: The objection is overruled.

20 Q I want to know if you had any record before you when you copied this memorandum of May 1, 1926, \$1,100, down? A The only record that I had was note.

Q You put down in this book what the note told you, is that right? A Certainly, the note.

Q You had the note at that time? A No.

Q Then how could you put it down? A I remember the date.

30 Q You said that you had the information, you got the information from which you put down this record, from the note itself; is that right? A I remember the date of the note.

Q You got the information from the note itself when you wrote it down here? A No, I didn't have the note right before me at the particular time when I got it; I got it from the bank book and from records.

Q I am not talking about any other record; I am talking about this of May 1, 1926; you say you got that from the bank book? A Naturally.

Abe Weiss, cross.

Q Show me anything in the bank book about May 1, 1926. A Not May 1st, oh, no; of the other dates. May first I got the date from this here note when I surrendered it to my cousin, and he told me that he is being sued on the note; so naturally for me I haven't got all these dates in my mind, and in order for me to remember the dates, I have to mark it down and copy it from the note. 10

Q When did you copy it down? A As I told you, I copied it down a few months ago.

Q Two months ago? A Two or three months ago.

Q Sometime in 1928, or possibly in 1929? A You might go back a few months.

Q A few months ago, then, you copied from the note the date and put it down in this book? 20
A Yes.

Q And that was a few months ago? A Yes.

Q Did you give this note back when you got your deed in October, 1927? A Yes, sure.

Q And you surrendered it to Weissman at that time? A Yes.

Q If that is so, how could you have the note a few months ago? A I didn't have it; he showed me the note; he gave me the date on it. 30

Q Then you did have the note at the time. You went back to him and looked at it? A Naturally, he has a record of it; I took and made a record. I know that it was in May, 1926, absolutely; I knew that.

Q You remember that without looking at the note? A Yes, 1925.

Q Somebody is wrong about it? A According to that.

Q How was it that you took off May 1, 1926, \$1,100, and put it down in this book, when you 40

Abe Weiss, cross.

know the note is May 1, 1925? A I copied it wrong from that.

Q You must have made a mistake? A Yes.

Q You did not make up this record in this black book at the time when you actually advanced any money? A The only record I had
10 was the notes.

Q And this record was made up afterwards?

A Yes.

Q How did you find out that you had a note of October 2, 1925, for \$250? A I have the record of the notes there.

Q You took that from the note? A No, from the bank book.

Q Did you look to see that the date in the bank book—what the date in the bank book is?

20 A I even made a mistake in reading it, as far as that goes, as I said before.

Q Where did you make a mistake? A In reading the bank book before.

Q Which was where you made the mistake?

A The Judge corrected me before.

Q What is the mistake there? A I thought it was the twenty-first—I said the twenty-first.

Q What is it? A It is October 2nd now.

Q You took that and copied it into this black
30 book from the bank book? A Yes.

Q What date did you copy in the black book?

A I must have copied October 2nd there; don't you see I made a mistake, because as I say—

Q Where is your trouble about October 21st?

A I haven't got any trouble; the only trouble is I didn't come here to be prepared for this trial or anything; the only thing is you are asking me questions I ain't not used to. If I came here prepared, you wouldn't catch me anything; I didn't come prepared.
40

Abe Weiss, cross.

Q There was \$250 given to Weissman on the 2nd of October, 1925? A According to the record.

Q It is not October 21st at all; it is October 2nd in the bank book? A Yes.

Q When you gave him this money on October 2, 1925, is that the time you took the note from him? A Yes. 10

Q Did he pay you any interest on that note? A He paid me interest as he went along.

Q You have gotten all the interest on that? A I got the interest as I went along, and small jobs, that he did for me, and didn't charge me for.

Q On the sixteenth of December, 1925, how much money did you give him? A \$500, I believe. 20

Q Did you take that out of your bank book? A Yes.

Q And I suppose that is the item here of December 16, 1925? A Yes, that is the item.

Q Did you get the note at that time? A Yes, I got a note.

Q You got a note? A Yes.

Q And you copied the record of the note into that black book? A Yes.

Q Look at December 16, 1925? A Yes. 30

Q And, of course, that is the time that you took the money out of the bank? A Yes.

Q December 16, 1925? A Yes.

Q How is it you got a note dated December 16, 1926? A I don't know; it must be a mistake there, that is all.

Q Who made that mistake? A Overlooked, that is all. That must have been overlooked. It is not that we mistrusted each other; we were very careful with everything. His word 40

Abe Weiss, cross.

would be better to me than his bond; the only thing, it was a matter that I was being taken away from all the resources, and I wanted something.

Q You cannot give us any explanation as to why this note, which was dated December 16,
10 1926— A Only a mistake.

Q You didn't loan any money in December, 1926? A December, 1925, I loaned the money.

Q No doubt about that? A Yes.

Q On the seventeenth of September, 1925, did you loan him any money? A On what date?

Q September 17, 1925? A I believe I did in September, 1925, yes.

Q How much? A Around \$250.

Q Did you get a note for that? A Yes.

20 Q Where is it? A I don't know; there is the record there.

Q Is that all you loaned him in September, 1925? A The record is right there. I know how this record is made up. A few months ago, I believe September, he got \$2,000. That is what he got in September, \$2,000, in 1925.

Q Sure about that? A Yes, it says that on here.

Q \$2,000 or \$2,500? A \$2,000.

30 Q Is that all you gave him in September, 1925? A Yes.

Q Did you give him \$250 besides the \$2,000? A I gave that a short time later.

Q This note of September 17, 1925, was given for \$2,000? A Yes.

Q And did you forget about this? A What do you mean?

Q You were not sure about it when I asked you in the beginning; you remember loaning him
40 \$2,000? A Yes, I remember loaning him \$2,000.

Abe Weiss, cross.

Q When you drew this money from the bank did you use one of the bank's checks that they allow you to use now drawing savings accounts out by check? A One of those slips, yes.

Q Did you make out a check to Weissman for it, or just make it out to yourself? A No, I gave him the cash; I drew the cash and gave him cash for it. 10

Q Did you have a check account at that time? A I had a small amount in the check account.

Q Was that the last loan you made in September, 1925? A Yes, I loaned him in September, 1925, \$2,000.

Q Nothing after that? A Yes, then I loaned him \$250 at a later date.

Q When was that? A I think it was in October, 1925. 20

Q You have told us, then, about all your loans in 1925. How much did you loan him in 1926? A It ran up—as I say, it ran up to various amounts, around \$1,100.

Q You have already told us about the \$1,100, because that is way back in May, 1925, that \$1,100 is, but I have been through 1925. Now, I am coming down to 1926, and I want to know whether you loaned him any more money in 1926? A In 1926—it might have been a mistake in the note that was overlooked at the time it was made up; May 1, 1926, there was probably a mistake there on that date, but I know when I loaned him it, I loaned him various amounts in May. 30

Q We will pass that May 1, 1926, transaction. Did you loan him any money in 1926 after that? A No; small amounts, not much.

Q How much were they? A Maybe fifty or a hundred dollars.

Q Did you take notes for those? A No. 40

Abe Weiss, cross.

Q Did you get that back? A Yes.

Q You got that all back? A Yes.

Q You didn't take any note for that? A No, I couldn't give him any more, because I was pretty nearly broke myself.

10 Q You didn't have the money? A No; but as far as loaning him, I would loan him anything he wanted. This \$500 is not December, 1926; it should be December 16, 1925. I don't know whether you are twisting the pieces around; I know when I loaned him the money. I can see here that you have the pieces twisted here, that is the trouble. I know you are mixing me up.

Q You tell me where I have got anything twisted. A This (indicating) belongs here, I can see by the ink; and this (indicating) follows here; I know I loaned him in 1926 and 1925.

20 Q Now, that I have untwisted the pieces, do you know yourself when you made those loans? A I told you I loaned in 1926.

Q In 1926? A In various amounts up to May 1, and then he gave me a note for \$1,100 that I loaned him.

Q That is in 1926? A Yes.

Q You are sure about that? A I have been telling you that right along, but you tell me 1925. I cannot get it through my mind.

30 Q I want to know whether you are now prepared to stick to it and say that it was 1926?

A You said 1925, and I stuck to it.

Q The \$1,100 is 1926? A Absolutely.

Q And the rest of the loans were when? A 1925.

Q All of them? A That is two thousand, two hundred and fifty and five hundred.

Q And 1926 has nothing to do with any of those loans? A 1926 was various amounts, that 40 I loaned him and advanced him.

Abe Weiss, cross.

Q I understood from you that the loans which you say made up the \$1,100 were all to go in the form of a note before you started to make the other loans of two thousand and five hundred? A That was made in 1925, two thousand.

Q After or before the eleven hundred? A That is before. Look at it and see if it is; I know I loaned him in 1926 amounts running up to eleven hundred dollars. 10

Q Then before that in 1925 you had loaned him at least two thousand dollars? A In 1925 I loaned him more than two thousand dollars.

Q Then why didn't you take all the notes in 1926, when you gave him the eleven-hundred-dollar note, and put them in one? A Because he kept promising to give me money each time; what was the use of taking those? This here (indicating) was supposed to be a payment of eleven hundred dollars when he got a bankrupt job, and he had to make good to the supply houses. 20

Q On the jewelry did you take any note? A No.

Q You had nothing at all from him to show that he owed you the money? A No.

Q Did you get the jewelry from the people you worked for? A Not from the people I worked for; they don't make that kind of jewelry; I picked that up on the outside. 30

Q Did you pay for the jewelry? A Yes.

Q When? A At various times; I got it on memoranda and paid for it as I go along.

Q Paid for it in cash or check? A No, I paid for it in cash.

Q And all this time you had a check account? A Yes.

Lena Kraemer Weissman, direct.

LENA KRAEMER WEISSMAN, sworn for defendants.

Direct examination by Mr. Potter.

10 Q Are you sometimes known as Lena Kraemer? A Yes.

Q Are you a defendant in this action? A Yes.

Q Are you the mother of Evelyn V. Kraemer, one of the other defendants? A Yes.

Q What relation are you to Joseph A. Weissman? A He is my stepson.

Q The defendant Evelyn V. Kraemer was a daughter by your first marriage? A Yes.

20 Q What is your husband's name? A Harry Weissman.

Q When were you married? A In 1920.

Q Did you purchase any property in the year 1924? A Yes.

Q What properties were they? A Three lots on Isabella avenue.

Q How much did you pay for those lots? A We paid for two lots \$1,650, and for one lot I think that was \$650.

30 Q I show you certified copies of two deeds from Eugene G. Erath to Joseph A. Weissman, and Gerard S. Ferguson to Joseph A. Weissman, and ask you if those are the properties you bought on those dates? A I suppose so; I am not such a good reader.

(Deeds offered in evidence and marked Exhibits D. 22 and D. 23.)

40 Q I call your attention to the fact that these deeds are in the name of Joseph A. Weissman; can you explain that? A Yes; Joseph A. Weiss-

Lena Kraemer Weissman, direct.

man is my stepson. I didn't know nothing about this business, and we decided to build houses, so I give him the money to buy the lots and supervise the job, and then when everything would be done, then we should share the expenses.

Q How did you protect your interest in the property? A I told my lawyer he should make a deed in my daughter's name for my half interest. 10

Q Did your lawyer do that? A He didn't do this the first time; he made a mistake; then I told him he should make another deed, and he made it.

Q I show you certified copy of a deed from Joseph A. Weissman to Evelyn V. Kraemer, dated June 27, 1924, and ask you if that is the deed which your lawyer drew at that time? A I suppose so. 20

The Court: That is a certified copy; there is no dispute about the conveyance.

Mr. Unger: We only claim a half interest.

The Court: When that deed was given, was a half interest in the daughter and half interest in this witness?

Mr. Unger: Evelyn Kraemer got half, and Weissman retained half. 30

The Court: I thought she said she gave the lawyer instructions to do that in the first place, and he didn't; and then, I understood she got the conveyance herself for one-half. That isn't so?

Mr. Unger: I understand that she did not take title in her name.

Mr. Potter: That is right. It is made to Evelyn Kraemer, at her request. 40

Lena Kraemer Weissman, direct.

The Court: Was there a subsequent conveyance of the other half interest retained by Weissman?

Mr. Unger: Not until the one which is in question.

10 The Court: Is that also to the grantee, the daughter?

Mr. Unger: Yes.

The Court: I understand this witness had a half interest and the daughter had a half interest.

Mr. Unger: The object was to put it in the daughter's name for her.

Q Why was this deed not drawn in your own name? A Because this money is from her father, and I didn't want someone else to mix it in, and if something happened to me, that is why I made it in her name.

Q How did you protect your interest in that property? A I didn't need any protection for my daughter.

Q Did you build on the property? A Yes.

Q Did you obtain a mortgage on the property? A Yes.

30 Mr. Unger: There is no dispute about the mortgage, if it is the mortgage to the Fourteenth Ward Building and Loan for \$10,000.

Mr. Potter: I offer deed in evidence, certified copy.

(Marked Exhibit D. 24.)

The Court: Is that before the conveyance complained of?

40 Mr. Unger: Yes.

Lena Kraemer Weissman, direct.

The Court: Mortgage executed by whom?

Mr. Potter: Joseph A. Weissman to the Fourteenth Ward Building and Loan.

The Court: The mortgage was executed by him while he held the full title?

Mr. Potter: And Evelyn V. Kraemer also executed it. 10

Q Mrs. Weissman, how much money did you contribute to the purchase of the Isabella avenue property and the erection of that house? A I gave half on all the bills Mr. Weissman showed me, and then I give him half of everything.

Q Then who was the actual owner of the one-half interest in that property at the time the deed to Evelyn V. Kraemer was made? A I was. 20

Q On May 8, 1926, did you buy any land from your stepson, Joseph A. Weissman? A Yes.

Q What did you buy? A I bought a half interest in the lot on Isabella avenue, about 37 by 100.

Q How much did you pay for that? A He only gave me a thousand dollars, and he wants to sell to someone else, but I bought it.

Q Did you take that property in your own name? A No, always in my daughter's. 30

Q Did you protect your interest in that property in any way? A Yes, she made out a trustee deed for me; as long as I lived it belonged to me.

Q Do you know whether or not your daughter had a deed drawn at that time on May 8, 1926? A She made a trustee deed for me.

Q I show you this trust deed and ask you whether you have ever seen that before? A Yes, that was in my possession? 40

Lena Kraemer Weissman, direct.

Mr. Potter: I offer it in evidence.

Mr. Unger: That does not cover this property?

Mr. Potter: No.

(Marked Exhibit D. 26.)

10 The Court: This deed is not attacked?

Mr. Unger: No; this is other property, which we don't attack at all.

Q From May 8, 1926, to October 20, 1927, did you loan any money to your stepson, Joseph A. Weissman? A Yes.

Q Do you know how much you loaned him?

A Altogether from September, 1926, until October, 1927, he owed me over \$4,000.

20 Q Did you keep any record of the money you loaned him? A No, my book account showed it.

Q I show you savings bank book No. 33259 in the Springfield Avenue Trust Company, and ask you if that is your savings book? A Yes.

Q And that is the only record you kept of the money that you loaned to Joseph Weissman? A Yes.

Mr. Potter: I offer this book in evidence.
(Marked Exhibit D. 27.)

30

Q Did you ever receive any notes from Mr. Weissman for the money which you advanced him? A Yes.

Q Do you remember how many notes you received? A I received four notes.

Q Do you remember in what amounts? A But I used to give him in small amounts; then I give him \$50 or \$75, and I didn't take any notes. When it was \$100 or over I took notes;
40 so when they come to a thousand dollars, I give

Lena Kraemer Weissman, direct.

him the small notes and I give him a thousand-dollar note, big note.

Q I show you two notes, marked Exhibits D. 4 and D. 3, and ask you if those are the notes which Mr. Weissman gave you on those dates?

A Yes.

Q When was the last time you saw the other two notes that you referred to? A The last two notes, I don't remember—in one year, from 1926 to 1927. 10

Q When did you last have possession of the two notes I have just shown you, Mrs. Weissman?

A It was in October, 1927, October 20th.

Q And what did you do with the notes on that day? A I gave them to Weissman.

Q Were there any other notes which you gave him on that day? A Yes, I gave him four notes, three one-thousand-dollar notes and one twelve-hundred-dollar note. 20

Q How much money exactly did Mr. Weissman owe you on October 20, 1927? A About \$4,200.

Q Did Mr. Weissman convey any property to you on October 20, 1927? A To my daughter.

Q What did you give for that conveyance? A I gave him the notes and I give him \$950 more.

Q Did you accept the conveyance of that property in cancellation of those four notes? A Yes. 30

Q Who was the owner of the property which Weissman conveyed to Evelyn V. Kraemer on October 20, 1927, after the conveyance? A Evelyn Kraemer.

Q Who was the actual owner? A The actual owner was me; she was my trustee.

Q Did you have any deed of trust drawn at that time? A Yes. 40

Lena Kraemer Weissman, cross.

Q Who took care of that for you? A My daughter.

Q Did you ever see that deed of trust? A Yes, I have it in my house.

Q I show you declaration of trust dated October 20, 1927, and ask you if that is the one?

10 A Yes.

Mr. Potter: I offer it in evidence for identification.

Mr. Unger: You can put it in evidence.

(Offered in evidence and marked Exhibit D. 28.)

Q Did you pay any cash to Mr. Weissman at the time of this conveyance on October 20, 1927?

20 A I paid it, but not right away.

Q How much did you pay? A \$950.

Q And do you know when you paid it? A Everything is in the book; I don't remember when, because I gave it to him in small sums.

Q Where did you get that money from? A From my savings account.

Q Was that \$950 part of the consideration of the conveyance of that deed? A Yes, I figured it with my daughter. With the back shares and other little expenses it was \$950, and I paid it.

30 Q Why didn't you pay that \$950 all at once? A He didn't need it; he only took—I don't know; it is in the book—how much he took the first time, but I don't remember, but I paid him.

Cross examination by Mr. Unger.

Q Mrs. Weissman, you took the property on
40 Tenth street, which was sold by Mr. Weissman

Lena Kraemer Weissman, cross.

to his cousin Abraham Weiss, in your name so far as one-fifteenth interest was concerned? A Yes.

Q How was it that you couldn't take the title to Isabella avenue in your name the same as you took the title to the Tenth street property? A Then my daughter was a baby yet, she was going to school. 10

Q When? A Nine or ten years back. I didn't want to make it in her name.

Q When was that, 1921? A Yes.

Q You didn't want to take it in her name? A She was a baby.

Q How old was she then, in 1921? A She is twenty-three now.

Q The money which you put in the land in order to put up the building on Isabella avenue, which you bought from Mr. Weissman, was all paid to you before 1927? A What? 20

Q Mr. Weissman didn't owe you anything for moneys advanced to build the house on Isabella avenue, did he? A I loaned him money all the time.

Q He had squared up with you for that; you say you gave him half to build the house? A Yes.

Q And that he paid the other half, and that you loaned him some money; was that to square up? A 1927? 30

Q Yes. A Not in 1927.

Q Before that time? A We did when we built the house in 1924, we squared up.

Q Did he owe you any money in 1924? A He didn't owe me money, but I loaned him later.

Q He didn't owe you anything in 1924? A No.

Q And he didn't owe you anything in 1925? A Yes. 40

Lena Kraemer Weissman, cross.

Q What did he owe you in 1925? A He paid me back; I used to loan money and he paid it back.

Q He didn't owe you anything in 1925 on account of the building? A No.

10 Q And he didn't owe you anything in 1924, either? A No.

Q What did you get this thousand dollar note for in August, 1924? A This is a note that I gave him to buy the lot.

Q You loaned him the money to buy the lot? A Yes.

Q He paid that back? A Yes.

Q And he gave you a note in 1924 for that? A Yes.

Q August 5th? A I don't know the date.

20 Q It was 1924? A Yes.

Q When did you pay that note? A A couple of months later.

Q So that in October, 1927, he didn't owe you anything on that note at all? A No.

Q That was all paid? A That was paid. I lost this note, but my daughter-in-law found it and she gave it to me a couple of weeks ago.

Q You didn't give this note back to Weissman when you got the deed? A No.

30 Q Even though it had been paid, you kept it all the time? A No, I didn't keep it; when I took notes I gave them back to him, but only this note I give it to my daughter-in-law, and I forget I gave it to her. A couple of weeks ago I was looking for something by my daughter-in-law and she said, "Here is your note."

Q Who is your daughter? A Mrs. Kraemer; she lives in East Orange. If you want her, I can get her here.

40 Q Joseph Weissman didn't have the note? A No.

Lena Kraemer Weissman, cross.

Q You didn't give the note to Joseph Weissman when he gave you the deed in October, 1927? A No.

Q It had been paid in 1924? A Yes. I didn't have it in my possession; how could I give it?

Q I understood you to say that you got four notes in all? A Yes. I gave him back four notes, and this note of August, 1924 that you have just shown me is not one of them. 10

Q You gave him back Exhibit D. 3 for \$1,000? A Yes.

Q And you gave him four notes for \$1,000? A Yes.

Q And what other notes did you give him? A I gave him two notes more.

Q How much were they for? A One for \$1,000 and one for \$1,200. 20

Q That made \$4,200? A Yes.

Q And you don't know where these notes are? A I give them to him.

Q You remember you gave him four notes in October, 1927? A Yes.

Q And you held these notes all along, did you? A Yes.

Q I understand you to say that you only took notes for over a thousand dollars? A Yes. I don't understand. 30

Q You said you only took notes for over \$1,000? A No, I said I used to take small notes, but I didn't take notes when I give him \$50 or \$75, but over \$100 I took notes. Then when I had notes for a thousand dollars, I gave him the small ones, and he give me a big note for a thousand dollars.

Q So when you gave him over \$100 in cash you took a note from him? A Yes. I don't know exactly how much, \$100 or more. 40

Lena Kraemer Weissman, cross.

Q You did take notes for less than a thousand dollars? A Yes.

Q What became of all those notes? A I gave them to him.

Q When did you give them back? A When he gave me the big note.

10 Q You waited until they grew to a thousand dollars and then you gave them all back? A Yes; I gave the small notes and he give me one note.

Q Where did you get that money from which went into your bank account? A I got it.

Q Where did it come from? A It is a question to say. My husband left me a lot of money; I have property and everything, I will show you the property what I had.

20 Q It appears according to your books that you were depositing in 1926, and not in 1927, various amounts, from \$50 up right along, practically every month or twice a month; where did that money come from? A I got an income.

Q That was your money that went into it? A Yes.

30 The Court: Income from stocks or mortgages?

The Witness: No, I got a son; he sends me money, and I got from my husband, and I got another son, a boy that lives with me.

Q Did all the money that you gave Weissman come out of your bank account? A Yes.

Q Did you use this bank to draw on from time to time for yourself? A No.

40 Q You didn't do that? A No.

Lena Kraemer Weissman, cross.

Q You put in your money each month and then you only used this account when Weissman wanted some money? A Any time he needed money I get it got him, any time he need it to pay the men and workmen sometimes.

Q Always \$50 or \$60? A Everything is in that book; I cannot remember. 10

Q Did he ever get odd money like \$61.73? A Maybe this is interest on my money.

Q This is money due you? A Maybe I put it in. I cannot remember what I put in.

Q This money that you put in this account is money that you took out; did he ever come to you and say, "I want odd moneys," like \$61 and some cents? A He don't say nothing; he asked me so much money, but I took out more; maybe sometimes I did not take out just what he asked me for. 20

Q Sometimes you used this money for yourself? A I didn't for myself.

Q Do you remember that you took \$61.73 out one time? A I don't know if I took it out; maybe it was for my interest, and there was a couple of odd cents more I took out. I didn't want to mix any change.

Q You deposited an interest check \$61.73, that was your interest? A I don't know what it is. 30

Q It seems from your book that on the 30th of July, 1926, you are credited with \$61.73? A Yes.

Q For some reason or other, I don't know what it was, and then you drew out on the same date \$61.73; was that the interest which you drew out at that time? A I don't know was this interest.

Lena Kraemer Weissman, cross.

Q You know you have that in your paper here? A I always took it for Mr. Weissman out of the bank; I put it in for myself.

10 Q You don't think that it looks kind of funny, or do you, that you should have \$61.73 credited up, and you should draw out just \$61.73 to give to Mr. Weissman? A No, I don't know; maybe I exchanged a check for someone, I don't know.

Q Did you give Mr. Weissman as little as \$40 at one time? A I gave him whatever he asked me, \$25 and \$10; any time he asked me for money, I gave it to him.

Q You had \$50.39 on August 22, 1927? A Yes.

20 Q Where did that come from? A I don't know; all in the book; I cannot remember everything. I know I didn't take it for anyone but him.

Q You didn't give Weissman an odd amount like \$50.30? A Maybe.

Q According to your statement, everything which went out of this book went to Weissman? A Yes.

Q This account was just for Weissman? A Yes.

30 Q Two of the checks which you have here and the only two that have been produced, are dated September 9, 1927, each for \$1,000. Do you remember those notes? A Yes.

Q And I suppose those notes were made up of smaller notes which he owed you at that time? A Yes.

Q September 9, 1927? A Yes.

Q Those notes are each for \$1,000? A Yes.

40 Q Did you get any notes from Weissman after September 9, 1927, remembering that you

Lena Kraemer Weissman, cross.

got a deed from him on the 20th of October, 1927, for the property? A I don't remember when he gave me, but I know so much money I had.

Q These notes of September 9, 1927, appear to be the only ones that are here, and yet you say here that you loaned him money on Sep- 10
tember 10th and 17th and 20th and 20th again, and October 1, 1927? A Whatever it is in the book.

Q It is not in the book, is it? A I don't know, but I loaned it; maybe I had money in the house.

Q Let us assume you loaned him the money; did you take a note for these little payments? A Maybe I had money in the house; I got money all the time in the house.

Q Are you sure it is in the book? A I told 20
you I don't know.

Q I want to know whether everything you loaned Weissman was taken out of the bank book? A Not all; sometimes I had money home.

Q What money was it that you gave him from the house and which was not in the book? A I don't know; I cannot remember.

Q The last note you got is dated September 9, 1927; on the 10th of September, you gave him, 30
according to your answer here \$200, on the 17th, \$150, and on the 20th, \$150 and \$100, and on October 1st, \$150 more, and you don't appear to have any notes for that? A I have notes; I give it to you.

Q You gave him those notes? A I gave you all the notes; I had over \$4,000 notes.

Q If that were so, there should be five more notes? A Why?

Q Because there are five more payments on 40
five different dates.

Lena Kraemer Weissman, cross.

The Court: She said she kept the small notes and when they amounted to a thousand dollars, she took a thousand dollar note for it.

10 Mr. Unger: There are only two notes or three notes, I have it, representing these loans of money which she says she made. She says she gave four notes at the time that this conveyance was made to Weissman, three of a thousand dollars and one of twelve hundred dollars; she produced here three notes, one of which is not in the transaction, but she produced two notes of a thousand dollars each, both dated September 9, 1927.

20 Mr. Potter: The fact that she does not produce the other two notes isn't conclusive against her, by any means, and these other two may have been dated later than September 9th.

Mr. Unger: There would have to be five to correspond with the payments here.

The Court: What do the loans amount to?

30 Mr. Unger: \$750 after that time; so under her story there would necessarily have to be five notes aggregating \$750.

The Court: There are payments after September 9th aggregating \$750?

Mr. Unger: Yes, commencing September 10th.

40 The Court: I see what you are getting at. Now, if her story is true, then there should be five notes for these amounts less than a thousand dollars, because they didn't aggregate a thousand dollars.

Lena Kraemer Weissman, cross.

Q Do you know anything about any five notes for less than a thousand dollars for money which you gave Weissman from September 10, 1927, down to October 1? A I know I had four notes, three thousand-dollar notes and one twelve-hundred-dollar note.

Q Is it possible that you gave Weissman money which doesn't appear in the bank book? 10

A Yes, I have money all the time.

Q Some of the money you recall you did not take from the bank, but from your house or pocket? A Yes, not from the house; from the pocket.

Q You remember that now? A If it is not in the book, I gave it from the pocket, but I gave him over \$4,000.

Q You stopped paying money to Weissman on December 19, 1927, according to your answer here, and paid him \$350 so as to make up \$950, which you say that you were to give him after the transaction was closed? A Yes. 20

Q After the nineteenth of December, 1927, and after you had given Weissman his \$950, did you give him any more money after that? A He come and asked me for money; I give it.

Q After the nineteenth of December, 1927, when this \$950 was paid in full, I understand you to say you did not give him any more money? 30

A I don't know; I don't remember.

Q You told us that this book was the book that was used for Weissman's money? A Yes, and other money, too.

Q Have you noticed in this book the odd sums of money that you drew out from December 19, 1927, right down to the end of the book, in 1929; you notice you were drawing out \$100 or \$50, \$50 and odd sums every few days? A Everything I drew out, I gave to him. 40

Lena Kraemer Weissman, cross.

Q You didn't give him any money after December 19? A How do you know?

Q I ask you? A I gave him.

Q Did you take it out of the bank? A Maybe I had it home.

Q Does Weissman owe you any more money
10 now? A No, we squared up.

Q The deed squared it up? A Yes, when I bought his half interest.

Q In the house? A Yes.

Q The money that you gave him, \$950, up to the nineteenth of September, made you and Weissman quits? A We figured out—my daughter figured it; it was for the back shares and all.

Q Since that time he doesn't owe you any
20 money? A No.

Q So that this money which was taken out of your bank book and out of your bank book from the 19th of December, 1927, must have been taken out by you for something other than Weissman's business? A I don't remember. Maybe I loaned him money after that; I don't know. I know I loaned him money all the time.

Q Can you tell us how you happened to have two notes for a thousand dollars each on September 9, 1927? A It is better for me. I asked
30 him he should make it out a thousand dollars each.

Q Two of them? A Two notes of a thousand dollars, because it is better to cash for me.

Q You didn't cash it; you never discounted it? A No, I don't know; maybe I would.

Q Wasn't it just as he paid it, one note of two thousand? A I said, "Make it a thousand-dollar note," and he did.

Lena Kraemer Weissman, cross.

Q Did he sit down and write them both at the same time? A I don't remember. I remember he give them to me, but I don't remember who wrote it; sometimes he write; sometimes my daughter write.

Q Did you get them at the same time; did he hand them to you at the same time? A I don't know. 10

Q How did you happen to take over this property in October, 1927? A He come to me sometime in October and he wants me to loan him more money; I said, "You owe me so much; you want more?" I said, "I want my money." He said, if I will not loan the money, he will sell his share in the house; I said I didn't want any strange partner in the house, so I bought it.

Q Did you figure up at that time how much was coming to him? A Yes. 20

Q How much was coming to him for his half in the property at that time? A Not quite \$5,000.

Q He owed you about \$4,100 or \$4,200? A Yes.

Q A little more? A I don't know exactly.

Q You knew when you closed title with him that there was more money coming to him on back shares? A No, I bought the back shares. 30

Q Did you make up any writing to show how much you owed him at that time? A No, I figured up with my daughter.

Q You knew that you owed him \$950 beside? A Yes.

Q That was arranged, was it, on the twentieth of October, or eleventh of October, when you got the deed? A Yes.

Q That was arranged between you and him, that he had \$950 coming to him? A Yes. 40

Lena Kraemer Weissman, cross.

Q And he wanted money, didn't he? A Yes.

Q That is why he came afterwards and proposed that you loan him some money? A Yes.

Q Why didn't you give him \$950? A He didn't need so much; he only asked for a small sum; he told me I should keep that for a while,
10 and then he took it later.

Q He came to you because he needed money?

A Yes. I told him I wouldn't loan him no more money, because I want my money what he owed me.

Q Now, you were not loaning money; you were buying property and settling up? A Yes.

Q Why didn't you sit down and offer him a check or give him a check? A I didn't have a check account. He said I shall keep it. He said he had no place to put it.
20

Q Did he tell you he would ask you for the money when he wanted it? A I told him if any time he wants the money, I would give it to him.

Q He said he didn't want it then? A By this time, he said, "All right, keep it. I will take it when I need it."

Q Did you give him the money after that? A Yes.

Q All at once? A No; small sums; \$50 at one time, \$80 another time, I think the book shows.
30

Q It is marked \$50 and \$80 in the book; that is the way you gave it to him? A Yes.

Q You had \$1,900 in the book at the time when he made the deed over to your daughter?

A Maybe I got money in another bank.

Q At least you had \$1,900 in this bank? A Maybe; I don't know.

Q If he had wanted all the money? A I
40. would have given it to him. He said he ain't

Lena Kraemer Weissman, cross.

got no place to put it; he ain't got no bank account. I said I would keep it; when he need it, I will give it to him; I trust him and he trust me.

Q Did you ever take any of this money and deposit it in your account? A No, never.

Q This is all your money, your income? A 10
Yes.

Q From rents and different things? A No rent.

Q From what? A The rent what I got we paid to the Building and Loan.

Q Where does this income come from? A Where I got the money?

Q Yes. A My husband I got from; I got a son sent me money, and I got a boy, a son at home. 20

Q Who sent you about \$350 every month in that way? A My son.

Q He gives you a check for that? A Yes.

Q What does he give it to you for? A I don't know; he can give me; if a son gives a mother a present, that is no harm.

Q Who gives you the big deposit? A That is my money.

Q Where did you get it? A I got it, saved it. 30

Q Where did you save it from? A From my income.

Q What was the income? A I told you twenty times.

Q Tell me again. A My husband gave me money, my boy sends me money; another son gives me money.

Q Tell me a place where you get income from; where did you get income from? A I don't understand. 40

Lena Kraemer Weissman, re-direct.

Q Do you own any mortgages? A I don't owe anybody any money.

Q Do you have any mortgages where people pay you interest? A No.

Q Did you have any stocks or bonds? A Yes.

10 Q You put Weissman's money in the bank account? A No.

Q Sure about that? A Yes.

Q What does he do with all the moneys he takes? A What do I know? He need it for his business. Nobody paid him; he makes buildings and no one paid him. If he would give me money, then I wouldn't ask him he should pay me.

20 *Re-direct examination by Mr. Potter.*

Q Of the four notes that were given back by you on October 20, 1927, two of them are not here; do you recall the dates on those notes? A No, I don't; I don't remember. I give them to him, all the notes, when I took over the house, and I don't know what he did with them.

30 Q Did you ever give back any other notes to Mr. Weissman during the period when you were loaning him money? A I gave him small notes and he make me a big note.

Q How long have you been loaning him money? A For the last nine or ten years.

Q And have you always given back every note which you took? A Yes, all the time. I never keep no notes, only this note. I didn't know where it is, I thought I lost it, but it was given by my daughter-in-law, and she found it a couple of weeks ago.

40

Lena Kraemer Weissman, re-cross.

Re-cross examination by Mr. Unger.

Q Did you ever see this \$200 check which was made by somebody to Mr. Weissman and placed in your bank account? A Look on the back of it and turn it over; what is this?

Q The check is dated October 31, 1927, and made by Grunt to Weissman for \$200? A 10
Maybe I changed it for him in my bank.

Q Is that your name on the back? A Yes.

Q In Yiddish? A Yes.

Q Why did you put your name on the back? A Maybe he changed it.

Q Why did you put your name on the back? A When I changed it, because I give this note in my bank.

Q What bank did you put that check in? A 20
I don't remember.

Q Did you put it in the Springfield Avenue Trust Company? A I don't know.

Q Can't you tell by looking at it? A No, I cannot.

Q It says at the bottom, "October 31, 1927, Investment Department of the Springfield Avenue Branch of the Federal Trust Company"; have you got another book beside this? A I got it home.

Q You have got other moneys that you deposited in your other savings account? A I 30
didn't deposit Weissman's money, only my money.

Q You did put this in? A Yes, I changed for him.

Q Will you tell me why? A I don't know.

Q Why did Weissman have to come to you to change a check? A I changed all his checks.

Q Why did he come to you to put that check in your account? A He give it to me to change. 40

Miss Evelyn V. Kraemer, direct.

Q Why couldn't he— A He know I got money, then I can change; nobody will change him another check who don't know him; I know him and he knows I got money.

Q You had to go to the bank to give him the amount of that check? A Maybe; I don't know.

Q Do you remember the transaction now? A No, I don't remember.

Q That check went into your bank account? A If it is my name, it may have went in, but I don't remember how it was.

Q You didn't bring your other book? A No.

Mr. Unger: I offer the check in evidence.
(Marked Exhibit C. 22.)

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MISS EVELYN V. KRAEMER, sworn for defendants.

Direct examination by Mr. Potter.

Q Are you a member of the bar of New Jersey? A Yes.

Q You are a defendant in this action? A Yes.

Q You are the daughter of Mrs. Weissman, who was just on the stand? A Yes.

Q What relation are you to Joseph A. Weissman? A I am a step-sister.

Q On May 8, 1926, did he convey to you a piece of property on Isabella avenue, Newark?

The Court: There is no necessity of going into that; no claim is made against that property.

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Miss Evelyn V. Kraemer, direct.

Q On October 20, 1927, did you represent your mother, Mrs. Weissman? A Yes.

Q Did Mr. Weissman ever tell you, on or about that time, that he wanted to sell his half interest in the Isabella avenue property? A No, he didn't tell me.

The Court: Is there any reason why this witness should not tell the story as she knows it? Mr. Unger has admitted only part of the story.

Mr. Potter: I wanted to get her history of the trust arrangement between herself and Mrs. Weissman.

The Court: He admits the instruments were executed. He hasn't admitted anything else, except the instruments were executed.

(Addressing the witness.) You may tell the circumstances which led up to the giving of this deed by Weissman to you and the execution of the deed of trust from you to your mother.

The Witness: I knew that my mother had been loaning him money ever since she knew him, and that there were notes back and forth, but I cannot say how much they were. A week before the deed was given, my mother told me that. That is how I knew, and she also told me that Weissman owed her something like \$4,000, and that he wanted some more money, and she asked me what I thought we ought to do, and I said that I thought the best thing for her to do would be to get this money back now, because it was getting into big sums, and my mother hasn't a terrible lot of money, and so she asked me what his share would

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Miss Evelyn V. Kraemer, direct.

10 be equal to—what it would amount to; and she said, although the house cost \$20,000—that was the first house, one of the first houses built around that neighborhood, and it had been built up very cheaply, that is, the other houses that were built there, and the general depreciation in value—anyway,
20 my mother decided that house was worth at that time about \$18,000. There was a building loan on the house of \$10,000, leaving an equity of \$8,000, and his half would be \$4,000. They paid in at the time I discussed that with my mother—I think they paid in about three years; I don't remember that definitely—the back share value was about \$1,800; his share being about \$900
30 and some other little expenses. In all, my mother paid him slightly over \$5,000, and she wanted to know whether she was getting her money. I didn't know much about the value of real estate, but I thought it was all right.

That is about all I know about the transaction.

30 And then she asked me to execute the deed, and I said in view of the fact that I was about that time to be married, I thought it best to draw another trust deed to protect her.

Q Do you know anything about the notes which your mother had? A I know my mother had notes. You mean at the time that that deed was given?

Q Yes. A There were four notes passed at the time.

40 Q Did you see them? A I saw them.

Miss Evelyn V. Kraemer, cross.

Q Do you know the dates and amounts? A I cannot say the amounts. I am almost sure one was a demand note. That is, I remember that one was for \$1,200 and the other ones were about \$1,000 each one of them. When she loaned the money, she just loaned it, and I didn't have very much to do with taking care of that, because this had been going on for about ten years, even when I was very, very young, and didn't have any interest in it. 10

Q Did you see your mother surrender the notes? A Yes, my mother handed him some notes and said, "Here are your notes." He said, "All right, we are square now." My mother said, "Yes, but I owe you \$950." He didn't take that at the time; he has no check account. He said he didn't have any place to keep the money, and my mother said, "All right; any time you need the money I will give it to you." 20

Q That is all you know about the transaction? A Yes.

Cross examination by Mr. Unger.

Q What preceded the closing or the transfer of the property? A Nothing unusual.

Q Wasn't it because Weissman was in need of money? A I didn't know anything about his affairs. 30

Q Didn't your mother tell you he had applied for more money? A He always did that. This is nothing unusual.

Q I asked you whether or not your mother told you in 1927, in October, that Weissman had made a demand upon her for more money? A Yes.

Miss Evelyn V. Kraemer, cross.

Q So that his immediate need, so far as you learned through your mother, was money? A As it was in other instances.

Q It was particularly so in October, 1927? A I don't know that of my own knowledge.

10 Q She told you that? A Yes, that is what my mother said. I don't know how much he asked for of her.

Q And his demanding led to the transfer of the property to you as trustee for your mother? A If it hadn't, he wanted to sell the property to pay my mother, and she didn't want a stranger in partnership with her, as she did in 1926.

Q And he was also demanding money in October, 1927? A Yes, that is what my mother told me.

20 Q You represented her at the closing? A Yes.

Q You were in a law office? A Yes.

Q Mr. Potter's office? A Yes.

Q And you took care of the closing for her? A I did.

Q And I suppose at that closing, which wasn't any different than the ordinary closing, a man was turning over a piece of property, and he was entitled to whatever equity he had in it? A Yes.

30 Q And he was supposed to pay, or allow whatever he owed your mother at that time? A Yes.

Q Did you have a computation of figures at that time? A I computed it with my mother.

Q Did you compute it with Mr. Weissman? A No.

Q Did you make any closing sheet? A We never did—none of the closings between my
40 mother and him.

Miss Evelyn V. Kraemer, cross.

Q You never had a closing before? A We had a similar one; I am trying to show that we had a similar one two years ago.

Q Did you have a closing sheet made up showing the price of this property? A No; that was understood between us. My mother, him and I always understood what it would be. 10

Q How could you understand what, if anything, was due until you had reduced your computation to figures? A My mother discussed that with me, and we had that all computed; it wasn't a case where my mother was a stranger buying a strange piece of property. My mother was a partner in this property from its very inception, and she knew all about it; it was only a question of what his back shares were, and we took care of that. That was one question. 20

Q Did you ascertain that? A Yes.

Q Was that put down on a closing paper? A No.

Q Did you apportion the expenses between the parties? A We apportioned certain debts, I don't know exactly.

Q Did you apportion insurance? A No, not definitely.

Q Did you apportion the taxes for 1927? A Those were paid. The insurance was paid and the taxes were paid. 30

Q Did you apportion the interest on the building and loan mortgage to the date of the last payment? A That was all figured in the back shares.

Q You have no paper or writing of any kind which shows any computation or settlement? A No, we never had that in any transaction.

Q Did you at that closing arrive at any definite figure showing exactly how much your mother had coming? A Certainly. 40

Miss Evelyn V. Kraemer, cross.

Q How much was that figure? A I don't remember now what the figure was, but his share, my mother and I figured out that his share was somewhere around \$5,000; I don't want to say definitely.

10 Q You were estimating his share? A We thought that was definite at the time. What I say is that I cannot tell you now whether it was exactly.

Q You didn't have any real closing where apportionments were figured? A The same as we did in the one-fifteenth interest; that is the way we always did.

Q You have now no closing sheet? A No.

20 Q Usually when you close a title you have a closing sheet for the protection of yourself closing it, and the buyer and the seller? A That all depends on who the parties are, Mr. Unger.

Q You generally estimate what someone is getting? A I always estimate.

Q And in round numbers it is about \$5,000 here? A Yes.

Q Your mother says in her paper that it was \$4,200. A You are mixing me up. I say in round numbers.

30 Q Estimating everything, including the back shares, about \$5,000? A Yes, about.

Q Did Weissman at that time take from your mother any paper showing that she owed him \$950, which he subsequently was paid for? A No.

Q Did you gather up the notes yourself or did you let the parties deliver them? A They delivered them at the place.

Q You didn't inspect the notes? A I saw them.

40 Q How many were there? A Four.

Miss Evelyn V. Kraemer, cross.

Q Aggregating how much money? A \$4,200.

Q Exactly? A As far as I can remember.

Q And those notes, I suppose, represented all the moneys that Weissman owed to your mother up to that time? A I cannot say. I tell you I cannot tell you that of my own knowledge, because I don't know enough about it. 10

Q You cannot tell whether the notes themselves aggregated \$4,200? A Yes.

Q They did? A The notes aggregated that.

Q What about the payments which your mother had made since September, 1927, in small amounts of \$50 and \$100 and \$150, did your mother surrender to Weissman notes representing these smaller loans? A That is something I cannot tell you.

Q But you were there? A You were talking about September—I tell you I don't know about the notes, the handing back and forth of notes; I only know about it in a general way. 20

Q You didn't inspect the notes? A These notes that were there I did inspect.

Q I refer now to all of the notes which were turned over at the time; were there any notes outside of the four notes which you say you inspected at that time? A Not that I know of. 30

Q Was this one of the notes, showing you Exhibit D. 2? A No, I don't think so.

Q That note didn't enter into it at all? A I don't think so; I am not sure. Take the ones that I had, I am almost sure—I don't think this note had anything to do with it.

Q So that note was out of it? A I think so; I am not sure.

Q I show you Exhibit D. 3, \$1,000, was that one of the notes? A I think so. 40

Miss Evelyn V. Kraemer, cross.

Q What makes you think so? A It looks like one of them, because I think the one that we had was written in his own handwriting.

Q You think that was one of the notes? A Yes.

Q That is for a thousand dollars? A Yes.

10 Q I show you Exhibit D. 4, which is another note for a thousand dollars; is that one of them? A Yes.

Q And that makes \$2,000? A Yes.

Q There were two other notes? A Yes.

Q One for one thousand dollars? A This makes \$3,000, and one for twelve hundred, making forty-two hundred.

20 Q What did your mother have to show the odd amount? It is over forty-two hundred; did she have any other note? A I didn't see any other note; she may have had; I didn't know what passed between them. All I know is what happened on that day.

Q Did Weissman at that time have any record showing the moneys that he had gotten from your mother? A I don't know anything about that. I know nothing about his affairs with my mother.

30 Q Your mother and Weissman did not discuss this matter in your presence? A No, I discussed it with my mother.

Q Was there any computation of interest? A Between my mother everything was figured in; my mother and I figured that up.

Q You arrived at the same amount? A Yes, in the neighborhood of \$5,000.

Q When the deed was delivered it was handed over to you? A To my mother.

Q It was made out to you? A Yes.

40 Q Your mother didn't take it? A We all handled it; I cannot remember that.

Miss Evelyn V. Kraemer, cross.

Q This is the deed, Exhibit D. 5? A Yes.

Q And Weissman went away without any money in his pocket and minus his property?

A That is right.

Q Your mother didn't give him any money at that time? A My mother offered it to him; he said he had no bank account; he said he didn't know where he could keep it.

10

Q Is that why he wouldn't take the money?

A Yes, that is what he said there.

Q He said he didn't want the money because he had no bank account? A My mother said, "All right; I know there is \$950 coming, and I will give it to you if and when you need it."

Q Didn't you think it funny that he said he didn't know what to do with \$950? A No, because he hadn't had a checking account, and that is the way they always did business.

20

Q He had come to your mother with a proposition to loan him more money at that time? A But he probably didn't need it all at once. You will have to ask him. He said he didn't need it at that time.

Q He didn't want it because he didn't need it at that time? A On that particular day, but I suppose he was expecting some jobs and would need it in the future.

30

Q And even if he needed it, he didn't want to take it because he didn't have a place to put it? A When?

Q At the time of the closing. A He said he had no account to keep it in at that time.

Q You were in the office of Potter & Berry all this time? A Yes.

Q When did you first hear that Weissman had given a bond for \$9,000 to Grunt? A When

40

Cecil J. Shaw, direct.

Mr. Kagen came into my office and swore that he had advanced \$12,000 on the mortgage.

Q When was that? A Sometime in January.

Q Following or before? A No, the following January.

Q Didn't you know that Weissman had given Grunt this bond? A He didn't know it himself.

10 Q Did you know that Weissman owed Grunt any money at that time. A I didn't even know Mr. Grunt.

Q Did you close the matter for Weiss, the cousin, who bought the property on Isabella avenue? A Yes.

Q On that transaction Weissman went away without any money paid? A Yes.

Q Did Weiss offer him any money at that time? A No. He gave him a handful of notes.

20 Q What was said about paying him any money? A I don't remember anything being said, simply they said something about squaring up about some jewels; I didn't know what it was all about.

Q Did they have any difficulties at that time? A That was between the family, they didn't need it.

30

CECIL J. SHAW, sworn for defendants.

Direct examination by Mr. Potter.

Q What business are you in? A Real estate and insurance.

Q Where is your office? A 9 Clinton street.

Q How long have you been in that business?

A Directly and indirectly about ten years; I can explain that by saying that I was secretary of a

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Cecil J. Shaw, direct.

building and loan first, and came in contact with appraisals of real estate that way, but as a direct broker, about a year and a half.

Q Have you been in Newark all that time?

A Yes; I was out of Newark a little while, and I have been in Newark around twenty-five years.

Q Did you ever make an inspection of the property No. 461-463 Tenth street? A Yes. 10

Q What kind of a house is that? A Frame house, three story high, store in the property, and some rooms in the back.

Q Do you know the size of the lot? A 51 by 111 and a few inches in each case.

Q When did you make this inspection? A In January; I don't remember the date.

Q What year? A This year.

Q Mr. Shaw, are you familiar with real estate conditions in the City of Newark in October, 1927? A Yes. 20

Q In your opinion as a real estate man, what was the value of that house No. 461-463 Tenth street when you examined it? A About \$13,000; \$4,000 for the land and \$9,000 for the building.

Q And in your opinion as a real estate man, what would you say the value of that property would have been in October, 1927? A About the same; it hasn't improved down there at all. 30

The Court: That is the property conveyed to Weiss?

The Witness: Yes.

Q Did you ever examine the property at No. 159 Isabella avenue, Newark? A I did.

Q When did you examine that? A At the same time as I examined the one on Tenth street. 40

Cecil J. Shaw, direct.

Q What kind of a building is that? A Frame, two-family house.

Q What was the value of that property at the time you examined it? A About \$18,000.

Q And in your opinion what would have been the value of that property in October, 1927? A
10 About the same.

Mr. Unger: May it appear, if it is not already in the case, that judgment was entered in favor of Grunt, the complainant, against Weissman, in the Essex County Circuit Court, on November 14, 1928, for \$9,-878.86 damages and costs?

Mr. Potter: Yes.

20 Mr. Unger: And also that Mr. Axtell, the secretary of the Fourteenth Ward Building and Loan, testified in the other case, the shares of stock upon which the mortgage—upon which both mortgages of the West End Building and Loan Association were based, which covered the Tenth street property and Isabella avenue property, were not transferred until October 31, 1928?

30 The Court: I don't get the significance of that. You mean the accounts of the mortgages were not transferred to the new purchaser?

Mr. Unger: I mean more than that. I mean that the shares of stock which support the mortgage—the mortgage is founded upon subscription of shares of stock—remain in the names of the persons who owned the same on October 20, 1927, until October 31, 1928, and were not transferred to the defendants in this case until that time.

40 Mr. Potter: That is true.

Harry Weissman, direct.

Mr. Unger: May it also appear that Mr. Axtell testified that in October, 1927, the amount due on the mortgage of \$10,000 on the Isabella avenue property was \$7,765, and that was the amount due on the mortgage at that time after crediting the share values; and that at the same time the amount due on the mortgage of the Fourteenth Ward Building and Loan Association on the South Tenth street property was \$6,300. 10

Mr. Potter: I had forgotten that the testimony of the building and loan secretary, which was introduced at the last trial, would be used at this time, and I should like to bring on one more witness to explain the delay in transferring the shares of the building and loan stock. 20

The Court: You may do so.

HARRY WEISSMAN, sworn for defendants.

Direct examination by Mr. Potter.

Q Mr. Weissman, are you the husband of Mrs. Weissman, who was recently on the stand? 30

A Yes.

Q And where do you live? A 159 Isabella avenue.

Q How long have you lived there? A Since 1924, in December.

Q What business are you in? A I am helping my son in the plumbing business.

Q How long have you been doing that? A Since he came from the army.

Q When did you marry Mrs. Kraemer? A 40

Harry Weissman, direct.

Q Who has collected the rents of the South Tenth street property? A I used to collect all the time.

Q How long have you been collecting them? A Since 1921, since we bought the property.

10 Q What do you do with the rents after you have collected them? A I used to pay the building and loan and the rest went for disbursements, for taxes and other things.

Q Did you personally pay the building and loan? A Yes.

Q The building and loan on Tenth street is not original? A Beginning it was only a private mortgage, but the building and loan is only since 1925.

20 Q Since that time have you paid it? A Since 1925 I collect the rent to the present date.

Q And you say you paid the taxes, too? A Yes.

Q Have you paid them personally? A Yes, on Tenth street.

Q Did you pay them in cash or check? A Cash.

30 Q And what would you do with any surplus money that was left over after the rents were paid to you on the Tenth street property? A We kept them in the bank until the time to pay for taxes, or fixing, or any other things. There was no surplus after the year, but previous it was accumulated by the collecting. After the year there wasn't any surplus, because there were a lot of repairs.

Q Did Joseph Weissman ever collect the rents on that property, to your knowledge? A Very seldom. I don't remember that he ever collect any.

Harry Weissman, direct.

Q On October 11, 1927, were you informed of a change of ownership in that property? A Yes.

Q By whom? A By Mr. Weiss; he told me that he got the property. Of course, I knew about it.

Q Who collected the rents after that time?

A I collected the rent; from the other house, where he lives, I don't collect the rent there, but I paid the building and loan, as he is never home, very seldom, and his wife has four small children, and it is a burden to her to take over the collecting and pay the building and loan, so for the Tenth street property I collect and take care of the repairs, and the balance I give her. The amount of the building and loan I take every third Monday in the month from Mrs. Weiss. 10

Q Do you know when the shares of stock were transferred to the building and loan in the Tenth street property? A Very late, but it wasn't our fault. 20

Q Can you explain that? A Yes. The first mortgage it was sold the property to Mr. Weiss; I was in the building and loan—the same man that was here on the stand, I approached him first and I told him that this property was sold. He said, "Come in next month and bring the people to sign it over"; so when I came the following month he said—the following month I came over and brought Joseph Weissman, so he asked me for Lena Kraemer. I said, "Lena Kraemer didn't sell one-fifteenth in the property." So he told me again that I have to see the secretary, Mr. Utter. So the following month I came again; so Mr. Utter says he thinks it has got to go through Mr. Pollard, in the Federal Trust Building. So we start to go into it—we didn't have much time, and we didn't get any- 30 40

Harry Weissman, cross.

wheres. Mr. Weiss asked me if I transferred it. I said, "When you pay the building and loan, it has agreed to change the thing again; as long as they get their money they don't want to know who the owner is finally, until the insurance expired." Then Mr. Weissman said, "I won't pay
10 any insurance," so they sent for us all, and Mr. Utter didn't need any lawyer or nothing, and it was transferred. This is making that when we bought the property on Tenth street, so the fire bill came on the old owner for a year's time.

Q Do you know anything about the transfer of the shares on the Isabella avenue property?
A It was all in the same day; when I applied for Tenth street, I applied to transfer the shares for the other, too. Of course, I pay once in a
20 while; most of the time my wife pays for the Isabella avenue, and once in a while I usually go with her.

Cross examination by Mr. Unger.

Q It took a year before you got the shares transferred? A Yes; what can I do? It was the fault of the company.

Q You always collected the rents for Isabella avenue and Tenth street? A No, not Isabella
30 avenue; just Tenth street.

Q You are collecting the same as you always did? A Yes.

Q What did you do with the money that is represented here? A I gave the money—until the third Monday of the month I turned over to Mrs. Weiss—Monday I go there and make out a slip and I take over to the Fourteenth Ward Building and Loan.

Q And she pays the bills or you pay the bills?
40 A The bills for repairs?

Harry Weissman, cross.

Q Yes. A I do everything, whatever is necessary.

Q What do you get for doing this? A There is a statement in the book that you cannot use it for anything unless you put in hundreds of dollars of repairs, when my son had the shop there; so he said, "For your compensation keep this." To him it is nothing worth, but to us it is worth probably fifteen or twenty dollars a month. 10

Q That is where you do your business now?
A Yes.

Examination by the Court.

Q You have a bank account? A I never had.

Q You say this money is put in a bank account as you collect it? A Them people. 20

Q Whose? A My wife has a bank account. I didn't have nothing to do with it.

Q You said that you collected these rents? A Only from Tenth street, and I turned it over to Mrs. Weiss, and they put it in their bank.

Q Didn't you collect the rents just the same before the conveyance was made? A Yes, and I used to turn it over to my wife, always; I have no bank account.

Q I understood you to say that you collected the rents and put it in the bank. A No, I cannot show any bank— 30

Q And paid the Building and Loan Association? A Yes, but it was for my wife, sir.

OPINION.

May 20, 1929.

BERRY, V.-C. (orally):

10 In the case of Grunt *v.* Weissman, I have delayed announcing my decision this morning, thinking that someone representing the defendant might appear.

I announced last Wednesday that I would advise counsel of my decision in the matter this morning, and my decision is that the bill of complaint will be dismissed.

20 My reason for that is that I do not feel at liberty to brand as liars all of the witnesses who testified to the consideration for the two conveyances which were involved; especially in view of the fact that the consideration alleged was further evidenced by promissory notes put in evidence in the one case, the case of the conveyance to Miss Kraemer, for the full amount of the consideration, except \$950, which was alleged to have been paid thereafter; and in the Weiss case, the consideration, with the exception of \$1,800, was shown by promissory notes. Those notes that were offered in evidence were obviously, I think, not manufactured for the occasion. They

30 bore evidence of having been in the possession of somebody from the time of their dates until the present time, because in two or three instances I note that they fell apart while handling here at the trial. That is an indication to me that they were bona fide notes.

I was not much impressed with the testimony of Mr. Weiss respecting the jewelry, but in view of the fact that his testimony stands uncontradicted, I feel that I have no alternative but to

40 dismiss the bill.

FINAL DECREE.

Filed June 11, 1929.

This cause coming on to be heard in the presence of Michael G. Alenick, Esquire, and Milton Unger, Esquire, solicitors of the complainant, and Messrs. Potter & Berry, solicitors of the defendants; 10

And the Court having read and considered the pleadings and having taken testimony orally and in open court, and having heard and considered the arguments of counsel thereon;

And the Court being satisfied that from the testimony and proofs taken before it, that complainant herein has not proved the allegations contained in his bill of complaint; and that the conveyance attacked by said bill of complaint was not fraudulent, as is alleged in said bill of complaint; 20

And the Court being of the opinion that the bill of complaint in the above-entitled cause should be dismissed,

It is, on this 18th day of June, nineteen hundred and twenty-nine, ORDERED, ADJUDGED and DECREED that the bill of complaint in the above-entitled cause be dismissed without costs or counsel fee to either party. 30

E. R. WALKER,
C.

Respectfully advised,

MAJA LEON BERRY,
V.-C.

NOTICE OF APPEAL.

Filed July 30, 1929.

10 Complainant, Joseph Grunt, trading as West Side Plumbing Supply Company, hereby appeals from the final decree made in the above-entitled cause on the 18th day of June, 1929, by the Chancellor on the advice of Vice-Chancellor Maja Leon Berry, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

Dated: July 27, 1929.

20 MICHAEL G. ALENICK,
Solicitor for and of Counsel with Complainant, Joseph Grunt, trading as West Side Plumbing Supply Company.

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

MICHAEL G. ALENICK,
Of Counsel with Complainant, Joseph Grunt, trading as West Side Plumbing Supply Company.

30 Service of the within notice of appeal and copy is hereby acknowledged this 29th day of July, 1929.

POTTER & BERRY,
Solicitors of Defendants.

PETITION OF APPEAL.

Filed August 17, 1929.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10

JOSEPH GRUNT, trading as West
Side Plumbing Supply Com-
pany,

Complainant-Appellant,

vs.

JOSEPH A. WEISSMAN, *et als.*,

Defendants-Appellees.

*On Appeal
from the
Court of
Chancery.*

*Petition
of Appeal.*

20

To the Honorable the Court of Errors and Ap-
peals in the last resort in all causes:

The petition of Joseph Grunt, trading as West
Side Plumbing Supply Company, the appellant
in the above-entitled cause, respectfully shows
that:

1. Petitioner finds himself aggrieved by a
final decree made in the Court of Chancery by
his Honor Edwin Robert Walker, Chancellor of
the State of New Jersey, on the advice of his
Honor Maja Leon Berry, Vice-Chancellor, bear-
ing date June 18, 1929, in a certain cause in said
Court of Chancery wherein the said Joseph
Grunt, trading as West Side Plumbing Supply
Company, was complainant and the said Joseph
A. Weissman, Abraham Weiss, Evelyn V. Krae-
mer and Lena Kraemer Weissman were defend-
ants, in this respect, to wit, that the said decree
adjudges that:

30

40

Petition of Appeal.

(a) The Court was satisfied from the testimony and proofs taken before it that the complainant had not proved the allegations contained in his bill of complaint;

10 (b) That the conveyances attacked by the said bill of complaint were not fraudulent;

(c) That the bill of complaint should be dismissed.

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

1. The evidence justified a finding that the conveyances made by the defendant, Joseph A. Weissman, were made with the intent to hinder,
20 delay and defeat the rights of creditors.

2. The evidence justified a finding that at the time the defendant, Joseph A. Weissman, transferred his properties he was insolvent.

3. The decree was erroneous in that it failed to adjudge that the conveyances were fraudulent.

4. The decree dismissing the bill of complaint was contrary to the weight of the evidence.

30 5. The said decree was inequitable.

6. The said decree was contrary to law.

7. The said decree was erroneous in that it failed to order a reconveyance of the properties by the persons to whom the defendant, Joseph A. Weissman, had conveyed them or, in the alternative, to order that the moneys actually advanced respectively by those persons, viz., Abraham Weiss and Lena Kraemer Weissman, when ascertained, should be impressed as liens against
40

Petition of Appeal.

the respective properties so conveyed to each of them.

8. The decree should have awarded the complainant the relief for which he prayed.

Petitioner therefore prays that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper. 10

MICHAEL G. ALENICK,
Solicitor for and of Counsel with Appellant.

20

30

40

ANSWER TO PETITION OF APPEAL.

Filed December 17, 1929.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10	JOSEPH GRUNT, trading as West Side Plumbing Supply Com- pany, <i>Complainant-Appellant,</i> <i>vs.</i> JOSEPH A. WEISSMAN, <i>et als.</i> , <i>Defendants-Appellees.</i>	<i>On Appeal from the Court of Chancery.</i> <i>Answer to Petition of Appeal.</i>
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20 The answer of Joseph A. Weissman, Abraham Weiss, Evelyn V. Kraemer and Lena Kraemer Weissman, appellees, to the petition of appeal of Joseph Grunt, the above-named appellant.

30 1. These appellees, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer nevertheless admit that a decree was, on the 18th of June, 1929, made and entered in the Court of Chancery of New Jersey in the above-entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, these appellees beg leave to refer thereto when the same shall be produced.

2. These appellees are advised and believe that the said decree is agreeable to equity; and they pray that the same may be affirmed with costs to be taxed in favor of these appellees.

POTTER & BERRY,
Solicitors of the Appellees.

40 RAYMOND H. BERRY,
Of Counsel.

*Defendants' Exhibits.***Exhibit D. 1.**

This is a certified copy of a deed from Joseph A. Weissman (single) to Evelyn V. Kraemer (single) dated May 8th, 1926 and recorded May 10th, 1926 in the Essex County Register's Office in Book K74-313 covering the remaining undivided one-half interest of Joseph A. Weissman in premises on Isabella Avenue, Newark, New Jersey, adjacent to a lot on the corner of Isabella Avenue and Grove Street; consideration, \$1.00 and other good and valuable consideration. 10

Exhibit D. 2.

\$1000 August fifth 192 20
 Six months after date I promise to pay to
 The order of Mrs. Lena Kraemer
 One Thousand Dollars
 at American National Bank
 Value received 6% per annum
 No..... Due.....

JOSEPH A. WEISSMAN

Exhibit D. 3.

30

\$1000.00 Sep 9, 1927
 on demand after date I promise to pay to
 The order of Lena Kraemer
 One Thousand and 00/100 Dollars
 at Springfield Ave Trust Co.
 Value received
 No..... Due.....

JOSEPH A. WEISSMAN

40

*Defendants' Exhibits.***Exhibit D. 4.**

\$1000.00 September 9, 1927
 ninety days after date I promise to pay to
 the order of Lena Kraemer
 One Thousand and no/100 Dollars
 10 at.....
 Value received with interest at 6%
 No..... Due December 8, 1927
JOSEPH A. WEISSMAN

Exhibit D. 5.

20 This is a deed from Joseph A. Weissman (single) to Evelyn V. Kraemer dated October 20, 1927 and recorded October 24, 1927 in the Essex County Register's Office in Book N77-89, covering the remaining undivided one-half interest of Joseph A. Weissman in premises on the corner of Isabella Avenue and Grove Street, Newark, New Jersey; consideration, \$1.00 and other good and valuable considerations.

30

Exhibit D. 6.

\$2000.00 Sep. 17, 1925
 on demand after date I promise to pay to
 the order of Abe J. Weiss
 Two Thousand 00/100 Dollars
 at Springfield Ave Trust Co.
 Value received with interest at 6%
 No..... Due.....
 40 JOSEPH A. WEISSMAN

*Defendants' Exhibits.***Exhibit D. 7.**

\$1100.00 Newark N. J. May 1
 On demand after date I prom
 the order of Abe J. Weiss
 Eleven Hundred 00/100
 at Springfield Ave Trust Co. 10
 Value received
 No..... Due.....
 JOSEPH A. WEIS

Exhibit D. 8.

\$250.00 Oct. 2, 1925
 On demand after date I promise to pay to 20
 the order of Abe J. Weiss
 Two Hundred and Fifty Dollars
 at Springfield Ave Trust Co.
 Value received with interest at 6%
 No..... Due.....
 JOSEPH A. WEISSMAN

Exhibit D. 9.

\$500.00 Newark N. J. Dec. 16 1925 30
 On demand after date I promise to pay to
 the order of Abe J. Weiss
 Five Hundred 00/100 Dollars
 at Springfield Ave Trust Co.
 Value received
 No..... Due.....
 JOSEPH A. WEISSMAN

*Defendants' Exhibits.***Exhibit D. 10.**

10 This is a deed from Joseph A. Weissman, single, to Abraham Weiss dated October 11, 1927 and recorded October 13, 1927 in the Essex County Register's Office in Book I 77-218, covering an undivided fourteen-fifteenths interest of Joseph Weissman in premises on South 10th Street, Newark, New Jersey. The deed recites that an undivided one-fifteenth interest in the premises was conveyed to Lena (Kraemer) Weissman, under the name of Lena Kraemer, by deed dated December 8th, 1921 and recorded in Book Z65 of Deeds for Essex County on pages 124 &c. The deed for the 14/15ths interest recites a consideration of \$1.00 and other good and valuable
20 considerations.

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*Defendants' Exhibits.***Exhibit D. 20.**

This is a cancelled Savings account pass book No. 25092 in Springfield Avenue Trust Co., Newark, N. J., in account with "Abe J. Weiss or Sara B. Weiss" containing the following figures:

Date	Items Deposited	Withdrawn	Balance	
Apr 16, 1923	Cash 2500.		2500.	10
July 11, 1923	16.66		2616.66	
Sep 29, 1923		2000.	516.66	
Oct 30, 1923		300.	216.66	
Jan 9, 1924		200.	16.66	
Jan 15, 1924	1000.		1016.66	
Interest Jan. 1, 1924	4.32		1020.98	
June 24, 1924		20.98	1000.00	
July 7, 1924	2000.		3000.00	
July 1	20.		3020.	20
July 22, 1924		20.00	3000.	
Interest Jan. 1, 1925	60.		3060.	
Jan. 20, 1925		60.00	3000.	
June 9, 1925		250.00	2750.	
Interest July 1, 1925	55.		2805.	
Aug. 1, 1925		55.	2750.	
Sept. 17, 1925		2000.	750.	
Oct. 2, 1925		250.	500.	
Dec. 16, 1925		500.		
Dec. 22, 1925	5.		5.	30

Exhibit D. 21.

This is a certified copy of a mortgage given by Joseph A. Weissman, single, Lena Kraemer Weissman and Harry Weissman, her husband, to The Fourteenth Ward Building and Loan Association of the City of Newark, dated December 7, 1925 and recorded December 11, 1925 in the

Defendants' Exhibits.

Essex County Register's Office in Book R56-11 covering premises on South 10th Street, Newark, New Jersey, and secures the payment of \$7,500.

Exhibit D. 22.

10

This is a certified copy of a deed from Gerard S. Ferguson and Bertha Ferguson, his wife, to Joseph A. Weissman, dated June 27, 1924 and recorded June 28, 1924 in the Essex County Register's Office in Book N70-310 covering premises on Isabella Avenue, Newark, New Jersey consideration \$1.00 and other good and valuable consideration.

20

Exhibit D. 23.

This is a certified copy of a deed from Eugene E. Erath and Maud Erath, his wife, to Joseph A. Weissman, dated June 19, 1924, and recorded June 21, 1924, in the Essex County Register's Office in Book M 70-469 covering premises on Isabella Avenue, Newark, New Jersey; consideration, \$1.00 and other good and valuable consideration.

30

Exhibit D. 24.

This is a certified copy of a deed from Joseph A. Weissman, single, to Evelyn V. Kraemer, dated June 27, 1924 and recorded June 30, 1924 in the Essex County Register's Office in Book M70-535 covering premises (three tracts) on Isabella Avenue, Newark, New Jersey; consideration, \$1.00 and other good and valuable consideration.

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*Defendants' Exhibits.***Exhibit D. 25.**

This is a certified copy of a mortgage given by Joseph A. Weissman and Evelyn V. Kraemer, both unmarried, to The Fourteenth Ward Building and Loan Association of the City of Newark dated September 10, 1924 and recorded September 11, 1924, in the Essex County Register's Office in Book Y51-547 covering premises on Isabella Avenue and Grove Terrace, Newark, New Jersey, and secures the payment of \$10,000. 10

Exhibit D. 26.

This is a Declaration of Trust dated May 8, 1926, by Evelyn Kraemer, single, in connection with the conveyance to her by Joseph A. Weissman of the Isabella Avenue premises, in which she states: 20

"Now know ye that I, Evelyn V. Kraemer (single), do in consideration of One Dollar (\$1.00) to me in hand paid by Lena Kraemer Weissman, of the City of Newark, County of Essex and State of New Jersey, hereby make known, admit and declare that said premises were so conveyed to me, and that I now hold and will continue to hold the same in trust, only, for the use and benefit of the said Lena Kraemer Weissman, of the City of Newark, County of Essex and State of New Jersey, her heirs, executors, administrators and assigns, and that I have no beneficial interest therein. 30

And I do further admit and avow that the consideration moneys expressed in said deeds were paid by the said Lena Kraemer Weissman.

And I do for myself, my heirs, executors and administrators covenant and agree to 40

Defendants' Exhibits.

10 and with the said Lena Kraemer Weissman, her heirs, executors, administrators and assigns, that I, my heirs, or executors shall and will convey the said premises or any part thereof by a good and sufficient deed to the said Lena Kraemer Weissman, or her assigns whenever and as soon as I or they shall be thereunto requested, in writing under the seal of the said Lena Kraemer Weissman, free of courtesy, and clear and discharged of and from all and every encumbrance thereon by me or my heirs; and that I or my heirs shall not do or knowingly suffer or permit any act, deed, matter or thing whereby or by means whereof said premises, or any part thereof, can, shall or may be anywise impaired, injured or encumbered in title, interest, estate, or otherwise, however.

20 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 8th day of May, Nineteen Hundred and Twenty-six.

EVELYN V. KRAEMER.

Signed, Sealed and Delivered :
in the presence of :

ABRAHAM LAUB''

30

40.

*Defendants' Exhibits.***Exhibit D. 27.**

This is a cancelled Savings account passbook No. 33259 in Springfield Avenue Trust Company, Newark, New Jersey, in account with Lena Kraemer, containing the following figures:

Date	Withdrawal	Deposit	Balance	
3-2-26		170.00	3,160.00	10
3-15-26	45.00		3,145.00	
3-22-26	30.00		3,115.	
4-6-26		100.00	3,215.	
4-16-26		100.00	3,315.	
4-19-26	240.00		3075.	
4-20-26		200.00	3275	
4-29-26	90.00		3185	
5-1-26		60.00	3245	
7-1-26	600.00		2645	20
7-7-26		150.00	2795	
7-13-26	100.00		2695	
7-30-26		61.73	2756.73	
7-30-26	61.73		2695.	
8-16-26		50.00	2745	
8-21-26	75.00		2670	
9-13-26		50.00	2720	
10-1-26	50.00		2670	
11-1-26	175.00		2495	
11-17-26		50.00	2545.	30
12-14-26	100.00		2445	
1-24-27	Int. Jan 1, 1927	48.90	2493.90	
1-24-27		75.00	2568.90	
2-23-27		70.00	2638.90	
3-2-27		150.00	2788.90	
3-7-27	40.00		2748.90	
3-21-27	100.00		2648.90	
3-25-27		100.00	2748.90	
3-29-27		71.10	2820.00	
4-4-27		120.00	2940.00	40

Defendants' Exhibits.

	5-2-27		300.00	3240.00
	5-7-27		60.00	3300.
	5-16-27	125.00		3175.
	5-21-27	100.00		3075.
	5-24-27		300.00	3375.
	5-27-27	100.00		3275.
10	5-31-27	230.00		3045.
	6-11-27		250.00	3295
	6-13-27		155.00	3450
	6-18-27	200.00		3250
	6-20-27	200.00		3050
	6-27-27	25.00		3025
	7-5-27		130.00	3155.
	7-18-27	Int. July 1, 1927	55.39	3210.39
	7-18-27	155.00		3055.39
	7-25-27		95.00	3150.39
20	7-30-27	100.00		3050.39
	8-2-27	50.00		3000.39
	8-15-27	350.00		2650.39
	8-22-27	50.39		2600.00
	8-23-27		70.00	2670.00
	8-29-27	270.00		2400.00
	9-6-27		100.00	2500.00
	9-8-27	200.00		2300.00
	9-10-27	200.00		2100.00
	9-17-27	150.00		1950.00
30	9-20-27	150.00		1800.00
	9-20-27	100.00		1700.00
	9-24-27		150.00	1850.00
	10-1-27	150.00		1700.00
	11-2-27	50.00		1650.00
	11-7-27		600.00	2250.00
	11-10-27	350.00		1900.00
	11-21-27	80.00		1820.00
	11-25-27		300.00	2120.00
	11-30-27		100.00	2220.00
40	12-10-27	120.00		2100.00

Defendants' Exhibits.

12-19-27	350.00		1750.00	
1-12-28	Int. Jan. 1, 1928	33.33	1783.33	
1-12-28	33.33		1750.00	
1-16-28	250.00		1500.00	
1-23-28	100.00		1400.00	
2-3-27	275.00		1675.00	
2-11-28		65.00	1740.00	10
2-20-28	150.00	150.00	1590.00	
2-23-28	150.00		1440.00	
2-23-28	50.00		1540.00	
3-2-28		110.00	1650.00	
3-7-28		305.00	1955.00	
3-12-28		30.00	1985.00	
3-19-28	150.00		1835.00	
3-23-28		160.00	1995.00	
4-3-28		30.00	2025.00	
4-4-28		85.00	2110.00	20
4-9-28		30.00	2140.00	
4-10-28		30.00	2170.00	
4-16-28	70.00		2100.00	
4-20-28		50.00	2150.00	
5-10-28	200.00		1950.00	
5-24-28		850.00	2800.00	
5-26-28	50.00		2750.00	
6-6-28	100.00		2650.00	
6-19-28	150.00		2500.00	
7-3-28		65.00	2565.00	30
7-6-28		246.00	2811.00	
7-14-28	Int. July, 1928	36.63	2847.63	
7-14-28	50.00		2797.63	
7-18-28	30.00		2767.63	
7-18-28	50.00		2717.63	
7-23-28	117.63		2600.00	
7-28-28		190.00	2790.00	
8-6-28		150.00	2940.00	
8-20-28	175.00		2765.00	
9-7-28		60.00	2825.00	40

Defendants' Exhibits.

	9-17-28	75.00		2750.00
	9-18-28	50.00		2700.00
	9-21-28	125.00		2575.00
	10-8-28		100.00	2675.00
	10-15-28	175.00		2500.00
	10-27-28	50.00		2450.00
	11-5-28	325.00		2125.00
10	11-10-28		110.00	2235.00
	11-19-28	105.00		2130.00
	12-1-28	30.00		2100.00
	12-3-28		185.00	2285.00
	12-6-28		165.00	2450.00
	12-18-28	100.00		2350.00
	12-26-28	25.00		2325.00
	1-5-29	25.00		2300.00
	1-1-29		42.61	2342.61

20

Exhibit D. 28.

Declaration of Trust by Evelyn V. Kraemer:

"To all to whom these presents shall come,
I Evelyn V. Kraemer, of the City of Newark,
County of Essex and State of New Jersey,
send Greetings:

30 WHEREAS, on the 20th day of October,
1927, Joseph A. Weissman, of the City of
Newark, County of Essex and State of New
Jersey, in consideration of One Dollar and
other good and valuable considerations to
him in hand paid, by deed under his hand
and seal did grant and convey unto me in
fee all his remaining undivided one half in-
terest, right and title in the premises situated
in the City of Newark, County of Essex and
State of New Jersey, and more particularly
described as follows:

BEGINNING at the southwest corner of
Isabella Avenue and Grove Terrace; thence

40

Defendants' Exhibits.

running westerly along the southerly line of Grove Terrace one hundred (100) feet; thence southerly parallel with Isabella Avenue thirty-seven and five tenths (37.5) feet; thence easterly parallel with the first course one hundred (100) feet to Isabella Avenue; thence northerly along the same thirty-seven and five tenths (37.5) feet to the place of BEGINNING. 10

Being the northerly one-half of lot #13 and all of lot #14 on map of Melrose Manor.

NOW KNOW YE THAT I, Evelyn V. Kraemer (single) do, in consideration of one dollar (\$1.00) to me in hand paid by Lena Kraemer Weissman, of the City of Newark County of Essex and State of New Jersey, hereby make known, admit and declare that said premises were so conveyed to me, and that I now hold and will continue to hold the same in trust. Only, for the use and benefit of the said Lena Kraemer Weissman, of the City of Newark, County of Essex and State of New Jersey, her heirs, executors, administrators and assigns, and that I have no beneficial interest therein. 20

AND I do further admit and avow that the consideration moneys expressed in said deed was paid by the said Lena Kraemer Weissman.

AND I do for myself, my heirs, executors, administrators covenant and agree to and with the said Lena Kraemer Weissman, her heirs, executors, administrators and assigns, and that I, my heirs, or executors, shall and will convey the said premises or any part thereof by a good and sufficient deed to the said Lena Kraemer Weissman, or her assigns whenever and as soon as I or they shall be thereunto requested, in writing under the seal of the said Lena Kraemer Weissman, free of courtesy, and clear and discharged of and from all and every encumbrance thereon by me or my heirs; and that I or my heirs shall not do or knowingly suffer or permit any act deed, matter or thing 30 40

Exhibit C. 22.

whereby or by means whereof said premises,
or any part thereof, can, shall or may be
in anywise impaired, injured or encumbered
in title, interest, estate, or otherwise, how-
ever.

10 IN WITNESS WHEREOF, I have hereunto
set my hand and affixed my seal this 20th
day of October, Nineteen Hundred and
Twenty-Seven.

EVELYN V. KRAEMER

Signed, Sealed and delivered
in the presence of
Thomas Potter

Exhibit C. 22.

20

West Side Plumbing Supply Co.

Joe Grunt, Prop.

38-40 Sixteenth Avenue

Newark, New Jersey, Oct. 31, 1927 No. 4401

Springfield Avenue Trust Company

Pay to the order of Jos. A. Weissman \$200.00

Two Hundred Dollars

JOE GRUNT

30

Endorsed:

Jos. A. Weissman

(In Yiddish) Lena Kraemer

40

New Jersey Court of Errors and Appeals

Between

JOSEPH GRUNT, trading as
West Side Plumbing Supply
Company,

Complainant-Appellant,

and

JOSEPH A. WEISSMAN, *et al.*,
Defendants-Appellees.

On Bill, &c.

*On Appeal
from Decree
in Chancery.*

Hon. E. R.
Walker, C.

Hon. Maja
Leon Berry,
V.-C.

BRIEF OF COMPLAINANT-APPELLANT.

Statements of Facts.

This appeal presents for review a decree which dismisses a bill of complaint which sought to set aside as fraudulent certain conveyances made by the defendant, Joseph A. Weissman to his relatives.

On October 11, 1927, the defendant, Joseph A. Weissman, transferred his undivided 14/15ths interest to the property at Nos. 461-463 South Tenth street, Newark, New Jersey, to his cousin, the defendant, Abe J. Weiss. On October 20, 1927, Joseph A. Weissman, conveyed his undivided one-half interest in the property at No. 159 Isabella avenue, Newark, New Jersey, to his step-sister, the defendant, Evelyn V. Kraemer.

At the time that Joseph A. Weissman made these transfers of all his property, he was indebted to the complainant in a sum close to \$10,000.00 and some months after these conveyances, complainant brought a suit against Joseph A. Weissman in the Essex County Circuit Court

which resulted in a verdict in complainant's favor.

On the very same day, viz., October 20, 1927, that Joseph A. Weissman executed a certain bond which formed the basis of one of the counts in the action at law upon which the judgment in the law court was rendered, he also executed a deed to his step-sister, the defendant Evelyn V. Kraemer, for his undivided one-half interest in the Isabella avenue, Newark, New Jersey, property (Case, p. 35, l. 39; Case, p. 36, l. 1). The deed for the Tenth street property Joseph A. Weissman had conveyed to his cousin, the defendant, Abe J. Weiss. nine days previously on October 11, 1927.

The deeds by which these transfers were effected each recited a consideration of One Dollar (Case, p. 35, ll. 34-36), and were given at a time when Joseph A. Weissman was in financial trouble (Case, p. 36, ll. 30-32).

Despite the testimony adduced at the trial, the learned Vice-Chancellor declined to set aside the conveyances by which Joseph A. Weissman had stripped himself of any property which might possibly have satisfied the complainant's debt or at least a very substantial part of it. The decree thus rendered forms the subject of this appeal.

The questions here to be considered are:

1. Were the conveyances by Joseph A. Weissman to his relatives fraudulent as to his creditors?
2. Was the weight of the evidence such as to justify the making of a decree dismissing the bill?

3. Was the decree in consonance with the established principles of law governing this case?

The inquiries will be dealt with under three headings:

POINT ONE: The transfers by Joseph A. Weissman were fraudulent as to his creditors.

POINT TWO: The decree dismissing the complainant's bill was contrary to the weight of the evidence.

POINT THREE: The decree was contrary to the law.

POINT ONE.

The transfers by Joseph A. Weissman were fraudulent as to his creditors.

This point involves an analysis and consideration of the facts and circumstances surrounding the transfers by Joseph A. Weissman.

It is to be remembered that Joseph A. Weissman in October, 1927, owed the complainant about \$10,000.00 for plumbing supplies which complainant had furnished. In order to secure complainant, Joseph A. Weissman joined in the execution of a bond. This bond was executed on October 20, 1927 (Case, p. 35, l. 40). On that very day, October 20, 1927, Joseph A. Weissman gave to his step-sister, Evelyn V. Kraemer, a deed for the last parcel of property in which he owned an undivided one-half interest. This deed to Evelyn V. Kraemer was admittedly without consideration (Case, p. 36, ll. 20-22).

By this conveyance and the one he made nine days before that, viz., on October 11, 1927, when he parted with his 14/15ths interest in the prop-

erty on Tenth street, Newark, Joseph A. Weissman had completely divested himself of all his real estate holdings and his only assets. For the evidence is clear that his equity in the Isabella avenue property was about \$6,000.00 (Case, p. 71, l. 27) and his equity in the Tenth street property was about \$8,000.00 (Case, p. 72, ll. 3 and 30) or a total of \$14,000.00. Stripping himself in this manner, left him absolutely without any means of satisfying his debt to complainant.

Can it be said that Joseph A. Weissman's intentions were honest, that they were not tainted with fraud? Knowing that he was deeply indebted to complainant and that he was in insolvent circumstances, Joseph A. Weissman transferred all he possessed to his relatives and left himself completely destitute of any assets which might be convertible into cash. Is there any doubt but that he made these transfers actuated by a fraudulent intent?

In his noted work on *Equity Jurisprudence* (Fourth Edition) Professor Pomeroy in Sec. 972, page 2109, states:

Sec. 972, page 2109:

"The intent (to defraud) will be inferred when the grantor was or is left insolvent, or if the conveyance deprives him of the means of paying his debts, or if he was so largely indebted that it would be reasonable to suppose that he contemplated his inability to pay his debts, or, as many cases hold, if he was so largely indebted that the conveyance would materially interfere with his ability to meet his obligations."

Sec. 973, page 2111:

"Finally, it may be laid down as a doctrine generally accepted, that if a person, being at the time indebted, makes a volun-

tary conveyance of his property to such an extent that he is left actually insolvent, or wholly unable to pay his existing debts, or that it is reasonable to suppose he contemplated his consequent inability to pay, or even that it is reasonably doubtful whether he is able to meet his obligations, then the conveyance will be fraudulent and void as against his subsequent as well as his existing creditors."

In 27 *Corpus Juris*, 493 (Sec. 146, par. 9), the following statement of law appears:

"The transfer of all or nearly all of his property by a debtor, especially when he is insolvent or greatly embarrassed financially, is a badge of fraud, not being in the usual course of business." Citing *Moore v. Row*, 35 E. 90; *Embury v. Klemm*, 30 E. 517; affirmed 31 E. 797.

In New Jersey numerous decisions are to be found which in circumstances like those which exist in the instant case, impel the Courts of Equity to grant relief to a creditor and result in the setting aside of fraudulent conveyances. The following are a few instances:

In *Hagerman v. Buchanan*, 45 E. 292, Mr. Justice Reed, in pronouncing the judgment of the Court of Errors and Appeals, said:

"Against the attack of a creditor belonging to this class (a prior or existing creditor), neither the motive which induced the deed, nor the solvency of the grantor at the time of its execution, nor any other circumstances which might bear upon the *bona fides* of the parties to the conveyance, is important. *Fraud is the legal conclusion arising from the contemporaneous occurrence of the two facts; namely, a voluntary deed, and an existing debt due by the grantor.*"

This decision is also followed in the case of *Gardner v. Kleinke*, 46 E. 90; 18 A. 457.

“When an existing creditor attacks the conveyance and shows that his debt was incurred before and was existing at a time when the conveyance was made, the law, without further proof, raises a conclusive presumption of fraud so far as a creditor is concerned.” *Washington National Bank v. Beatty*, 77 E. 292.

When it is recalled that the consideration in the deeds which were the subject of attack in the Court below, recited a nominal consideration of One Dollar, the case of *Ruppert v. Hurley*, 47 A. 280, takes on added significance for it holds:

“Where nominal consideration is mentioned in a deed, the burden of proof is on the grantee to show payment of a valuable consideration.”

In the rather recent case of *Conway v. Raphael*, 141 A. 804 (6 N. J. Ad. Rep. 812), emphasis was laid upon Section 4 of the Uniform Fraudulent Conveyance Act of 1919 which provides that:

“Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration.”

As to whether or not a fraudulent intent was in the mind of Joseph A. Weissman at the time that these impugned transfers were made can very well be resolved by the application of the principle laid down by Chief Justice Beasley in the case of *Demarest v. Terhune*, 18 E. 532, where the Chief Justice found the fact to be:

“A debtor having property which, at a fair valuation, is ample to justify all that he owes, transfers such property, by way of

sale and payment, to one of his creditors; such creditor being a near relative."

The Chief Justice goes on to say:

"No one, it is presumed, will deny that such a transaction is well calculated to excite suspicion and awaken vigilance."

The Court held that the conveyance, which was found to be in part voluntary, should be set aside upon equitable terms and these required the land to be sold, the proceeds of such sale to be applied, first, to pay the debt due the creditor who held the conveyance and after the payment of costs of both parties, to the satisfaction of the judgment of the complainant.

In *Warner v. Withrow*, 56 E. 795, Vice-Chancellor Pitney in deciding a fraudulent conveyance case said:

"A man in his circumstances has no right to give away his property, or to sell it at a price much below its value, for the sake of getting ready money, and preventing his property going to pay his debts; and I think that, when such a case arises, the inclination of a court of equity should be to hold the transaction a mortgage, instead of an absolute sale, as was done in the case of *Demarest v. Terhune*, 18 E. 532 * * *."

Vice-Chancellor Garrison in a very learned opinion in the case of *Horton v. Bamford*, 79 E. 356, enunciated a number of important guiding principles of the law relating to fraudulent conveyances. In that case the Court held that, since an agreement between Joseph and Walter Bamford to hinder, delay or defraud the creditors could not be proved, it would not declare null and void the transfer *in toto* because actual fraud was not sufficiently proved. However, the Court held that *persons dealing with a failing debtor are chargeable with such facts as they*

would have learned had they properly investigated, provided facts were brought to their attention which would lead a reasonable man in like circumstances to investigate. 62 A. 421. The law is that if one is affected with such knowledge and purchases the property of the debtors, even in the absence of proof of a participation with the debtors in an intention to hinder, delay and defraud creditors of the debtor, he must either pay approximately the value of the property that he takes of the debtor, or take the risk of being held for any inadequacy if it is of such an amount as to show that the sale to him was not a fair and proper one under the circumstances. 18 N. J. E. 542.

Applying to the facts in this case the legal principles above enunciated, the conclusion is inevitable that the conveyances by Joseph A. Weissman were made with a fraudulent intent and are consequently void.

POINT TWO.

The decree dismissing the complainant's bill of complaint was contrary to the weight of the evidence.

Section 2, paragraph 1, of the Uniform Fraudulent Conveyance Act, 1 C. S. C. S. 647, provides:

"A person is insolvent when the present fair salable value of his assets is less than the amount that will be required to pay his probable liability on his existing debts as they become absolute and matured."

Section 4 of that statute reads as follows:

"Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obli-

gation is incurred without a fair consideration."

In the case at bar, no doubt exists but that Joseph A. Weissman was insolvent, because in his opening, counsel for Joseph A. Weissman stated that the latter from 1924 to 1927 "gradually fell into a deeper and deeper financial trouble" (Case, p. 36, ll. 29-32). At the time of the transfer of the properties, Joseph A. Weissman, to quote from his testimony, "was short of money" (Case, p. 56, l. 12). On page 65 of the State of the Case, line 22, etc., the cross examination of Joseph A. Weissman took the following form:

"Q What was it that induced you to make these deeds on these particular dates: one on the eleventh and one on the twentieth of October, 1927?

A I needed more money to carry on business.

Q You had just been relieved of Grunt's debt by signing a bond on the twentieth of October, 1927?

A Yes.

Q That wasn't pressing you at that time?

A The bond?

Q Yes.

A No.

Q What was it that made you need money on that day?

A I wasn't collecting any payments.

Q How did you need money to pay on the eleventh of October?

A I had to complete that bankrupt building.

Q On the eleventh of October, 1927?

A Yes.

Q And then did you want some funds; were you in need of cash?

A Yes, to pay for labor.

Q Is that what you needed?

A Yes, and expenses.

Q Was that the situation on October 20, 1927?

A Yes.

Q You were in need of cash?

A No; I had credit; I needed cash.

Q What cash did you get from either Miss Kraemer or Mr. Weiss when you gave them these deeds on that day?

A What cash did I get?

Q Yes.

A I didn't get any cash."

The conveyance in October of 1927 not only rendered Joseph A. Weissman improvident but totally insolvent. Thus Joseph A. Weissman's case falls squarely into the provisions of the Uniform Fraudulent Conveyance Act above set forth.

Moreover, the adequacy or inadequacy of the consideration is an important element to look at in connection with other factors. Joseph A. Weissman transferred his one-half interest in the Isabella avenue property to his step-sister, Evelyn V. Kraemer. No actual consideration passed for this conveyance, but the transaction is sought to be upheld by spelling out a trustee relationship between Evelyn V. Kraemer and her mother, the defendant, Lena Kraemer Weissman. The daughter claimed that she advanced no money but that her mother did and that she, Evelyn V. Kraemer, merely held the naked title for her. Bearing in mind that her mother, Lena Kraemer Weissman, took a direct conveyance for an undivided 1/15th interest in the property on South Tenth street, Newark, when it was originally purchased, the question arises, why could she not also take a direct conveyance of the property on Isabella avenue in her own name? Why take it in the name of her daughter? Why all this concealment of the real identity of the title-holder?

And even if this transaction between close relatives, whose dealings Chief Justice Beasley in his opinion in the case of *Demarest v. Terhune*, 18 E. 532, says should be looked upon with askance,——even if this transaction were to be regarded as *bona fide*, still the question persists, was the consideration adequate?

The proof indicated that the consideration was inadequate because at the most, if the story of Joseph A. Weissman and his step-mother, Lena Kraemer Weissman, is to be believed, the latter was indebted to the former in the sum of about \$4,200.00, whereas, Joseph A. Weissman's equity in the property was in the neighborhood of \$6,000.00, thereby indicating that there was an inadequacy in the consideration to the extent of about \$2,000.00. So far as the consideration for the transfer to Abe J. Weiss of the Tenth street, Newark, property, is concerned, if the story related by Joseph A. Weissman and his cousin, Abe J. Weiss, is to be given full credence, all that Joseph A. Weissman owed to his cousin was \$6,000.00, whereas, his equity in the property was in the neighborhood of \$8,000.00, thereby indicating an inadequacy of consideration of approximately \$2,000.00; and the total \$4,000.00 is a fairly substantial sum, in the face of the indebtedness of Joseph A. Weissman to the complainant, Joseph Grunt, in the sum of \$10,000.00 and upwards.

Vice-Chancellor Berry, who heard this case, remarked in his opinion (Case, p. 138, l. 36) that he was not much impressed with the testimony of Abe J. Weiss respecting the item of jewelry for which Abe J. Weiss claimed that the defendant, Joseph A. Weissman, was indebted to him in the sum of \$1,800.00 or \$2,000.00. The transaction involving the notes which purported to be

executed by Joseph A. Weissman and which tended to give color to the statement of his indebtedness to Lena Kraemer Weissman and also to Abe J. Weiss was far from satisfactory and, if anything at all, rather threw a shadow of doubt and suspicion upon the fabric which the defendants wove.

From the testimony it appeared that a number of notes were given by Joseph A. Weissman to Lena Kraemer Weissman and to Abe J. Weiss and that when the notes reached the aggregate of \$1,000.00 a new note was executed for that amount which was to take the place of the notes for the smaller sums which aggregated the \$1,000.00. Whether or not this was true is very seriously doubted by complainant, particularly in view of the failure to produce the notes in the smaller sums and an instance of the sort is to be found in the testimony which developed in the cross examination of the defendant, Lena Kraemer Weissman (Case, p. 110, l. 30, etc.):

“Q Two of the checks which you have here and the only two that have been produced, are dated September 9, 1927, each for \$1,000. Do you remember those notes?

A Yes.

Q And I suppose those notes were made up of smaller notes which he owed you at that time?

A Yes.

Q September 9, 1927?

A Yes.

Q Those notes are each for \$1,000?

A Yes.

Q Did you get any notes from Weissman after September 9, 1927, remembering that you got a deed from him on the 20th day of October, 1927, for the property?

A I don't remember when he gave me, but I know so much money I had.

Q These notes of September 9, 1927, appear to be the only ones that are here,

and yet you say here that you loaned him money on September 10th and 17th and 20th and 20th again, and October 1, 1927?

A Whatever it is in the book.

Q It is not in the book, is it?

Q I don't know, but I loaned it; maybe I had money in the house.

Q Let us assume you loaned him the money; did you take a note for these little payments?

A Maybe I had money in the house; I got money all the time in the house.

Q Are you sure it is in the book?

A I told you I don't know.

Q I want to know whether everything you loaned Weissman was taken out of the bank book?

A Not all; sometimes I had money home.

Q What money was it that you gave him from the house and which was not in the book?

A I don't know; I cannot remember.

Q The last note you got is dated September 9, 1927; on the 10th of September, you gave him, according to your answer here, \$200, on the 17th, \$150, and on the 20th, \$150 and \$100, and on October 1st, \$150 more, and you don't appear to have any notes for that?

A I have notes; I give it to you.

Q You gave him those notes?

A I gave you all the notes; I had over \$4,000 notes.

Q If that were so, there should be five more notes?

A Why?

Q Because there are five more payments on five different dates.

The Court: She said she kept the small notes and when they amounted to a thousand dollars, she took a thousand dollar note for it.

Mr. Unger: There are only two notes or three notes, I have it, representing these loans of money which she says she

made. She says she gave four notes at the time that this conveyance was made to Weissman, three of a thousand dollars and one of twelve hundred dollars; she produced here three notes, one of which is not in the transaction, but she produced two notes of a thousand dollars each, both dated September 9, 1927.

Mr. Potter: The fact that she does not produce the other two notes isn't conclusive against her, by any means, and these other two may have been dated later than September 9th.

Mr. Unger: There would have to be five to correspond with the payments here.

The Court: What do the loans amount to?

Mr. Unger: \$750 after that time; so under her story there would necessarily have to be given notes aggregating \$750.

The Court: There are payments after September 9th aggregating \$750?

Mr. Unger: Yes, commencing September 10th.

The Court: I see what you are getting at. Now if her story is true, then there should be five notes for these amounts less than a thousand dollars, because they didn't aggregate a thousand dollars."

Besides the non-production of the five notes above mentioned, another suspicious instance is the fact that on the same date, to wit, September 9, 1927, two notes each in the sum of \$1,000.00 were executed by Joseph A. Weissman to the order of Lena Kraemer (Exhibits D. 3 and D. 4, Case, p. 145, l. 30, etc.), one payable on demand and the other payable ninety days after date, and according to the testimony although they bear the same date, they seem to have been executed at different times and with different inks and for which there is no satisfactory explanation.

With regard to these notes the following testimony of Joseph A. Weissman is rather enlightening (Case, p. 53, l. 4, etc.):

“Q What was this entire note of September 9, 1927, given for?

A The note on white paper for a thousand dollars, what was that given for? For cash money received.

Q When?

A When they totaled up a thousand dollars and she got the note.

Q You have another note here dated September 9, 1927, totaling up to a thousand dollars. How do you account for that?

A That is where the money came in and it totaled up.

Q Why didn't you put the two notes in one?

A What is the difference if it is one thousand or two thousand? If I carried a hundred notes and they were consolidated into one, that would be a different story.

Q These notes were given the same day?

A They probably were.

Q Were they or were they not?

A If they are dated the same, they must be.

Q And did you sign at the same time?

A They must have been.

Q I see one is written in nice heavy black ink and one in pale green ink.

A We can give you half a thousand inks in the house.

Q You signed them with different pens?

A I don't know. There are lots of pens in the house.

Q Who made out the note of September 9, marked D. 3, in black ink?

A I think that is my handwriting.

Q Who made out the one of September 9, 1927, in light green ink, marked D. 4?

A This is Mrs. Kraemer's handwriting.

Q So that you made out one and someone else made out the other?

A Yes.

Q Do you recall the transaction when you signed these two notes?

A I don't put anything indelible in the head."

Another important instance to which consideration ought to be given is the fact that Evelyn V. Kraemer who is an attorney-at-law of New Jersey represented her step-brother, Joseph A. Weissman, and his cousin, Abe J. Weiss, as well as her mother, Lena Kraemer Weissman. In the cross examination of Joseph A. Weissman (Case, p. 68, l. 25) the following questions and answers appear:

"Q Who represented Mr. Weiss, the purchaser?

A Mr. Weiss was represented by Miss Kraemer.

Q So that the same one was representing both?

A Yes."

In the cross examination of Miss Evelyn V. Kraemer (Case, p. 124, l. 20, etc.) the following questions were asked:

"Q You represented her (Lena Kraemer Weissman) at the closing?

A Yes.

Q You were in a law office?

A Yes.

Q Mr. Potter's office?

A Yes.

Q And you took care of the closing for her?

A Yes. I did.

Q And I suppose at that closing, which wasn't any different than the ordinary closing a man was turning over a piece of property, and he was entitled to whatever equity he had in it?

A Yes.

Q And he was to pay, or allow whatever he owed your mother at that time?

A Yes.

Q Did you have a computation of figures at that time?

A I computed it with my mother.

Q Did you compute it with Mr. Weissman?

A No.

Q Did you make any closing sheet?

A We never did—none of the closings between my mother and him.”

It impresses one that when representing a purchaser or seller of real estate and a sale of the property is consummated, that the ordinary and the proper thing for an attorney to do is to draw up a statement of closing which will clearly reflect the entire transaction, what debits exist and what credits are given. When dealing with relatives, in order that there may not be even a suggestion of any suspicion attending the transaction, even more careful should an attorney be to prepare a closing statement to show how figures are arrived at and how the consideration is made up. In the case at bar, no closing sheet was prepared, no apportionment of taxes or insurance or water rents or anything of any sort was computed; no figure was arrived at as to the interest of the seller in the building and loan backshares; no writing of any sort took place except the execution of the deed. Were the transactions and the title closings between Joseph A. Weissman and Abe J. Weiss, in one instance, and the former, and Lena Kraemer Weissman in the other instance, regular, *bona fide* and not open to question? The answer is, no!

Thus the foregoing instances illustrate that the weight of the evidence was clearly against the defendant and in favor of the complainant, and the decree dismissing the complaint was made in the face of the overwhelming and very convincing evidence which existed in favor of the complainant.

POINT THREE.

The decree was contrary to the law.

Since it has been established that the conveyances by Joseph A. Weissman to his relatives was voluntary, without the support of an adequate consideration and fraudulent as to his creditors, these transfers should be set aside.

However, if the learned Vice-Chancellor was right in his determination that the conveyances were not totally lacking in consideration, then it is respectfully submitted that in dismissing the bill of complaint, the learned Vice-Chancellor inadvertently committed error.

The very least that the Vice-Chancellor should have done for the complainant was to have decreed that to the extent to which the defendants, Lena Kraemer Weissman and Abe J. Weiss, respectively, had advanced moneys to the defendant, Joseph A. Weissman, a lien should be impressed in their favor against the respective properties conveyed to the said Lena Kraemer Weissman and Abe J. Weiss, and that the properties should be sold and out of the proceeds of the sale, after satisfying the undisputed encumbrances and the respective debts of the said Lena Kraemer Weissman and Abe J. Weiss, the surplus should go to the complainant.

This view of the law is supported by substantial authorities, among them the following:

“In the absence of satisfactory proof of actual fraud, a transfer by a debtor will be sustained to the extent of the consideration actually given, and declared void as to the residue, the amplified principle being that where a court of equity is asked to set aside a deed as voluntary and fraudulent as against creditors, and the evidence is not sufficient to induce the court to avoid the

deed absolutely, but merely excites a well grounded suspicion as to the adequacy of the consideration and the fairness of the transaction, the court will permit the conveyance to stand as security for the consideration actually given." *Horton v. Bamford*, 79 E. 356.

"If a deed or transfer absolute on its face is made only as security for a loan, or an antecedent debt, it will be considered a mortgage, and the fact that it was so made may be shown by parol." *Phillips v. Hulsizer*, 20 E. 308.

In the case of *VanKeuren v. MacLaughlin*, 19 E. 187, it was held:

"Where the grantee of lands, alleged to have been conveyed to him in fraud of creditors, has a bona fide claim for a large amount, which the conveyance was honestly made to secure and the whole fraud is in a subsequent transaction, he will be allowed to retain his priority to the amount of his debt, and the property will be sold to pay him, in the first place, the amount of his claim, and next, the amount due judgment creditors."

See also the cases of:

DeCamp v. Crane, 19 E. 166;

Clark v. Condit, 18 E. 358;

Sweet v. Parker, 22 E. 453;

Kline v. McGuckin, 24 E. 411;

Papsco v. Novak, 121 A. 518.

Upon this ground, therefore, there is reversible error affording ample justification for a reversal of the decree.

SUMMARY.

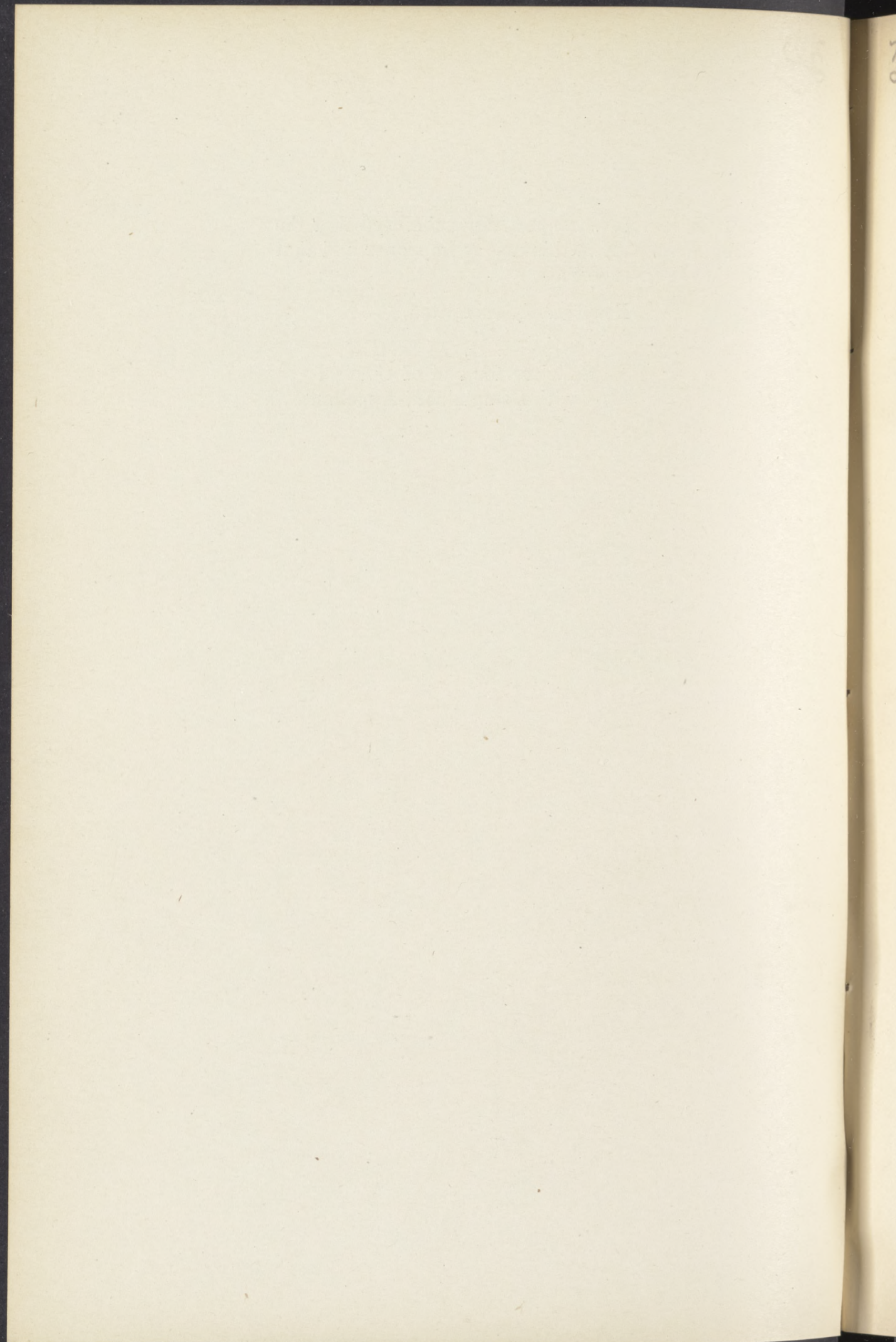
A careful review of all the facts in this case and the very many suspicious circumstances which attended the transfers of the properties of the defendant, Joseph A. Weissman, clearly indicate that the transfers were made with a fraudulent intent and with the purpose of hindering, defeating and delaying creditors of Joseph A. Weissman, particularly, the complainant, and the case comes squarely within the provisions of the Uniform Fraudulent Conveyance Act.

Moreover, the weight of the evidence was such as to justify the making of a decree which would invalidate the conveyances. The learned Vice-Chancellor in rendering his decision said that he was not much impressed with the testimony of Mr. Weiss respecting the jewelry, but in view of the fact that his testimony stood uncontradicted, he felt he had no alternative but to dismiss the bill of complaint. In coming to his conclusion we feel that the learned Vice-Chancellor was in error, because if he did not believe Mr. Weiss then the latter's testimony had no probative value at all and it was the duty of the Vice-Chancellor to completely disregard it as unworthy of belief. If it was not entitled to credence, the complainant was not obliged to contradict it except by cross examination and we feel certain that a reading of the cross examination of Mr. Weiss (Case, pp. 85-97) will show how impossible was his whole story, and similarly the cross examination of Mrs. Weissman (Case, pp. 104-120) shows that her alleged loans to Joseph A. Weissman were pure fiction. The weight of the evidence was in favor of the complainant.

It is, therefore, respectfully submitted that the decree rendered in this case is improper and that it should be reversed.

Respectfully submitted,

MICHAEL G. ALENICK,
Solicitor for and of Counsel
with Complainant-Appellant.



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New Jersey Court of Errors and Appeals

Between

JOSEPH GRUNT, trading as West
Side Plumbing Supply Com-
pany,
Complainant-Appellant.

and

JOSEPH A. WEISSMAN, *et al.*,
Defendants-Appellees.

On Bill, &c.

On Appeal from
Decree in
Chancery.

Hon. E. R.

Walker, C.

Hon. Maja Leon

Berry, V. C.

BRIEF OF DEFENDANTS-APPELLEES.

Statements of Facts.

This is an appeal from a decree of Vice-Chancellor Berry. The bill was to set aside two conveyances executed by the defendant Weissman as being in fraud of the complainant Grunt.

On October 11, 1927, the defendant Weissman conveyed to his cousin, Abe J. Weiss, his 14/15ths interest in certain property known as #461 South 10th Street, Newark, New Jersey. On October 20, 1927, the defendant Weissman conveyed to his step-sister, Evelyn V. Kraemer, his 1/2 interest in property known as #159 Isabella Avenue, Newark, New Jersey. The property conveyed to Evelyn V. Kraemer was conveyed to her as trustee for her mother, who is the step-mother of the complainant Weissman. The defense raised and proved was that both conveyances were made for a fair consideration. The conveyance to Abe J. Weiss was made in consideration of the cancella-

tion of an antecedent debt in the sum of \$5,600.00. The undisputed testimony (State of the Case, p. 131, ll. 25 and 26) was that the 10th Street property was worth \$13,000.00. On this property there was a mortgage held by the Fourteenth Ward Building and Loan Association for \$7,500.00, dated December 7, 1925 (State of the Case, p. 149, Exhibit D-21), which, at the date of the conveyance, was paid down to the sum of \$6,300.00, making the 10th Street property worth \$6,700.00 on the date of conveyance, from which sum is to be deducted a 1/15th interest of Lena Kraemer Weissman, making it worth \$6,258.00. The Isabella Avenue property on the date of conveyance, according to the undisputed testimony, was given a value of \$18,000.00 (State of the Case, p. 132, l. 4), upon which there was a building and loan mortgage held by the Fourteenth Ward Building and Loan Association dated September 10, 1924, in the sum of \$10,000.00 (State of the Case, p. 151, Exhibit D-25), which mortgage, on the date of conveyance, was paid down to \$7,765.00, leaving the value on that date at \$5,616.00. The Isabella Avenue property was conveyed in consideration of the cancellation of an antecedent debt owing to Lena Kraemer Weissman in the sum of \$4,200.00, and in further consideration of the payment by her of \$950.00, making a total of \$5,150.00. The conveyances attacked show on their faces the consideration of \$1.00. Complainant offered both conveyances in evidence and rested his case. The defendants then introduced the testimony of six witnesses. There was no further testimony on behalf of complainant, and the whole testimony in this case on complainant's behalf consisted of cross-examination of the defendants' witnesses.

POINT ONE.

The transfers by Joseph A. Weissman were not fraudulent as to his creditors.

In urging the negative of the above heading of Point One, the appellant first contends that the defendant, Joseph A. Weissman, by the conveyances of October 20th and October 11th, 1927, divested himself of all his real estate holdings and his only assets. This statement is unsupported in the evidence, and there is nothing therein to show that Weissman had no other assets left after these two conveyances. Nor does appellant refer to any part of the testimony which brings this point out. To support his contention, appellant quotes voluminously from the learned treatise of Professor Pomeroy on *Equity Jurisprudence*. These principles of equity are uncontradictable and would be overwhelming were they in any way appropriate to the appellant's contention. But unfortunately, the principles whereby a Court of Equity must be guided in a case such as the case at bar are contained at length in the *Uniform Fraudulent Conveyance Act* of the State of New Jersey (P. L. 1919, chapter 213). That act provides, in sections one and two, what insolvency shall consist of, and lays down the following definition:

“A person is insolvent when the present fair salable value of his assets is less than the amount that will be required to pay his probable liability on his existing debts as they become absolute and matured.”

Appellant's remarks infer insolvency or a liability to become insolvent on the part of the defendant Weissman, but there is no testimony whatsoever before this Court or the Court below

that the defendant Weissman's condition in any way approached the qualifications laid down in this rule.

There then follows a suggestion that the testimony in this case shows an intent to defraud creditors in general on the part of the defendant Weissman. No evidence, however, is adverted to to support such a contention. Appellant cites many cases, among them the case of *Demarest vs. Terhune* (18 N. J. E., 532); *Warner vs. Withrow* (56 N. J. E. 795); *Horton vs. Bamford* (79 N. J. E., 356), and other cases as authority for the Appellate Court to find an intention to defraud on the part of the defendant Weissman.

Taking these cases in order, the case of *Demarest vs. Terhune* was a bill to set aside conveyances made by a debtor to his uncle. The conveyances were made for the cancellation of a debt of \$3,000.00, and the property was proven to be worth from \$5,000.00 to \$6,000.00. The uncle, who was the grantee, already held mortgages on the land to cover a part of his indebtedness. The Court held that the conveyance made to the uncle was not an actual fraud, but that on account of the inadequacy of the consideration and on account of the fact that the deed extinguished a mortgage lien already upon the land, the transaction must be taken to have been security only, and the decree was so settled.

In the case of *Withrow vs. Warner*, a debtor owing \$10,000.00 conveyed to Withrow, after suit on the \$10,000.00 had started, land for the consideration of \$11,397.35. \$2,500.00 of this was paid in cash, and the rest represented assumptions of and cancellation of mortgages, judgments and taxes which were liens upon the land. The \$2,500.00 in cash was paid by the grantee in a most extraordinary manner. \$1,195.00 was paid at least a month before the title passed, and the

balance in various small sums ranging from \$500.00 to \$20.00, and by checks drawn on four or five different banks and at different times. The opinion of the Court does not say what value was attributed to the land conveyed. In this case again, no actual fraud was found, but due to the suspicious circumstances and to the inadequacy of the consideration the conveyance stands as security only.

In the case of *Horton vs. Bamford*, the debtor transferred to his brother, securities having a book value of \$314,000.00 in consideration of a \$5,000.00 debt, and even when faced with this gross discrepancy between the book value and the consideration, the Court still found no actual fraud, and permitted the transfer to stand as security only.

Not a single one of the cases cited by appellant bears out his contention that the testimony shows the conveyances under consideration to be fraudulent. The law touching the proof of an actual intent to defraud is cited only in one case, to wit, the *Withrow vs. Warner* case above, where the Court sets down the following rule:

“The concession, if warranted, had weight only as against an absolute avoiding of the deed. To work such a result it is necessary that it should appear that the grantee had knowledge of or participated in the fraudulent intent of the grantor; but where, in such a suit as is involved in this appeal, the evidence, though not sufficient to induce the court to avoid the deed absolutely on the ground of fraud, is sufficient to excite a well-grounded suspicion as to the adequacy of the consideration and the fairness of the transaction, the court will permit the conveyance to stand only as security for the consideration actually given.”

With this rule in mind, and holding in mind that the complainant offered no testimony whatsoever of the participation of the grantees in the fraud, the point may be dismissed without further consideration.

A great point is made by the appellant of the fact that on October 20, 1927, the date upon which the bond was executed by him on which the judgment in the Essex County Circuit Court was founded, the defendant, Joseph A. Weissman conveyed away his last interest in the Isabella Avenue property. On that day, he owed a book account to the complainant Grunt in the approximate sum of \$10,000.00. That indebtedness, presumably, then took the form of a bond in the sum of \$12,000.00, which bond was made payable to one Joe Cagan. The defendant, Joseph A. Weissman had on that day settled his debt temporarily with the complainant Grunt, who took in lieu of an open book account a bond payable in six months. Is it surprising, or is it an indication of fraud, that on that day he should have chosen to settle his debt also with his step-mother? For on the same day, the complainant Grunt obtained not only a bond signed by the defendant Weissman and two other parties, but also a mortgage on the property of one James Cupola. This testimony, and the bond and mortgage do not appear in the transcript or in the State of the Case upon which this appeal is based, but are to be found in State of the Case under the title of Joseph A. Weissman and Joseph Grunt, which case was tried in consolidation with the case at bar. Since the appellant has chosen to refer to matters which are not properly in the present State of the Case, this appellee takes the liberty of pointing out to the Appellate Court that the testimony in the above case cited might well be considered in deciding this appeal.

A close scrutiny of the *Uniform Fraudulent Conveyance Act*, above cited, will show that when an intention to defraud is proved, all conveyances shall be set aside, but it is here urged that an intention to defraud cannot be proved without testimony, and inasmuch as the complainant has offered no testimony other than the deeds themselves, it is a vacant argument which now urges this court to such a conclusion.

POINT TWO.

The decree dismissing the complainant's bill of complaint was not contrary to the weight of the evidence.

The appellant predicates his argument under this point upon the theory that all conveyances which render a party insolvent are fraudulent, and that the admissions of the defendant Weissman in his testimony shows that he was rendered insolvent by these conveyances. This predication is not only false in law, but also untrue in fact. Two statements made by the defendant Weissman are used to prove a confession of insolvency. Insolvency has a definite legal meaning. In cases of this kind, the definition is found in the *Uniform Fraudulent Conveyance Act*, above cited, which states:

“A person is insolvent when the present fair salable value of his assets is less than the amount that will be required to pay his probable liability on his existing debts as they become absolute and matured.” (P. L. 1919, c. 213, sec. 2 (1).)

The only language relied upon by the complainant is the expression of defendants' counsel: “gradually fell into a deeper and deeper financial trou-

ble", and the excerpts from the testimony of the defendant Weissman (State of the Case, page 36, lines 29 to 32; State of the Case, page 56, line 12; and State of the Case, page 65, line 22, etc.), the purport of which testimony is that he was pressed for money, and was making frequent loans from every available source to carry on his business. This does not constitute proof of insolvency. But apart from the consideration of the testimony and the attenuated inferences which appellant chooses to draw from the remarks therein, the *Uniform Fraudulent Conveyance Act* (above cited), which appellant quotes to his own disadvantage, provides in *Section Four* that any conveyance which renders the grantor insolvent shall be deemed fraudulent, unless it is made without a fair consideration, and as the main defense dealt entirely with a fair consideration, the fallacy of appellant's argument is plain. The latter part of appellant's argument under Point One deals with the question of the adequacy of consideration. Adverting for a moment to the *Uniform Fraudulent Conveyance Act*, above quoted, the words "adequate" or "inadequate" have no place therein. The question deals entirely with the fairness of the consideration. Section Three of the *Uniform Fraudulent Conveyance Act* is quoted at length:

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

(a) When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or

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

value of the property, or obligation obtained." (L. 1919, c. 213, p. 501.)

The wording of this statute raises the standard whereby the court of equity will be assisted in judging as to fairness of consideration given. The statute demands that the amount of the present advance or antecedent debt cancelled be not disproportionately small as compared with the value of the property. The challenge, therefore, which appellant raises to the opinion of the learned vice-chancellor below is based upon the assumption that the sum of \$5,150.00 is disproportionately small as compared to \$5,616.00, and that the sum of \$5,600.00 is disproportionately small as compared to the sum of \$6,258.00. It requires no citation of law nor any exposition of fact to demonstrate to a mind, gifted with the ordinary powers of mathematics, the fallacy in such an argument. These figures stand undisputed in the testimony. The debt of Weissman to Lena Kraemer Weissman, and the payment of actual cash at the time the conveyance was made is shown in *State of the Case* on page 40, line 17, and page 56, lines 14 to 24. The debt of the defendant Weissman to Abe Weiss is proved in *State of the Case* on page 80, lines 14 and 15.

The next substantial point raised under Point Two of the brief directs the Appellate Court's attention to the fact that this whole transaction was confined to members of the same family, and the case of *Demarest vs. Terhune* (18 N. J. E., 532) is cited as authority for the rule that transactions between close relatives should always be looked at askance. This case, decided in 1867, was based upon an apparent inadequate consideration. Since that time there have been numerous cases in our courts which deal more particularly with the question of conveyances between relatives.

That a failing debtor may prefer his creditors and that his natural instinct would lead him to prefer a relative who is a debtor rather than a stranger, has been made the law in this state in numerous cases. The case of *Atlantic Refining Co. vs. Josiah Stokes* (77 N. J. E., 119, Chancery 1910, Leaming, V. C.) was a bill to set aside conveyances, and the defense was that the grantor had preferred a creditor. The Court in disposing of this question, made the following statement:

“The law controlling controversies of this nature is well defined. So far as the powers of this court extend it is the right of an individual who is in failing circumstances or insolvent to prefer one of his creditors; and it is also the right of any creditor of such an individual, acting honestly and in good faith, to obtain security from his debtor to secure the debt, or to extinguish the debt by purchasing property of the debtor which is of the same value as the credits surrendered. The limitations upon these rights are to be found in a want of integrity of purpose upon the part of the preferred creditor.”

The case of *Roe vs. Moore* (35 N. J. E., 526, Errors and Appeals 1882, Knapp, J.) was a bill to set aside conveyances made by a son to his mother. The court found that the debt of the mother was an honest one, and that she did not participate in any fraudulent scheme, and no inference of fraud was allowed by the Court because of the relation of mother and son without the added proof of her fraudulent intention.

The case of *Silvers vs. Potter* (48 N. J. E., 539, Chancery 1891, Green, V. C.). In disposing of the question as to whether or not a conveyance to near relatives, which constituted a preference, although the consideration was valid, was fraudulent, the Court said as follows:

“It was entirely competent, under the decisions in this state, for Lewis to convey his interest in discharge of an indebtedness to his mother or sisters and brother, and if the same was done in good faith it was perfectly good as against his other creditors, being only a preference given by him to the claim of his relatives over that of the others. There is nothing in the evidence to show that the value of one-sixth of this estate was worth more than \$900, the amount advanced to him by his mother, nor do I discover any indications of fraud to even bring suspicion on the transaction, or to defeat the contention of the defendants that this was not a voluntary conveyance of any interest Lewis had, if he in fact had any.”

The case of *Kessler vs. Smith* (2 Miscellaneous, 1119, Buchanan, V. C.), was a bill to set aside conveyances made by a debtor to his brother and sister for an honest debt. Against an attack on this conveyance the court says:

“He says he made this conveyance to his brother and sister in order to pay that debt so that they might have that preference. It is, of course, well settled that he had the right to do so, and they had the right to accept such preferential payment.”

In the case of *Assets and Liabilities Association vs. S. Pozito* (95 N. J. E. 585), a deed between husband and wife was upheld on similar grounds.

Appellant's contention that these transactions should be regarded with utmost suspicions is perhaps true, but if the suspicion is applied and the consideration is found to be fair and bona fide, no indication of fraud can be stressed because the transaction occurred between members of the same family.

The appellant closes his argument under this heading, in which he urges the court that the de-

cree was contrary to the weight of the evidence, by citing the many suspicious instances brought forth in the testimony for the Court's consideration. The testimony of the indebtedness between Joseph A. Weissman and his step-mother, Lena Kraemer Weissman, shows that Mrs. Weissman loaned to Joseph Weissman sums of money as he demanded them from time to time, which money she withdrew from her savings account in the Springfield Avenue Trust Company. On October 20, 1927, the date of the conveyance, this indebtedness amounted to \$4,200.00 (State of the Case, page 40, line 18), and he had been borrowing money from her since September, 1926. There was offered in evidence three notes signed by Joseph Weissman to Lena Kraemer Weissman, or Lena Kraemer, as she was sometimes known, for \$1,000.00 each (State of the Case, page 145, Exhibit D-2, Exhibit D-3, Exhibit D-4). The testimony of Mrs. Weissman was that she had advanced money in small sums, and when the amount got to be \$1,000.00 she would take a note. The last note for \$1,200.00 was not offered in evidence, inasmuch as it could not be found. This note, it was testified to, was returned on October 20th, when the conveyance was executed (State of the Case, page 103, line 21). The appellant points out that the failure to produce at the trial the notes for the small amounts which were given back when the \$1,000.00 notes were made out, is a suspicious incident in the proof. But it must be pointed out on the behalf of defendants that not only had these notes been lost, but also that the final note for \$1,200.00, which was not produced at the trial, was missing. The whole tenor of the appellant's contention on this point is that the notes were fabricated for the occasion. If this is so, why did not the defendants fabricate the fourth note? Why, also, did they not fabricate

the lesser notes which were turned in when the larger notes were made? In the opinion of the Court (State of the Case, page 138), the vice-chancellor, who had the opportunity of examining the notes and hear the witnesses at first hand, makes the following observation:

“Those notes that were offered in evidence were obviously, I think, not manufactured for the occasion. They bore evidence of having been in the possession of somebody from the time of their dates until the present time, because in two or three instances I note that they fell apart while handling here at the trial. That is an indication to me that they were bona fide notes.”

Another suspicious circumstance pointed out by the appellant is the fact that defendant, Lena Kraemer Weissman, the grantee of the Isabella Avenue property, took that property in her daughter's name. The Court's attention is called to the testimony of the complainant, which deals with this circumstance. In 1924, the defendant, Joseph A. Weissman, and his step-mother, the defendant Lena Kraemer Weissman, purchased a piece of property on Isabella Avenue in the name of Joseph A. Weissman (State of the Case, page 150, Exhibit D-22; State of the Case, page 38, line 32, to page 39, line 23). On June 27, 1924, because of the fact that the defendant, Lena Kraemer Weissman, had supplied the money to purchase the lot, the defendant, Joseph A. Weissman, transferred to the defendant, Evelyn V. Kraemer, a $\frac{1}{2}$ interest in the whole lot (State of the Case, page 150, Exhibit D-24; State of the Case, page 98, line 37, to page 99, line 21). On May 8, 1926, Joseph A. Weissman conveyed to Evelyn V. Kraemer a $\frac{1}{2}$ interest in part of the Isabella Avenue property (State of the Case, page 145, Exhibit D-1). The consideration for this was paid

by the defendant Lena Kraemer Weissman (State of the Case, page 101, lines 21 to 40). In order to protect her interest in the land at this time, the defendant, Lena Kraemer Weissman, had a trust deed drawn by her attorney showing the interest retained on May 8, 1926, which deed appears in evidence (State of the Case, page 151, Exhibit D-26). On October 20, 1927, all that remained to the defendant Joseph A. Weissman of the Isabella Avenue property was a $\frac{1}{2}$ interest in the remaining portion of the land. This he conveyed in the deed which is under attack, to Evelyn V. Kraemer, and simultaneously therewith, another trust deed was executed in favor of the defendant Lena Kraemer Weissman, which was offered in evidence, and appears in State of the Case, on page 156, Exhibit D-28. This testimony and these deeds were offered in evidence to show that the defendant Lena Kraemer Weissman, who had married a second time, did not wish to own this property in her own name, and that the system of conveying the property to her daughter dates back to 1924, long before the alleged straitened circumstances of the defendant, Joseph A. Weissman, occurred, and long before the complainant Grunt gave any consideration to this bill.

Lastly, it is urged that when the conveyances were executed, they were executed in the office of the defendant, Evelyn V. Kraemer, who is a licensed attorney at law, and that there was no closing statement made out at the time. No indication of invalidity could possibly be drawn from such a suggestion. In dealings between relatives, it is unlikely that they will go to the added expense of employing counsel to represent them, and more especially is this so when the grantee in the transaction receives a deed of conveyance of real estate in cancellation of a debt. The title to the land in the case of the Isabella Avenue property was to the extent of a $\frac{1}{2}$ interest already

in the name of Lena Kraemer Weissman, who accepted the conveyance of the other half for the deed. She took what she knew to be a good title, and she took whatever was offered to her in payment of the debt.

No serious consideration can be given to Point Two of the appellant's brief, which deals with the weight of the evidence. All of the evidence before the Court was the evidence of the defendants. The complainant produced none. The learned vice-chancellor below was convinced that the evidence supported the defense. All of the inferences, and appellant's brief is strictly confined to inferences, were in the mind of the vice-chancellor when the opinion was made. How could it be said that the decree was against the weight of the evidence when the evidence of the defendant stands wholly uncontradicted?

POINT THREE.

The decree was not contrary to the law.

Under this heading, appellant urges that the conveyances, if not proved to be fraudulent, should be declared to be security only for the defendants' indebtedness, and should be sold, and the surplus of the proceeds of the sale applied to the complainant's debt.

This interesting theory is admittedly a sound principle of equity in certain cases. But before the principle will apply, one of two elements must first be found. One, that the conveyances were not conveyances in fact, but were given merely as security. Two, that the conveyances were absolute, and that the consideration, although paid in good faith, was disproportionate to a fair valuation of the property.

In considering the second theory, it is urged again that the defendant Weissman's interest in the Isabella Avenue property amounted to \$5,-

616.00, and the indebtedness cancelled amounted to \$5,150.00, and that in the case of the 10th Street property, the value of his interest in the property amounted to \$6,258.00, and his indebtedness cancelled, to \$5,600.00. It is true that in both cases the indebtedness cancelled is less than the proven value of the property conveyed, but there is another element to be considered. A fractional interest in a house and lot can not be said to equal a fractional portion of the fair mortgage value of the whole. Consideration must be given to the fact that in one instance the defendant Weissman had a half interest in a house and lot to sell, and in the other instance, a 14/15ths interest in a house and lot to sell. A purchaser might easily have been found to purchase the whole for a fair market value, but there are not many customers in the market for a 14/15ths interest in real estate, or any other fractional portion thereof. A fractional division of title to real estate seriously diminishes the value of it as compared to the value of the whole, and could this co-efficient of partial ownership be applied with any precision to the numerical value of the defendant Weissman's title in either case there can be no serious doubt but that a fair market value of his interest would be even less than the amount of indebtedness cancelled.

In both instances the Court found that the conveyances were made in good faith and for a fair consideration, and as to the question of the disproportion of the figures, it is urged that they are not disproportionately at variance.

As to the other theory that the conveyances were made for security only, there is nothing in the testimony to indicate that such was the case. The testimony of two absolute conveyances stands uncontradicted. In the cases cited by appellant upholding his theory, the case of *Phillips vs. Holsizer* (20 N. J. E., 308), was a case which dealt with deeds made only as securities. This is also

true of the case of *VanKeuren vs. MacLaughlin* (19 N. J. E., 187). In the case of *Horton vs. Bamford* (79 N. J. E., 356), the Court found that the deeds were absolute and not given as security, but that the circumstances of the transaction excited a well grounded suspicion as to the adequacy of the consideration and the fairness of the transaction. This case dealt with the transfer of certain shares of stock in consideration of the payment of \$5,000.00. The stock had a value on the books of \$314,000.00. There can be no doubt but that the consideration was so grossly inadequate, albeit that the intention of the transfer was honest, as to require an impression of trust upon the balance of the value. The fairness of the transaction stands impeached upon the face thereof, and the theory of equity which the case expresses and which arose from such a transaction is well put. But the case at bar contains no such discrepancies between consideration and value therefor, and the rule can not apply.

It is therefore submitted that the learned Vice-Chancellor below was correct in dismissing the bill on the grounds that all the testimony before him induced him to believe that the conveyances attacked were made in consideration of the cancellation of bona fide antecedent indebtednesses, and in the one case for an additional payment of \$950.00 in cash; that the conveyances were absolute; that the title to the property passed irrevocably to the grantee, and that the consideration for the conveyances was not disproportionately small as compared to the value of the interest conveyed.

Respectfully submitted,

POTTER & BERRY,
Solicitors of Defendant-Appellee.

RAYMOND H. BERRY,
Of Counsel.

