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SUMMONS.

(Issued September 12, 1928.)

THE STATE OF NEW JERSEY, TO SADIE CADES, INDIVIDUALLY; AND LEWIS LIBERMAN AND EDWIN CADES, EXECUTORS OF THE ESTATE OF AARON S. CADES, DECEASED, GREETING:

You are summoned to answer the annexed complaint of Ashor Salaman, in an action at law in the New Jersey Supreme Court.

(Seal)

And take notice that unless you file your answer to said complaint with the clerk of the New Jersey Supreme Court, at Trenton, New Jersey, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

Witness, WILLIAM S. GUMMERE, Chief Justice of the New Jersey Supreme Court, at Trenton, N. J., this twelfth day of September, 1928.

FRED L. BLOODGOOD,
Clerk.

AUG. B. REPETTO,
Attorney for Plaintiff.

COMPLAINT.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

ASHOR SALAMAN, *Plaintiff*, v. SADIE CADES, individually; and LEWIS LIBERMAN and EDWIN CADES, Executors of the Estate of AARON S. CADES, deceased, *Defendants.*	Action at Law. Complaint.

The plaintiff, Ashor Salaman, of the City of Philadelphia, State of Pennsylvania, respectfully shows:

1. On or about November 26, 1926, defendants, Sadie Cades and her husband, Aaron S. Cades, in his lifetime, agreed in writing to purchase from one Martin I. Isen, a certain bond and mortgage in said agreement described, for the sum of $45,000.00, on account of which $20,000.00 has already heretofore been paid, leaving a balance due of $25,000.00, which by the terms of said agreement became due and payable within one year thereafter, to wit, on November 26, 1927.

2. Said agreement was fully performed by the parties thereto, except the said balance of $25,000.00

which has not yet been paid. On or about March 19, 1927, said Aaron S. Cades and Sadie Cades, filed their bill of complaint in the Court of Chancery of New Jersey, seeking a decree that said agreement be rescinded.

3. Subsequently, on or about December 14, 1927, the said Aaron S. Cades departed this life and on December 18, 1927, letters testamentary were issued by the surrogate of Camden County in this State to Edwin Cades and Lewis Liberman, executors named in his last will and testament.

4. Subsequently, on or about February 1, 1928, by order duly entered in said suit in the Court of Chancery of New Jersey, the executors aforesaid were substituted in the place and stead of Aaron S. Cades as complainants therein.

5. On February 28, 1928, by a final decree duly entered in said suit in the Court of Chancery of New Jersey it was ordered, adjudged and decreed that the said bill of complaint be and the same was thereby dismissed, it appearing to the Court that all the substantial allegations to the bill were untrue. A copy of said final decree is hereunto annexed and made a part hereof by this reference and marked Exhibit "A."

6. By reason of said final decree the controversies between the parties thereto became *res judicata;* and there became due and payable from Sadie Cades, and Edwin Cades and Lewis Liberman, executors of the estate of Aaron S. Cades, deceased, the said sum of $25,000.00 with interest from November 26, 1927, as more fully hereinabove set forth, payable to said Martin I. Isen.

7. On March 26, 1928, said Martin I. Isen, filed proof of claim with said executors demanding, by reason of the facts aforesaid, $25,000.00 with lawful interest from November 26, 1927; and due and legal service of said proof of claim was acknowledged by the proctor of said estate. A copy of said proof of claim, together with the acknowledgment of service aforesaid, is annexed hereto and made a part hereof by this reference and marked Exhibit "B."

8. Thereafter, on or about June 6, 1928, and prior to the commencement of this suit, said executors notified said Isen that the said claim was and is disputed and disallowed, a copy of which disallowance is annexed hereto and made a part hereof by this reference and marked Exhibit "C."

9. Thereafter, said Isen assigned to plaintiff, his said claim against the defendants by an assignment in writing duly recorded, which assignment is in the possession by the plaintiff, ready to be produced at the trial of this case.

Wherefore, plaintiff demands of the defendants, Sadie Cades, and Lewis Liberman and Edwin Cades, executors of the estate of Aaron S. Cades, deceased, the sum of $25,000.00 with interest thereon from November 26, 1927, with costs of suit.

AUG. B. REPETTO,
Attorney for Plaintiff.

EXHIBIT "A."

IN CHANCERY OF NEW JERSEY

Between
AARON S. CADES, et ux.,
Complainants,
and
MARTIN I. ISEN, et al.,
Defendants.

On Bill &c.
DECREE OF DISMISSAL

THIS MATTER coming on to be heard, upon Defendant's Order to Show Cause why Complainant's Bill should not be dismissed with costs; said Order to Show Cause and the Petition upon which the same is based having been served as by said Order directed and an acknowledgment of said service having been filed herein;

AND this Court, by an Order made on the twenty first day of February, 1928, having substituted Lewis Liberman and Edwin Cades, Executors of the Estate of Aaron S. Cades, deceased, in the place and stead of Aaron S. Cades, one of the Complainants to this Suit;

AND it further appearing that due notice of said motion to dismiss this Suit has been served upon said Executors;

And it further appearing that after Answers were filed on behalf of both Defendants, the Complainants failed to file any Replication or to take any other step in the Cause within the time required by Rule 77 of this Court nor at any other time;

And it further appearing by affidavit of Martin I. Isen, one of the Defendants, that all of the substantial allegations of Complainants' Bill are untrue; and no cause being shown to the contrary:

IT IS, thereupon, on this 28th day of February, 1928, on motion of Carlton Godfrey, Solicitor for Martin I. Isen and Kwass Realty Co., the Defendants herein, ORDERED ADJUDGED and DECREED that Complainants' Bill be and the same is hereby dismissed:

And it is further ORDERED that said Defendants have and recover from the Complainant Sadie Cades and of Lewis Liberman and Edwin Cades, Executors and Aaron S. Cades, deceased, the Defendants' costs of this Suit to be taxed, including a counsel fee of One hundred and fifty Dollars which is hereby allowed Defendants and ORDERED to be taxed as part of Defendants' costs, to be collected from the Complainants according to the Rules and the usual practice of this Court in such cases.

E. R. Walker

C.

Respectfully advised:
R. H. Ingersoll
V. C.

EXHIBIT "B."

IN THE CAMDEN COUNTY SURROGATE'S COURT.

In the matter of the estate of Aaron S. Cades, deceased } PROOF OF CLAIM.

STATE OF NEW JERSEY }
COUNTY OF ATLANTIC }

MARTIN I. ISEN, of full age, being duly sworn according to law, upon his oath deposes and says:

1. On or about November 26, 1926 deponent entered into a written agreement whereby Aaron S. Cades, now deceased agreed to pay to the Equitable Trust Company of Atlantic City for the account of deponent, the sum of Twenty-five thousand dollars in cash in consideration of the covenants in said agreement set forth, and particularly in exchange for certain other real estate in said agreement mentioned.

2. By the terms of said agreement the said sum of Twenty-five thousand dollars was to have been paid within one year from the date of the agreement or on or before November 26, 1927.

3. No part of said sum of twenty-five thousand dollars was paid on or before November 26, 1927 nor at any other time, and the full amount thereof is still due and owing to deponent from the estate of said Aaron S. Cades, now deceased.

Deponent therefore demands the sum of twenty-five thousand dollars with lawful interest from November 26, 1927 up to the date of payment.

Martin I. Isen

Sworn and subscribed to
before me this twenty-sixth
day of March, A. D. 1928

IN THE CAMDEN COUNTY SURROGATE'S COURT

In the matter of the estate of Aaron S. Cades, deceased

ACKNOWLEDGMENT OF SERVICE

Due and legal service of Proof of Claim on Behalf of Martin I. Isen acknowledged as of March 26, 1928.

Lewis Liberman
Proctor for the Executors
Edwin S. Cades and Lewis
Liberman.

EXHIBIT "C."

To: Carlton Godfrey, Esq.,
Attorney of Martin I. Isen,
Guaranty Trust Bldg.

You are hereby notified that the undersigned dispute your claim amounting to Twenty-five Thousand ($25,000.00) Dollars, against the Estate of Aaron S. Cades, deceased, presented by you on behalf of and as attorney for Martin I. Isen, to them as executors of the said estate.

Dated:
Camden, N. J. June 6th 1928.

Lewis Liberman
Edwin Cades.
Executors of the Estate of
Aaron S. Cades, deceased.

ASSESSMENT OF DAMAGES BY CLERK.

(Entered October 5, 1928.)

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

ASHOR SALAMAN, *Plaintiff,* v. SADIE CADES, individually; and LEWIS LIBERMAN and EDWIN CADES, Executors of the Estate of AARON S. CADES, deceased, *Defendants.*	Action at Law. Assessment of Damages.

This action is brought to recover money due and owing from the defendants to the plaintiff, as more fully set forth in the complaint on file in the above cause.

Total sum due	$25,000.00
Interest from November 26, 1927 to October 4, 1928	1,283.36
Total	$26,283.36

Interlocutory judgment by default having been duly entered against the defendants in the above-stated cause, in favor of the plaintiff, and no rule for a writ of inquiry, or for an assessment of dam-

ages by the Court, having been entered by the said defendants within the time required by law, or at any time since (the Court not being actually in session), and I being satisfied that the above statement and calculation are correct, in pursuance of the statute in such case made and provided do assess the damages of said plaintiff at the sum of $26,283.36, besides costs to be taxed.

Dated: October 5th, 1928.

FRED L. BLOODGOOD,
Clerk.

RULE FOR JUDGMENT BY DEFAULT.

(Entered October 5, 1928.)

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

ASHOR SALAMAN, *Plaintiff,* v. SADIE CADES, individually; and LEWIS LIBERMAN and EDWIN CADES, Executors of the Estate of AARON S. CADES, deceased, *Defendants.*	Action at Law. Rule for Judgment by Default.

The summons and complaint in this cause having been duly served upon the defendants, Lewis Liber-

man and Edwin Cades, executors of the estate of Aaron S. Cades, deceased, on the day of October, 1928, and the defendants, having failed to file an affidavit of merits and having failed to take any other steps in response to said complaint within the time limited by the rule of the Court.

It is ordered that judgment interlocutory be entered against the defendants, Lewis Liberman and Edwin Cades, executors of the estate of Aaron S. Cades, deceased, and in favor of the plaintiff, Ashor Salaman.

And the damages of the plaintiff, having been assessed by the clerk of the Court, at the sum of $26,283.36.

It is ordered that judgment final be entered against the defendants, Lewis Liberman and Edwin Cades, executors of the estate of Aaron S. Cades, deceased, and in favor of the plaintiff for the sum of $26,283.36 with costs to be taxed.

FRED L. BLOODGOOD,
Clerk.

On motion of
AUG. B. REPETTO,
Attorney.

Rule entered this 5th day of October, 1928.

TESTIMONY TAKEN BEFORE SUPREME COURT COMMISSIONER ON NOVEMBER 7, 1928.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

ASHOR SALAMAN, *Plaintiff,* v. SADIE CADES, *et al.*, *Defendants.*	Action at Law. On Rule to Show Cause. Depositions.

Atlantic City, N. J., November 7, 1928.

Depositions before CLAUDE W. MYROSE, Supreme Court Examiner.

Depositions taken before Claude W. Myrose, Supreme Court Examiner, on Wednesday, November seventh, 1928, at eleven o'clock in the forenoon, in the Law Library, Real Estate & Law Building, Atlantic City, N. J., in the presence of August B. Repetto, Esq., attorney for plaintiff; James N. Butler, Esq., of Messrs. Moore and Butler, attorneys for Equitable Trust Company, and Morris Bloom, Esq., attorney for Isaac D. Sinderbrand.

It is stipulated and agreed by and between counsel for the respective parties that the depositions shall be taken stenographically, afterwards reduced to typewriting, and the signatures of the various witnesses waived.

It is stipulated and agreed by and between counsel for the respective parties that the testimony on the application of Equitable Trust Company and Isaac D. Sinderbrand shall be taken together, as in one proceeding, and such testimony when taken shall be used on the argument on the return of the rule to show cause granted on the application of the two parties above mentioned.

Mr. Repetto: This stipulation is made conditional that it shall be proven that the parties, Sinderbrand and Equitable Trust Company, have a right to intervene in the suit, my contention being that they have not shown any right to intervene in the suit between Salaman and Cades.

Mr. Butler: I offer in evidence mortgage made by Kwass Realty Company to Martin I. Isen, dated October first, 1926, to secure the sum of $45,000 payable at any time within three years, said mortgage being recorded in the clerk's office of Atlantic County on the sixth day of October, 1926, in Book 422 of Mortgages, page 439, etc., covering property situate at the northeast corner of Georgia and Fairmount Avenues, Atlantic City, New Jersey.

Mr. Repetto: I object to the admission of these papers in evidence on the ground that they have no relevancy to the case, as the action is pending between Salaman and Cades, who are neither parties

to the mortgage nor in any wise interested in the bond and mortgage and assignment.

(The mortgage was marked Exhibit E1.)

Mr. Butler: I offer in evidence a bond made by Kwass Realty Company, a New Jersey corporation, to Martin I. Isen, the date being blank, given to secure the penal sum of $90,000, for the payment of the just sum of $45,000, payable at any time within three years from the date thereof, together with the warrant accompanying the same.

Mr. Repetto: I object to the admission of these papers in evidence, on the ground that they have no relevancy to the cause, as the action is pending between Salaman and Cades, who are neither parties to the mortgage nor in any wise interested in the bond and mortgage and assignment.

(The bond was marked Exhibit E2.)

Mr. Butler: I offer in evidence an assignment of mortgage from Martin I. Isen to Equitable Trust Company a banking corporation of New Jersey, bearing date December sixteenth, 1926, said assignment covering the mortgage just mentioned and marked Exhibit E1, which assignment was recorded in the clerk's office of Atlantic County on December eighteenth, 1926, in Book 87 of Assignments of Mortgages, at page 3.

Mr. Repetto: I object to the admission of this paper in evidence on the ground that it has no relevancy to the case, as the action is pending between Salaman and Cades, who are neither parties to the

mortgage nor in any wise interested in the bond and mortgage and assignment, and the further objection that the paper has been altered by having words apparently added to the assignment after the execution of the assignment.

(The assignment was marked Exhibit E3.)

Mr. Butler: The offer is made excepting therefrom the pencil marks which appear upon the face of the instrument as follows: "Convention garage, Ga. and Fairmount Aves." I offer in evidence articles of agreement between Aaron S. Cades and Sadie, his wife, and Martin I. Isen, dated November twenty-sixth, 1926, acknowledged on November twenty-seventh, 1926, together with the certificate of acknowledgment.

(The paper was marked Exhibit E4.)

Mr. Butler: I offer in evidence promissory note in the sum of $20,000, dated October first, 1926, wherein Kwass Realty Company, Martin I. Isen, president; Norman Kwass, secretary; agree to pay Equitable Trust Company the sum of $20,000, which note bears the endorsement of Martin I. Isen, and assigns to the Equitable Trust Company certain collateral therein mentioned.

Mr. Repetto: As it appears by the record in this case, this note, together with the other note, is objectionable for the reason that suit was instituted by Equitable Trust Company against the makers of the note, together with the maker of a $7500 note, and the claim reduced to judgment. For that reason it is objected to. There has been a merger of the claim on the notes in the judgment.

(The note was marked Exhibit E5.)

Mr. Butler: I offer in evidence note dated July fifth, 1927, to Equitable Trust Company, in the sum of $7500, made by Martin I. Isen, which assigns to the Equitable Trust Company collateral therein mentioned.

Mr. Repetto: As it appears by the record in this case, this note, together with the other note, is objectionable for the reason that suit was instituted by Equitable Trust Company against the makers of the note, together with the makers of the note marked Exhibit E5, and the claim reduced to judgment. For that reason it is objected to. There has been a merger of the claim on the notes in the judgment.

(The note was marked Exhibit E6.)

Mr. Butler: Mr. Repetto, I call upon you to produce the letters dated December seventh, 1926, written to Martin I. Isen by George W. Brown, Jr., vice-president and trust officer of the Equitable Trust Company, and a letter likewise dated December seventh, 1926, written by George W. Brown, Jr., vice-president and trust officer of Equitable Trust Company, to Aaron S. Cades.

Mr. Repetto: We have not the original letters, but we have no objection and will agree that the copy that you produce may be copied in the record.

Mr. Butler: I offer these copies of the letters just mentioned and ask that they be copied in the record.

(The letters were marked Exhibits E7 and 8, and copies are appended hereto.)

It is stipulated and agreed by and between counsel for the respective parties that a judgment was entered by Equitable Trust Company against Martin I. Isen, and Kwass Realty Company on May twelfth, 1928, in the Supreme Court of New Jersey, in the sum of $22,227.72, the judgment being for the claims represented by the two notes marked Exhibits E5 and 6.

DAVID C. REED, sworn.

Direct examination.

By Mr. Butler:

Q. Mr. Reed, you are vice-president of the Equitable Trust Company, the petitioner in this matter?

A. I am.

Q. I show you two notes, E5 and E6, and ask you whether or not those notes have been paid?

A. No, they haven't. The original notes have been given a credit, but the notes haven't been paid in full.

Q. Has there a part of the notes been paid?

A. The one note of $20,000 was given a credit of $5100, reducing it to $14,900, credits being for $5000 certified check cashed and credited to the note, and $100 for the amount of the bid on the sale of the collateral under the note. The $7500 note was credited by a $1500 payment by the cashing of a certified check and crediting it to the note.

Q. Was the collateral that is mentioned in this note of $20,000 purchased by the Equitable Trust Company?

A. Yes.

Q. After the giving of these notes just mentioned did you have any negotiations with Martin Isen respecting the payment of them?

A. I had negotiations with him probably fifteen or twenty different times.

Q. Do you recollect any concrete form which those negotiations took, any proposition on his part or on the part of the bank?

A. Well, under various promises from Isen, he promised at some times to give additional collateral, at another time he promised to give us a deed to the Convention Garage.

Q. Did he give you that deed?

A. He made a deed, but did not have the seal of the corporation on it and for that reason it wasn't acceptable and never recorded. I still have the deed. At various times he came in and discussed with me the advisability of settling his claim with Cades' estate.

Mr. Repetto: I object to that as being too indefinite, the advisability of settling with Cades' estate. I think that is a matter of conclusion as to what he thought might be advisable. I object to it.

A. He also asked what amount we would accept on payment of our claim against him and Kwass on our judgment out of the proceeds that he would settle with the Cades estate. He told me in the presence of a witness that Cades had offered him, or the executors of the Cades estate ——

Mr. Repetto: I object to that as irrelevant, because the plaintiff in this case would not be bound by any conversation had between this witness and Isen, it not being in the presence of Mr. Salaman. Therefore, I ask that all this testimony regarding conversations had out of the presence of Mr. Salaman be stricken out.

A. Mr. Isen asked the trust company, through me as its officer ——

Mr. Repetto: In order to avoid interrupting the witness, I make a general objection that any conversations or negotiations which this witness may have had in the absence of the plaintiff, Mr. Salaman, with Mr. Isen or any other person are not binding upon the plaintiff, Mr. Salaman.

Q. At the times which you have mentioned had Isen, so far as you know, assigned the claim against the Cades estate to the plaintiff, Salaman?

A. He positively said he hadn't.

Q. Now proceed.

A. Mr. Isen asked the trust company, through me, to give him a full credit of $10,000 on the Koury mortgage, what is known as the Koury mortgage, under the loan of $6000, and to accept in settlement $8000 from the $16,000 or $18,000 he was to get from the executors of the Cades estate, and see what arrangement I could make with Mr. Sinderbrand to cancel his judgment by a payment of a lesser amount than the judgment and a guaranty for the full payment for both the bank and Sinderbrand by either security or an endorser of some kind.

Q. Did Isen ever during these negotiations make any claim that the moneys due ——

Mr. Repetto: I object to the question as being leading.

Q. ——from Cades belonged to him or that they belonged to the bank?

Mr. Repetto: I object to that as being leading and irrelevant to the issue.

A. Mr. Isen agreed and admitted ——

Mr. Repetto: Which did he do, agree or admit?

A. He agreed and admitted, both, that after our judgment and a lien on the equity in his interest in what was known as the Cades mortgage, that he ceased to have any interest whatever, and the bank had full right and title to all of his interest in that particular mortgage, and went, as I said in my previous testimony, so far as to give us a deed to the Convention Garage, so that if we bought the mortgage we wouldn't have to go to the trouble of foreclosure.

It is stipulated and agreed by and between counsel for the respective parties that the judgment of the Equitable Trust Company against Martin I. Isen and Kwass Realty Company, a New Jersey corporation, is unpaid, being the same judgment previously referred to, obtained by the Equitable Trust Company on May twelfth, 1928, in the New Jersey Supreme Court.

Cross-examination.

By Mr. Repetto:

Q. Mr. Reed, you referred to a mortgage just a few moments ago. What mortgage did you have reference to?

A. I referred to the $45,000 trust mortgage ——

Q. What mortgage?

A. The $45,000 mortgage on the Convention Garage at Georgia and Fairmount Avenues which was placed in trust in the Equitable Trust Company under an agreement between Martin Isen and Cades—I don't know his first name at all.

Q. Aaron Cades?

A. Aaron Cades.

Q. You mean it was left in escrow?

A. It was left in escrow. Left in trust, of course, in our trust department in escrow, under which particular mortgage ——

Q. Wait. You have answered the question.

A. I have got a right to finish what I have to say about the mortgage.

Mr. Repetto: I object to that as being more than responsive.

Q. You said it was agreed and admitted by Mr. Isen a few moments ago. In what form was the agreement?

A. Verbal agreement entirely.

Q. What was the agreement? Just state the substance of it.

A. Mr. Isen admitted to me that he had no further interest in any manner in his particular share of the particular mortgage referred to, the $45,000

mortgage, that he wanted the bank to have that particular mortgage, and was willing to do everything in his power to see that we got it, until he went back on his word, which he always has done.

Q. That is what you call the agreement, just what you have stated?

A. Yes.

Q. Now referring to Exhibit E5, you held for the payment of the amount named in that note of $20,000 certain securities as specified?

A. As specified in the note.

Q. And all of those securities were sold, as I understand your testimony?

A. We have first the bond and mortgage. That was sold. The assignment of bond and mortgage by the Winchester Development Company to Kwass, I don't know anything about as to—that was in escrow in the title company. I don't know what proceedings that came under. You will have to get that information from Moore and Butler's office. That, I think, it still in litigation in some manner. The other is a deed to the Equitable Trust Company—I can't read it.

Mr. Butler: "Deed from the undersigned"—that is Kwass—"to said Equitable Trust Co., dated October first, 1926, covering four tracts of land described in deed from Winchester Development Company."

A. That is still in litigation. I think the deed to the four tracts of land from the Winchester Development Company to Kwass Realty Company was in lieu of this particular bond and mortgage, the mortgage to be satisfied on the Atlantic Avenue property, and he in turn was to get four properties, and had deeds, I think, registered in the title company.

Q. Those deeds ——

A. I doubt if they have been satisfied. This is a matter of litigation in the receivers.

Q. Under that note you still have a claim to certain securities which are in the hands of the receiver?

A. To the best of my knowledge. It would have to be cleared up by the lawyers' office.

Q. Under the note marked Exhibit E6 there is a $10,000 mortgage on New Hampshire Avenue. Was that security sold?

A. That hasn't been sold.

Q. You still hold that?

A. We still hold that under an attachment from one by the name of Blieden, who claims to have a one-half interest in the mortgage.

Q. It has been assigned to you under this note?

A. Yes.

Q. And you still hold that security?

A. Yes.

It is stipulated and agreed by and between counsel for the respective parties that the agreement offered in evidence and marked Exhibit E4 is the same agreement which is mentioned in paragraph one of the complaint in this cause.

By Mr. Bloom:

Q. Mr. Reed, as I understand your testimony, you had an agreement with Mr. Isen ——

Mr. Repetto: Are you calling him as your witness?

Mr. Bloom: The testimony is going to be used together.

Mr. Repetto: I do not want you to cross-examine him. I object to the cross-examination. If you call him as your witness, it is all right.

Q. Mr. Reed, the conversations that you had with Mr. Isen concerning the collection of the claim against the Cades estate, were those conversations had after the second loan was made by the Equitable Trust Company to him?

Mr. Repetto: I object to that as assuming as a fact that there were conversations concerning collection, when there is no such evidence in the case.

A. I would say that they were made after the discounting of the second note, to my recollection.

Q. Did Mr. Isen agree with the Equitable Trust Company, through you as its representative, that you were to collect or receive any moneys collected or received from the Cades estate, and that any such moneys collected or received from the Cades estate should be credited either on one of both of the two notes which have been offered in evidence as Exhibits E5 and 6?

Mr. Repetto: I object to that as being leading and not relevant to the issue.

A. All the money received—that Isen was to receive from Cades' estate was to go towards the liquidation of the judgment as a whole, less a credit of $10,000, which we were tentatively to give him on the Koury mortgage, what is known as the Koury mortgage, until such time as the litigation was out of the way, and if we got full credit for that, he was to get that full credit.

Q. And the mortgage that you identify as the Koury mortgage is the mortgage which is mentioned in Exhibit E6 as a $10,000 mortgage on lot New Hampshire and Boardwalk, northwest corner, Bessie Mannheimer to Martin Isen, dated February second, 1927?

A. Yes.

ISAAC D. SINDERBRAND, sworn.

Direct examination.

By Mr. Bloom: It is stipulated and agreed by and between counsel for the respective parties that on or about December twelfth, 1927, Isaac D. Sinderbrand recovered a judgment in the Atlantic County Circuit Court against Martin I. Isen for $7,701.96 damages and $59.92 costs; that on or about March twelfth, 1928, the Sheriff of Atlantic County made a levy on the right, title and interest of the said Martin I. Isen in and to two certain mortgages, one of $45,000 executed by the Kwass Realty Company to Martin Isen, which has heretofore been offered in evidence as Exhibit E1, and the other being a mortgage of $10,000 which was executed by Bessie Mannheimer to Martin I. Isen, dated February second, 1927, recorded in Book of Mortgages 449, page 347, covering the property in the west line of New Hampshire avenue 330 feet south of Oriental Avenue in Atlantic City, New Jersey, which mortgage was assigned by Martin I. Isen to Equitable Trust Company by assignment dated February second, 1927, and recorded in Book 88 of Assignments of Mortgages, page 99. It is further stipulated that the sale of the bond and mortgage for $10,000 covering premises at

New Hampshire Avenue and the Boardwalk, which mortgage is recorded in Book 449, page 347, was made subject to the interest which the Equitable Trust Company might have in that mortgage by virtue of the collateral note marked Exhibit E6. It is further stipulated that the sale of the bond and mortgage for $45,000 upon the premises known as the Convention Garage, at the corner of Fairmount and Georgia Avenues, beings Exhibits E1 and 2, was subject to the rights which Aaron Cades or Sadie Cades might have in that bond and mortgage.

Mr. Bloom: I offer in evidence mortgage, Bessie Mannheimer to Martin I. Isen, dated February second, 1927, recorded in Book 449, page 347.

(The mortgage was marked Exhibit S1.)

Mr. Bloom: Bond and warrant of attorney, executed by Bessie Mannheimer to Martin Isen, dated February second, 1927, accompanying the mortgage heretofore offered as Exhibit S1.

(The bond was marked Exhibit S2.)

Mr. Bloom: Assignment of mortgage, Martin I. Isen to Equitable Trust Company, dated February second, 1927, recorded in Book 88 of Assignments of Mortgages, page 99, assigning to the Equitable Trust Company the mortgage heretofore offered as Exhibit S1.

(The assignment was marked Exhibit S3.)

Mr. Bloom: I offer in evidence a bill of sale executed by the Sheriff of Atlantic County under date of August seventeenth, 1928, which bill of sale is re-

corded in the clerk's office of Atlantic County, August twenty-third, 1928, in Book 99 of Assignments of Mortgages, page 59.

(The bill of sale was marked Exhibit S4.)

Q. You are the holder of this judgment of approximately $7,700 against Martin Isen?
A. I am.
Q. Has any part of that judgment been paid?
A. No.

Cross-examination.

By Mr. Repetto:

Q. How much did you pay for the purchase of these two mortgages, Mr. Sinderbrand?
A. $100.
Q. There should be a credit of that amount, shouldn't there?
A. I think there is.
Q. You think there is what?
A. There is.
Q. A credit of $100.
A. Yes, sir.
Q. How do you mean you think there is a credit of $100?
A. When the judgment is satisfied we will take $100 less. That is the credit.
Q. You were asked by Mr. Bloom as to whether there was any credit on the judgment and you said no.
A. Any credit? Any part of it paid. That is what he asked me.
Q. Has any part been paid?
A. No, no part has been paid by Mr. Isen.

Q. You sold these securities and bought them in for $100?

A. Yes, sir.

Q. Don't you say that is a payment on account of the judgment?

A. Well, that is a credit, but not a payment.

Q. Will you explain just what you mean?

Mr. Bloom: We are willing to stipulate that the defendant, Isen, is entitled to a credit of $100 on account of the judgment heretofore obtained by Mr. Sinderbrand against Isen in the Atlantic County Circuit Court, being the amount for which he signed a receipt to the sheriff.

I hereby certify that the foregoing is a full and accurate transcript of the testimony taken before me in the before-entitled cause.

CLAUDE W. MYROSE,
Supreme Court Examiner.

EXHIBIT "E4."

ARTICLES OF AGREEMENT.

MADE THIS twenty-sixth day of November in the year of our Lord one thousand nine hundred and twenty-six.

BETWEEN AARON S. CADES and SADIE his wife, of the City of Atlantic City, County of Atlantic, and State of New Jersey, parties of the first part and

MARTIN I. ISEN, of the City of Atlantic City,

County of Atlantic and State of New Jersey, party of the second part.

Party of the first part agrees to sell, party of the second part agrees to purchase, all that certain lot of ground with the buildings and improvements thereon erected, being known as #178 States Avenue in the City of Atlantic City, County of Atlantic, and State of New Jersey. Said lot forty (40′) feet front on States Avenue running back one hundred thirty (130′) feet to Maryland Avenue.

SUBJECT TO a first mortgage of sixteen thousand ($16,000.00) Dollars, which has approximately two and one-half years to run and subject to a second mortgage of fourteen thousand ($14,000.00) Dollars, which has approximately four (4) years to run. Both these mortgages are straight mortgages.

For the consideration of one ($1.00) dollar and by the assignment by the party of the second part to the party of the first part an interest of twenty thousand ($20,000.00) dollars in a certain second mortgage of forty-five thousand ($45,000.00) dollars, covering premises, Northeast Corner of Georgia Avenue and Fairmount Avenue, lot 75′ x 110′ and known as the Convention Garage. Said forty-five thousand ($45,000.00) dollar mortgage is subject to a prior lien, a first mortgage, Building and Loan of thirty-one thousand ($31,000.00) dollars reduced by payments thereon to about twenty-five thousand ($25,000.00) dollars. Said second mortgage of forty-five thousand ($45,000.00) dollars has about two and one-half years to run making the consideration for the said property on States Avenue fifty thousand ($50,000.00) dollars, more fully described herein.

States Avenue property being subject to thirty thousand ($30,000.) dollars in mortgages and the assignment of a twenty thousand ($20,000.00) dollar interest in the within mentioned forty-five thousand

($45,000.00) dollar mortgage, making a total purchase price of $50,000.00.

Party of the first part agrees at the expiration of one year from the date of settlement to pay to the Equitable Trust Company of Atlantic City, to whom this mortgage will be assigned twenty-five thousand ($25,000.00) dollars and, upon the payment of said sum, this mortgage is to be surrendered to the said party of the first part in full together with interest, which has thereon been accrued on the twenty thousand ($20,000.00) dollars due Mr. Cades in the said forty-five thousand ($45,000.00) dollar mortgage from the date of settlement.

Taxes, water rent, house rent, interest on encumbrances to be apportioned as to the day of settlement.

Title to be such that it will be insured by the South Jersey Title Company or the Chelsea Title Company of Atlantic City, as far as the property and the mortgage are concerned.

Settlement to be made within fifteen days from the date of this agreement.

IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

Aaron S. Cades
Sadie Cades
Martin I. Isen.

SIGNED, SEALED AND DELIVERED)
in the presence of)
David G. Cades
Craig Wilkinson

STATE OF NEW JERSEY)
SS
CAMDEN COUNTY)

BE IT REMEMBERED That on this 27 day of November in the year of our Lord one thousand nine hundred and twenty-six before me personally appeared Aaron S. Cades and Sadie, his wife who, I am satisfied, are the vendors mentioned in the above deed or conveyance, and I having first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed. All of which is hereby certified.

Lewis Liberman
M C C of N J

EXHIBIT "E5."

$20,000/00

Atlantic City, N. J., October 1st, 1926

On demand after date, FOR VALUE RECEIVED, the undersigned promises to pay to the order of the

EQUITABLE TRUST COMPANY

at its Banking House in Atlantic City, N. J.,

Twenty thousand .....Dollars

in United States gold coin or its equivalent, having deposited with the said Company as collateral security for the payment of this note, or any note given in extension or renewal thereof, as well as for the payment of any other liability or liabilities of the undersigned to the said Company, due or to become due, whether now existing or hereafter arising, the following property, viz.:

(1) Bond and mortgage to secure $15,000.00 covering property known as #3 South Stenton Place, Atlantic City, N. J., made by the undersigned to said Equitable Trust Co., dated Oct. 1st, 1926.
(2) Assignment of Bond and Mortgage made by Winchester Dev. Co. to Kwass Realty Co. dated Sept. 1st, 1926, to secure $48,000.00 covering property known as 1905, 1907 and 1909 Atlantic Ave., Atlantic City, N. J.
(3) Deed from the undersigned to said Equitable Trust Co. dated Oct. 1st, 1926, covering four tracts of land described in deed from Winchester Dev. Co. to said Kwass Co. dated Sept. 1st, 1926, & held in escrow by Atlantic Title Co. of a market value estimated by the undersigned at $.....; and the undersigned agree to deliver to the said Company additional securities to its satisfaction, should the market value of the said securities, as a whole, suffer any decline, and also hereby give to the said Company a lien for the amount of all the said liabilities upon all the property or securities given unto or left in the possession of the said Company by the undersigned, and also upon any balance of the deposit account of the undersigned with the said Company.

On the non-performance of this promise, or upon the non-payment of any of the liabilities above mentioned, or upon the failure of the undersigned, forthwith, with or without notice to furnish satisfactory additional securities in case of decline, as aforesaid, or in case of insolvency, bankruptcy or failure in business of the undersigned, then and in any such case, this note, and all other liabilities of the undersigned or any of them, shall forthwith become due and payable, without demand or notice, and full power and authority are hereby given to said Company to sell, assign, and deliver the whole of the said securities, or any part thereof, or any substitutes

therefor, or any additions thereto, or any other securities or property given unto or left in the possession of the said Company, by the undersigned, for safe keeping or otherwise, at any broker's board or at public or private sale, at the option of the said Company or its President or Treasurer, without either demand advertisement or notice of any kind, which are hereby expressly waived. At any such sale the said Company may itself purchase the whole or any part of the property sold free from any right of redemption on the part of the undersigned, which is hereby waived and released. In case of sale for any cause, after deducting all costs or expenses of any kind for collection, sale or delivery, the said Company may apply the residue of the proceeds of the sale or sales so made, to pay one or more or all of the said liabilities to the said Company, as it or its President shall deem proper, whether then due or not due, making proper rebate for interest on liabilities not then due, and returning the overplus if any to the undersigned, who agree to be and remain liable to the said Company for any deficiency arising upon such sale or sales. The undersigned do hereby authorize and empower the said Company, at its option, at any time to appropriate and apply to the payment and extinguishment of any of the above-named obligations or liabilities, whether now existing or hereafter contracted, any and all moneys now or hereafter in the hands of the said Company, on deposit or otherwise, to the credit of or belonging to the undersigned whether the said obligations or liabilities are then due or not due.

Kwass Realty Co.
Martin I. Isen President
79296 Address Norman Kwass Sec.

(On reverse side.)

$5,000 Credit a/c 10/27/27 WJR
100 " " 12/27/27 WJR

In consideration of one dollar paid to the undersigned, and of the making at the request of the undersigned, of the loan evidenced by the within note, the undersigned hereby jointly and severally guarantee to THE EQUITABLE TRUST COMPANY OF ATLANTIC CITY, N. J., its successors, endorsees or assigns, the punctual payment, at maturity, of the said loan, and hereby assent to all the terms and conditions of the said note and consent that the securities for the said loan may be exchanged or surrendered from time to time, or the time of payment of the said loan extended, without notice to or further assent from the undersigned, who will remain bound upon this guarantee, notwithstanding such changes, surrender or extension, hereby waiving demand, protest and notice thereof.

Martin I. Isen

EXHIBIT "E6."

$7500 $\frac{xx}{100}$

Atlantic City, N. J., July 5, 1927.

One month after date, FOR VALUE RECEIVED, the undersigned promises to pay to the order of the EQUITABLE TRUST COMPANY at its Banking House in Atlantic City, N. J.,

Seventy-Five Hundred ..... $\frac{xx}{100}$ Dollars

in United States gold coin or its equivalent, having deposited with the said Company as collateral se-

curity for the payment of this note, or any note given in extension or renewal thereof, as well as for the payment of any other liability or liabilities of the undersigned to the said Company, due or to become due, whether now existing or hereafter arising, the following property, viz.:
$10000 Mtg. on lots New Hampshire & Bdwk. N. W. corner Bessie Manheiner to Martin Isen dated 2/3/27, of a market value estimated by the undersigned at $.....; and the undersigned agree to deliver to the said Company additional securities to its satisfaction, should the market value of the said securities, as a whole, suffer any decline, and also hereby give to the said Company a lien for the amount of all the said liabilities upon all the property or securities given unto or left in the possession of the said Company by the undersigned, and also upon any balance of the deposit account of the undersigned with the said Company.

On the non-performance of this promise, or upon the non-payment of any of the liabilities above mentioned, or upon the failure of the undersigned, forthwith, with or without notice to furnish satisfactory additional securities in case of decline, as aforesaid, or in case of insolvency, bankruptcy or failure in business of the undersigned, then and in any such case, this note, and all other liabilities of the undersigned or any of them, shall forthwith become due and payable, without demand or notice, and full power and authority are hereby given to said Company to sell, assign, and deliver the whole of the said securities, or any part thereof, or any substitutes therefor, or any additions thereto, or any other securities or property given unto or left in the possession of the said Company, by the undersigned, for safe keeping or otherwise, at any broker's board or at public or private sale, at the option of the said

Company or its President or Treasurer, without either demand advertisement or notice of any kind, which are hereby expressly waived. At any such sale the said Company may itself purchase the whole or any part of the property sold free from any right of redemption on the part of the undersigned, which is hereby waived and released. In case of sale for any cause, after deducting all costs or expenses of any kind for collection, sale or delivery, the said Company may apply the residue of the proceeds of the sale or sales so made, to pay one or more or all of the said liabilities to the said Company, as it or its President shall deem proper, whether then due or not due, making proper rebate for interest on liabilities not then due, and returning the overplus if any to the undersigned, who agree to be and remain liable to the said Company for any deficiency arising upon such sale or sales. The undersigned do hereby authorize and empower the said Company, at its option, at any time to appropriate and apply to the payment and extinguishment of any of the above-named obligations or liabilities, whether now existing or hereafter contracted, any and all moneys now or hereafter in the hands of the said Company, on deposit or otherwise, to the credit of or belonging to the undersigned whether the said obligations or liabilities are then due or not due.

Martin I. Isen
Address

8/5/27
87821

(On reverse side.)

$1500 Credited a/c 10/27/27 WJR

In consideration of one dollar paid to the undersigned, and of the making at the request of the un-

dersigned, of the loan evidenced by the within note, the undersigned hereby jointly and severally guarantee to THE EQUITABLE TRUST COMPANY OF ATLANTIC CITY, N. J., its successors, endorsees or assigns, the punctual payment, at maturity, of the said loan, and hereby assent to all the terms and conditions of the said note and consent that the securities for the said loan may be exchanged or surrendered from time to time, or the time of payment of the said loan extended, without notice to or further assent from the undersigned, who will remain bound upon this guarantee, notwithstanding such changes, surrender or extension, hereby waiving demand, protest and notice thereof.

. . . . . .

EXHIBIT "E7."

December 7, 1926.

Mr. Martin I. Isen,
Atlantic City, N. J.
Dear Mr. Isen:

This is to advise you that pursuant to your request, we have agreed to hold, in excrow, mortgage made by Kwass Realty Company to yourself, dated October 1st, 1926, recorded in book of mortgages 422, page 439, &c., together with articles of agreement dated November 26th, 1926, by and between Aaron S. Cades and wife of the City of Atlantic City and yourself.

We are enclosing herewith copy of our letter to Mr. Cades which explains the matter fully.

Very truly yours,
Geo. W. Brown, Jr.,
Vice-President and Trust Officer.

EXHIBIT "E8."

December 7, 1926.

Mr. Aaron S. Cades,
178 States Avenue,
Atlantic City, N. J.

Dear Mr. Cades:

This is to advise you that Martin I. Isen of the City of Atlantic City has assigned to our Institution a second mortgage dated October 1st, 1926, recorded in book of Mortgages 422, page 439 &c in the amount of $45,000, covering premises Northeast corner Georgia and Fairmont Avenues, known as the Convention Garage.

Our institution is holding the same mortgage, in escrow, pursuant to the articles of Agreement made by and between yourself and wife and Martin I. Isen, dated November 26th, 1926.

Under the terms of this agreement, we are to surrender the said mortgage to you, on receipt of the payment of twenty-five thousand dollars ($25,000) at the expiration of one year from November 26th, 1926.

Very truly yours,
Geo. W. Brown, Jr.,
Vice-President & Trust Officer.

OPINION OF COURT BELOW.

(Filed Dec. 11, 1928.)

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

ASHOR SALAMAN, *Plaintiff,* v. SADIE CADES, individually, and LEWIS LIBERMAN and EDWIN CADES, executors of the Estate of AARON S. CADES, deceased, *Defendants.*	Action at Law. On Application to admit the Equitable Trust Company as party-plaintiff.

APPEARANCES:
For the Rule, MOORE & BUTLER, ESQS.
Contra, ROBERT H. MCCARTER, ESQ., and A. B. REPETTO, ESQ.

OPINION.

KATZENBACH, J.

Camden, N. J., December 11, 1928.

Hearing of the above matter before Honorable Frank S. Katzenbach, Jr., Justice of the Supreme

Court, at the Court House, Camden, New Jersey, on the above date, in the presence of James A. Butler, Esq., of Moore & Butler, Esqs., for the rule, Robert H. McCarter, Esq., and A. B. Repetto, Esq., contra.

KATZENBACH, J.: The Equitable Trust Company of Atlantic City has applied to be made a party to the proceedings in the above-entitled cause. The attitude of the Equitable Trust Company, as I gather it from the argument of counsel, is that they have an interest in the fund or moneys which may be paid by the Cades Estate or Sadie Cades growing out of the contract of November 26th, 1926. The picture presented is one of high finance, and I am not certain that I grasp all of the ramifications of the transaction, but I feel that this matter should be disposed of at once.

The agreement of November 26th, 1926, provided that the Cades were to pay at the expiration of one year from the date of settlement to the Equitable Trust Company of Atlantic City, to whom a mortgage, known as a second mortgage, on the Convention Garage property should be assigned, the sum of twenty-five thousand dollars, and upon the payment of this sum, there was to be surrendered to Aaron S. Cades and wife the forty-five-thousand-dollar Convention Garage mortgage.

On December 16, 1926, Martin I. Isen, assigned to the Equitable Trust Company, by deed of assignment, the forty-five-thousand-dollar mortgage. This assignment was acknowledged by Isen and placed on record in the clerk's office of the County of Atlantic on December 18, 1926, and recorded in Book No. 87

of Assignments of Mortgage, in and for said county on page 3, etc.

The Equitable Trust Company contends that any judgment which may be obtained in the present action should be paid to it under the terms of this agreement of November 26, 1926. The suit is in actuality one for a breach of this agreement of November 26, 1926.

The situation presented is, that if the judgment is paid the Cades are entitled to the mortgage. This mortgage would have to be assigned by the Equitable Trust Company to the Cades Estate. To determine fully the question finally, if it were the subject of consideration by this Court, one would have to know the circumstances and the date under which the plaintiff, Salaman, took this mortgage. There has been no testimony with reference to any assignment of the claim by Isen to Salaman which gives the Court any of these facts.

While I think that this case will eventually have to go into the Court of Chancery to have the respective rights of the parties litigated, yet, in view of the condition in the agreement that the money was to be paid to the Equitable Trust Company of Atlantic City, I will grant the application of the Equitable Trust Company of Atlantic City and will make an order that they be made a party-plaintiff. I cannot, personally, see how this will avail the Equitable Trust Company to any extent, because, of course, the question has ultimately got to be determined as to whether the plaintiff in this action is entitled to the consideration or the Equitable Trust Company.

The Equitable Trust Company further claims that when it receives the money, outside of any commissions which it may be entitled to for acting under this agreement, that it holds notes upon which Isen is a party as guarantor or otherwise, which

should be paid out of this twenty-five thousand dollars when realized. This is a question that cannot be determined upon this application; it depends upon a great many facts not as yet disclosed, and upon numerous propositions of law which have not been raised or argued.

I am doing this merely to prevent Salaman, in the present stage of the proceedings, from getting away with the twenty-five thousand dollars, if he could do so, which is doubtful. To grant this motion can do Salaman no harm, because eventually he will have to defend against the other claimants his right to this fund, so that I think under the rules of the Supreme Court I have authority which I will exercise to make the Equitable Trust Company of Atlantic City a party-plaintiff. It is only, in my opinion, postponing the day, evil or otherwise, when this entire subject will have to be threshed out, because, of course, it is quite impossible for twenty-five thousand dollars to be used to pay some three claimants. Money, unfortunately, cannot be utilized in this manner.

RULE ADMITTING EQUITABLE TRUST CO. AS A PARTY-PLAINTIFF.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

ASHER SALAMAN, *Plaintiff,* v. SADIE CADES, *et al.*, *Defendants.*	Action at Law. On Rule to Show Cause. Rule Admitting Equitable Trust Company as a Party-Defendant.

This matter coming on to be heard in the presence of James N. Butler, of Moore & Butler, attorneys for the petitioner, Equitable Trust Company, and Robert H. McCarter, of counsel, and August B. Repetto, attorney for plaintiff, Ashor Salaman, and the Court, having read and considered the depositions taken before Claude W. Myrose, Supreme Court Examiner, and the exhibits, and having heard the arguments of counsel, and it appearing to the Court that the petitioner, Equitable Trust Company, has an interest in the subject-matter of the above-entitled cause and is a proper party-plaintiff:

It is, on this eleventh day of December, A. D. nineteen hundred and twenty-eight, ordered that the said Equitable Trust Company, a banking corporation of New Jersey, be and it is hereby admitted as a

party-plaintiff with the plaintiff, Ashor Salaman, in the above-entitled cause.

Let this rule be entered in the minutes.

FRANK KATZENBACH, JR.,
Justice of the Supreme Court of New Jersey.

RULE DENYING MOTION TO ADMIT ISAAC D. SINDERBRAND AS PARTY.

(Entered December 11, 1928.)

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

ASHOR SALAMAN, *Plaintiff,* v. SADIE CADES, individually, and LEWIS LIBERMAN and EDWIN CADES, Executors of the Estate of AARON S. CADES, deceased, *Defendants.*	Action at Law. Rule Denying Motion to Admit Isaac D. Sinderbrand as Party.

This matter coming on to be heard on the eleventh day of December, 1928, upon the motion of Isaac D. Sinderbrand to be admitted as a party to the above-styled action, in the presence of Morris Bloom, Esq., attorney for said Isaac D. Sinderbrand, and in the

presence of Robert H. McCarter, Esq., of counsel with Aug. B. Repetto, Esq., attorney for the plaintiff, and the Court, having heard and considered the arguments and depositions offered, and having concluded that said motion ought to be denied for the reason that said Sinderbrand has not shown such an interest in the subject-matter of this suit:

It is, thereupon, on this eleventh day of December, 1928, on motion of Aug. B. Repetto, attorney for plaintiff, ordered that the motion of Isaac D. Sinderbrand be and the same is hereby denied and his application to be admitted as a party hereto is denied.

FRANK S. KATZENBACH,
Supreme Court Justice.

Rule actually entered December 12, 1928.

A true copy.

FRED L. BLOODGOOD,
Clerk.

NOTICE OF APPEAL FROM RULE ADMITTING EQUITABLE TRUST COMPANY AS PARTY-PLAINTIFF.

(Served January 5, 1929.)

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

ASHOR SALAMAN, *Plaintiff*, v. SADIE CADES, individually, and LEWIS LIBERMAN and EDWIN CADES, Executors of the Estate of AARON S. CADES, deceased, *Defendants.*	Action at Law. Notice of Appeal From Rule Admitting Equitable Trust Company as Party-Plaintiff.

To Moore & Butler, Esqs., Attorneys for Equitable Trust Company:

Please take notice that the plaintiff, Ashor Salaman, appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey, from the whole and every part of the rule made December 11, 1928, by Justice Frank S. Katzenbach, Jr., and entered in the above-entitled cause, which rule ad-

mitted Equitable Trust Company as a party-plaintiff to said cause.

Dated: January 5, 1929.

AUG. B. REPETTO,
Attorney for Plaintiff,
Ashor Salaman.

GROUNDS OF APPEAL.

(Served January 15, 1929.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

ASHOR SALAMAN, *Plaintiff-Appellant,* EQUITABLE TRUST COMPANY, *Plaintiff-Respondent,* v. SADIE CADES, *et als.*, *Defendants.*	Action at Law. On Appeal from Supreme Court. Grounds of Appeal.

Plaintiff, Ashor Salaman, appeals to the Court of Errors and Appeals of New Jersey from an order made in the New Jersey Supreme Court by Justice Frank S. Katzenbach, Jr., dated December 11, 1928, which order admits the Equitable Trust Company as a party-plaintiff in the above-entitled cause; and

plaintiff, Ashor Salaman, hereby assigns the following grounds of appeal:

1. Because Equitable Trust Company had not proved itself to possess any interest in the subject-matter of said suit, nor did said Equitable Trust Company have such an interest therein as entitled it to be admitted as a party-plaintiff to said suit under the statute in such cases made and provided.

2. Because, as to the estate of Aaron S. Cades, deceased, the application to admit Equitable Trust Company as a party-plaintiff was served after final judgment was entered in favor of plaintiff, Ashor Salaman, and, therefore, the application to admit the party-plaintiff came after all the issues in the case had been determined and at a time when no issue remained which could be determined in said suit in the Supreme Court.

3. Because the order appealed from was made by the Supreme Court solely to restrain the plaintiff, Salaman, from disposing of the proceeds of said judgment until the adverse claims of plaintiff, Salaman, and the Equitable Trust Company to said fund could be determined in the Court of Chancery or elsewhere other than in the Supreme Court, when the dispute between plaintiff, Salaman, and the said Equitable Trust Company was not at issue therein nor available for determination in said Supreme Court suit in any event.

AUG. B. REPETTO,
Attorney for Ashor Salaman,
Plaintiff-Appellant.

INDEX

PETITION OF EQUITABLE TRUST CO. FOR ADMISSION AS PARTY.

NEW JERSEY SUPREME COURT,
CAMDEN COUNTY.

ASHOR SALAMON, *Plaintiff*, v. SADIE CADES, *et al.*, *Defendants.*	Action at Law. Petition of Equitable Trust Co. for Admission as Party.

To the Supreme Court of New Jersey:

The petition of Equitable Trust Company, a banking corporation of the State of New Jersey, having its principal place of business at Arkansas and Atlantic Avenues, in the City of Atlantic City, County of Atlantic and State of New Jersey, respectfully shows that:

1. At the times hereinafter mentioned Martin I. Isen, plaintiff's assignor in the above-stated cause, was a customer of your petitioner and indebted to it as hereinafter appears.

2. Your petitioner holds legal title to the bond and mortgage mentioned in the complaint in the above-entitled cause under assignment from the said Isen, dated December 16, 1926, and recorded in the office of the clerk of Atlantic County at Mays Landing, New Jersey.

3. Petitioner holds title to the said bond and mortgage pursuant to the terms of a written agreement mentioned in the above complaint between said Isen and Aaron S. Cades and Sadie Cades, a true copy of which said agreement is annexed hereto, made a part hereof and marked "Exhibit A."

4. Under the terms of the said agreement petitioner is entitled to receive payment from the said Cades of the sum of twenty-five thousand dollars ($25,000), being the amount of the purchase price therein agreed upon.

5. Prior to the execution of the said agreement, petitioner agreed, at the request of the said Isen, to take and hold title to the said bond and mortgage and to accept the duties imposed upon it by the terms of the said agreement without compensation, in consideration of the agreement of the said Isen that petitioner should hold the said bond and mortgage, or the moneys derived therefrom under the said agreement, for the satisfaction of such liabilities as the said Isen might then have incurred or might thereafter incur to petitioner.

6. On December 7, 1926, by letters of that date signed by its vice-president and trust officer, and directed to the said Isen and to the said Aaron S. Cades, true copies of which are annexed hereto, made a part hereof, and marked Exhibits A1 and A2, respectively, petitioner notified the said parties to the written agreement hereinbefore mentioned of its acceptance of the duties imposed upon it by the terms of the said agreement.

7. On October 1, 1926, prior to the execution of the said agreement, the said Isen incurred a liability to petitioner upon his written guaranty of a certain $20,000.00 demand collateral note made by Kwass Realty Co. to the order of petitioner and endorsed by said Isen. A true copy of the said note, together with the contract of guaranty of the said Isen thereon endorsed, is annexed hereto, made a part hereof and marked "Exhibit B."

8. Thereafter, to wit, on February 3, 1927, said Isen entered into a contract with petitioner in the form of a collateral promissory note in the sum of seventy-five hundred dollars ($7500) made by the said Isen to the order of petitioner, a true copy of which said note is annexed hereto, made a part hereof and marked "Exhibit C." Under the terms of the said collateral promissory note, the said Isen gave to the petitioner a lien for the amount of all his liabilities to petitioner upon all the property or securities of him, the said Isen, given unto or left in the possession of your petitioner, as will more particularly appear by the terms of said note hereinafter set forth. At the time of the making of the said note, and for some months prior thereto, petitioner had been in possession of the interest of the said Isen in the aforementioned bond and mortgage, and has ever since continued to hold the same as security for the payment of the liabilities of the said Isen to it.

9. Neither of the liabilities hereinbefore mentioned of the said Isen to petitioner has been satisfied and the said Isen is still indebted to your petitioner upon a judgment entered on the said liabilities in this court on May 12, 1928, in the sum of

$22,227.72 damages and costs, together with lawful interest thereon from May 12, 1928, and sheriff's execution fees.

10. Your petitioner claims that it is entitled to any interest the said Isen, his heirs, representatives or assigns may have in the said bond and mortgage, or the proceeds thereof, up to the amount of its claim upon the liabilities hereinbefore mentioned.

11. Petitioner further claims that it is a necessary party to the above-entitled cause, and that an adjudication of its rights and liabilities in the premises is necessary to a complete determination of the cause.

Wherefore, your petitioner respectfully applies to be admitted as a party to the above-entitled cause and by that means to have its rights and liabilities in the premises determined on trial of the said cause.

MOORE & BUTLER,
Attorneys for Equitable Trust Co.

EXHIBIT A.

ARTICLES OF AGREEMENT.

Made this twenty-sixth day of November in the year of our Lord one thousand nine hundred and twenty-six.

BETWEEN AARON S. CADES AND SADIE his wife, of the City of Atlantic City, County of

Atlantic, and State of New Jersey, parties of the first part, and MARTIN I. ISEN, of the City of Atlantic City, County of Atlantic and State of New Jersey, party of the second part.

Party of the first part agrees to sell, party of the second part agrees to purchase, all that certain lot of ground with the buildings and improvements thereon erected, being known as #178 States Avenue in the City of Atlantic City, County of Atlantic and State of New Jersey. Said lot forty (40′) feet front on States Avenue, running back one hundred thirty (130′) feet to Maryland Avenue.

SUBJECT TO a first mortgage of sixteen thousand ($16,000.00) dollars, which has approximately two and one-half years to run and subject to a second mortgage of fourteen thousand ($14,000.00) dollars, which has approximately four (4) years to run. Both these mortgages are straight mortgages.

For the consideration of one ($1.00) dollar and by the assignment by the party of the second part to the party of the first part and interest of twenty thousand ($20,000.00) dollars in a certain second mortgage of forty-five thousand ($45,000.00) dollars, covering premises, Northeast Corner of Georgia Avenue and Fairmount Avenue, lot 75′ x 110′ and known as the Convention Garage. Said forty-five thousand ($45,000.00) dollar mortgage is subject to a prior lien, a first mortgage, building and loan of thirty-one thousand ($31,000.00) dollars reduced by payments thereon to about Twenty-five thousand ($25,000.00) dollars. Said second mortgage of forty-five thousand ($45,000.00) dollars has about two and one-half years to run making the consideration for the said property on States Avenue fifty thousand ($50,000.00) dollars, more fully described herein.

States Avenue property being subject to thirty thousand ($30,000.00) dollars in mortgages and the assignment of a twenty thousand ($20,000.00) dollar interest in the within-mentioned forty-five thousand ($45,000.00) dollar mortgage, making a total purchase price $50,000.00.

Party of the first part agrees at the expiration of one year from the date of settlement to pay to the Equitable Trust Company of Atlantic City, to whom this mortgage will be assigned twenty-five thousand ($25,000.00) dollars and upon the payment of said sum, this mortgage is to be surrendered to the said party of the first part in full together with interest, which has thereon been accrued on the twenty thousand ($20,000.00) dollars due MR. CADES in the said forty-five thousand ($45,000.00) dollars mortgage from the date of settlement.

TAXES, water rent, house rent, interest on encumbrances to be apportioned as to the day of settlement.

Title to be such that it will be insured by the South Jersey Title Company or the Chelsea Title Company of Atlantic City, as far as the property and the mortgage are concerned.

Settlement to be made within fifteen days from the date of this agreement.

IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

A. S. CADES
DADIE CADES
MARTIN I. ISEN

SIGNED SEALED AND DELIVERED
in the Presence of
DAVID G. CADES
CRAIG WILKINSON

EXHIBIT A1.

December 7, 1926.

Mr. Martin I. Isen,
Atlantic City, N. J.
Dear Mr. Isen:

This is to advise you that pursuant to your request, we have agreed to hold, in escrow, mortgage made by Kwass Realty Company to yourself, dated October 1st, 1926, recorded in book of mortgages 422, page 439 &c., together with Articles of Agreement dated November 26th, 1926, by and between Aaron S. Cades and wife of the City of Atlantic City and yourself.

We are enclosing herewith copy of our letter to Mr. Cades which explains the matter fully.

Very truly yours,
(signed) Geo. W. Brown, Jr.,
Vice-President and Trust Officer.

EXHIBIT A2.

December 7, 1926.

Mr. Aaron S. Cades,
178 States Avenue,
Atlantic City, N. J.
Dear Mr. Cades,

This is to advise you that Martin I. Isen of the City of Atlantic City has assigned to our institution, a second mortgage dated October 1st, 1926, recorded in Book of Mortgages, 422, page &c., in the amount of $45,000, covering premises North east corner

Georgia and Fairmount Avenues, known as the Convention Garage.

Our Institution is holding the said mortgage, in escrow, pursuant to the articles of Agreement made by and between yourself and wife and Martin I. Isen, dated November 26th, 1926.

Under the terms of this agreement, we are to surrender the said mortgage to you, on receipt of the payment of twenty-five thousand dollars ($25,000.) at the expiration of one year from November 26th, 1926.

Very truly yours,
(signed) Geo. W. Brown, Jr.,
Vice President & Trust Officer.

EXHIBIT B.

Note

$20,000. Atlantic City, N. J., October 1 1926

On Demand after date, FOR VALUE RECEIVED, the undersigned promises to pay to the order of the

EQUITABLE TRUST COMPANY

at its Banking House in Atlantic City, N. J.

twenty thousand ..... Dollars

in United States gold coin or its equivalent, having deposited with the said Company as collateral security for the payment of this note, or any note given in extension or renewal thereof, as well as for the payment of any other liability or liabilities of the undersigned to the said Company, due or to become due, whether now existing or hereafter arising, the following property, viz:

(1) Bond and mortgage to secure $15,000 cover-

ing property known as # 3 South Stenton Place, Atlantic City, N. J. made by undersigned to Equitable Trust Co. dated Oct. 1, 1926.

(2) Assignment of Bond and Mortgage made by Winchester Dev. Co. to Kwass Realty Co. dated Sept. 1, 1926, to secure $48,000. covering property known as 1905-7-9 Atlantic Ave., Atlantic City, N. J.

(3) Deed from the undersigned to Equitable Trust Co. dated Oct. 1, 1926, and covering four tracts of land as described in deed from Winchester Dev. Co. to Kwass Co. dated Sept. 1, 1926 & Held in escrow by Atlantic Title Co. of a market value estimated by the undersigned at $.....; and the undersigned agree to deliver to the said Company additional securities to its satisfaction, should the market value of the said securities, as a whole, suffer any decline, and also hereby give to the said Company a lien for the amount of all the said liabilities upon all the property or securities given unto or left in the possession of the said Company by the undersigned, and also upon any balance of the deposit account of the undersigned with the said Company.

On the non-performance of this promise, or upon the non-payment of any of the liabilities above mentioned, or upon the failure of the undersigned, forthwith, with or without notice to furnish satisfactory additional securities in case of decline, as aforesaid, or in case of insolvency, bankruptcy or failure in business of the undersigned, then and in any such case, this note, and all other liabilities of the undersigned or any of them, shall forthwith become due and payable, without demand or notice, and full power and authority are hereby given to said Company, to sell, assign, and deliver the whole of the said securities, or any part thereof, or any substi-

tutes therefor, or any additions thereto, or any other securities or property given unto or left in the possession of the said Company, by the undersigned, for safe keeping or otherwise, at any broker's board or at public or private sale, at the option of the said Company or its President or Treasurer, without either demand, advertisement or notice of any kind, which are hereby expressly waived. At any such sale the said Company may itself purchase the whole or any part of the property sold free from any right of redemption on the part of the undersigned, which is hereby waived and released. In case of sale for any cause, after deducting all costs or expenses of any kind for collection, sale or delivery, the said Company may apply the residue of the proceeds of the sale or sales so made, to pay one or more or all of the said liabilities to the said Company, as it or its President shall deem proper, whether then due or not due, making proper rebate for interest on liabilities not then due, and returning the overplus if any to the undersigned, who agree to be and remain liable to the said Company for any deficiency arising upon such sale or sales. The undersigned do hereby authorize and empower the said Company, at its option, at any time to appropriate and apply to the payment and extinguishment of any of the above-named obligations or liabilities, whether now existing or hereafter contracted, any and all moneys now or hereafter in the hands of the said Company on deposit or otherwise, to the credit of or belonging to the undersigned whether the said obligations or liabilities are then due or not due.

KWASS REALTY CO.
Martin I. Isen Pres.
Norman Kwass Sec.

79296 Demand

EXHIBIT C.

$7500 ATLANTIC CITY, N. J., Feruary 3, 1927

Three months after date, FOR VALUE RECEIVED, the undersigned promises to pay to the order of the

EQUITABLE TRUST COMPANY

at its Banking House in Atlantic City, N. J., 10

Seventy Five Hundred.....Dollars

in United States gold coin or its equivalent, having deposited with the said Company as collateral security for the payment of this note, or any note given in extension or renewal thereof, as well as for the payment of any other liability or liabilities of the undersigned to the said Company, due or to become due, whether now existing or hereafter arising, the following property, viz:

$10,000. Mortgage on lot New Hampshire & Bwdk 20
N. W. Corner
Bessie Manheim to Martin Isen Dated 2/2/27

of a market value estimated by the undersigned at $.....; and the undersigned agree to deliver to the said Company additional securities to its satisfaction, should the market value of the said securities, as a whole, suffer any decline, and also hereby give to the said Company a lien for the amount of all the said liabilities upon all the property or securities given unto or left in the possession 30 of the said Company by the undersigned, and also upon any balance of the deposit account of the undersigned with the said Company.

On the non-performance of this promise, or upon the non-payment of any of the liabilities above mentioned, or upon the failure of the undersigned, forth-

with, with or without notice to furnish satisfactory additional securities in case of decline, as aforesaid, or in case of insolvency, bankruptcy or failure in business of the undersigned, then and in any such case, this note, and all other liabilities of the undersigned or any of them, shall forthwith become due and payable, without demand or notice, and full power and authority are hereby given to said Company to sell, assign, and deliver the whole of the said securities, or any part thereof, or any substitutes therefor, or any additions thereto, or any other securities or property given unto or left in the possession of the said Company, by the undersigned, for safe keeping or otherwise, at any broker's board or at public or private sale, at the option of the said Company or its President or Treasurer, without either demand, advertisement or notice of any kind, which are hereby expressly waived. At any such sale the said Company may itself purchase the whole or any part of the property sold free from any right of redemption on the part of the undersigned, which is hereby waived and released. In case of sale for any cause, after deducting all costs or expenses of any kind for collection, sale or delivery, the said Company may apply the residue of the proceeds of the sale or sales so made, to pay one or more or all of the said liabilities to the said Company, as it or its President shall deem proper, whether then due or not due, making proper rebate for interest on liabilities not then due, and returning the overplus if any to the undersigned, who agree to be and remain liable to the said Company for any deficiency arising upon such sale or sales. The undersigned do hereby authorize and empower the said Company, at its option, at any time, to appropriate and apply to the payment and extinguish-

ment of any of the above-named obligations or liabilities, whether now existing or hereafter contracted, any and all moneys now or hereafter in the hands of the said Company, on deposit or otherwise, to the credit of or belonging to the undersigned whether the said obligations or liabilities are then due or not due.

Martin I. Isen

87821 May 3

AFFIDAVIT.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

ASHOR SALAMAN, *Plaintiff,* v. SADIE CADES, *et al.*, *Defendants.*	Action at Law. Petition for Admission as Party. Affidavit.

STATE OF NEW JERSEY, } *ss.*
COUNTY OF ATLANTIC, }

DAVID C. REED, being first duly sworn according to law, upon his oath deposes and says:

1. I am the vice-president of the Equitable Trust Company, petitioner in the above-entitled cause.

2. I have read the above petition and am personally familiar with the matters and things therein set forth and the facts therein averred are true of my own knowledge.

DAVID C. REED.

Sworn and subscribed to before me this twenty-third day of October, 1928.

ANNA D. PRESS,
(Seal) *Notary Public, N. J.*

RULE TO SHOW CAUSE.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

ASHOR SALAMAN, *Plaintiff,*	Action at Law.
v.	On Petition.
SADIE CADES, *et al.*, *Defendants.*	Rule to Show Cause.

This matter being opened to the Court by Moore & Butler, attorneys of petitioner, Equitable Trust Company, and it appearing to the Court, by affidavit of David C. Reed, vice-president of petitioner, that the said petitioner has an interest in the subject-matter of the above-entitled cause and is a necessary party to the complete determination of the cause.

It is on this 24th day of October, 1928, ordered that the plaintiff, Ashor Salamon, show cause, at the Court House, in the City of Camden, on Monday, the 12th day of November next, why the said Equitable Trust Company should not be admitted as a party to this cause; and it is further ordered that plaintiff and petitioner, or either of them, may take depositions on four days' notice to be used on the return of this rule.

Let this rule be entered on the minutes.

FRANK S. KATZENBACH,
Justice, Supreme Court of N. J.

JOINDER IN ERROR.

NEW JERSEY COURT OF ERRORS AND APPEALS.

ASHOR SALAMAN, *Plaintiff-Appellant,* EQUITABLE TRUST COMPANY, *Plaintiff-Respondent,* v. SADIE CADES, *et al.*, *Defendants.*	On Appeal from Supreme Court. Joinder in Error.

The Equitable Trust Company by Morris Bloom, its attorney, comes into court and says that there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid, and

it prays here that the Court here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed.

Dated January 23, 1929.

MORRIS BLOOM,
Attorney for and of Counsel with Equitable Trust Company, Plaintiff-Respondent.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

ASHOR SALAMAN,
Plaintiff-Appellant,

EQUITABLE TRUST COMPANY,
Plaintiff-Respondent,

and

SADIE CADES, individually, and LEWIS LIBERMAN and EDWIN CADES, executors of the Estate of AARON S. CADES, deceased,
Defendants.

ON APPEAL FROM SUPREME COURT.

ORDER OF JUSTICE FRANK S. KATZENBACH, JR.

BRIEF FOR PLAINTIFF-RESPONDENT.

This is an appeal from an order made December 11, 1928, by Justice Frank S. Katzenbach, Jr., in the Supreme Court, admitting the Equitable Trust Company as a party plaintiff with plaintiff, Ashor Salaman, in the above cause.

FACTS.

1. On October 1, 1926, Martin I. Isen incurred a liability to respondent upon his written guaranty of a certain $20,000 demand collateral note made by Kwass Realty Co. to the order of respondent and endorsed by said Isen. A true copy of said note, together with the contract of guaranty of said Isen thereon endorsed is marked "Exhibit E5," State of Case, page 31.

2. On the same date, Kwass Realty Co. executed and delivered to said Isen, its bond and mortgage for $45,000 on property northeast corner Georgia and Fairmount Avenues, Atlantic City, N. J. ("Exhibits E1" and "E2," State of Case, pages 13 and 14.)

3. On or about the same date, and prior to November 26, 1926, respondent agreed, at the request of said Isen, to take and hold title to the bond and mortgage mentioned in the preceding paragraph, and to accept the duties imposed upon it by the terms of an agreement mentioned in the next paragraph, without compensation, in consideration of the agreement of the said Isen that respondent should hold the said bond and mortgage, or the moneys derived therefrom under the said agreement, for the satisfaction of such liabilities as the said Isen might then have incurred or might thereafter incur to respondent.

4. On November 26, 1926, Isen entered into an agreement with Aaron S. Cades and Sadie Cades,

his wife ("Exhibit E4," State of Case, page 28) whereby Isen agreed to sell to said Cades the $45,000 mortgage above-mentioned (which mortgage was to be assigned to respondent) upon Cades conveying to Isen property 178 States Avenue, Atlantic City, N. J. (in which it was considered that Cades had a $20,000 equity), and the balance of $25,000 to be paid to respondent at the expiration of one year from date of settlement (settlement to be made within 15 days from the date of the agreement); and upon the payment of the sum of $25,000 by Cades to respondent, the $45,000 bond and mortgage is to be surrendered by respondent to the said Cades in full with interest accrued from date of settlement.

5. On December 16, 1926, according to his agreement, Isen assigned the above-mentioned bond and mortgage of $45,000 to respondent, which assignment was duly recorded December 18, 1926, in the clerk's office of Atlantic County, N. J.

6. On February 3, 1927, Isen entered into a contract with respondent in the form of a collateral promissory note in the sum of $7500, made by Isen to respondent, a true copy of which is marked "Exhibit E6," State of Case, page 34. Under the terms of said collateral promissory note, Isen gave to respondent a lien for the amount of all his liabilities to respondent upon all the property or securities of him, the said Isen, given unto or left in the possession of respondent. At the time of the making of said note, and for some months prior thereto, respondent had been in possession of the interest of the said Isen in the above-mentioned bond and mortgage of $45,000, and has ever since continued to hold

the same as security for the payment of the liabilities of the said Isen to it.

7. On December 14, 1927, Cades died, and thereafter the defendants qualified as executors. These executors have since resigned and the Seaside Trust Company of Atlantic City, has been appointed substituted-administrator with the will annexed.

8. On March 26, 1928, Isen filed proof of claim with the executors of the Cades' Estate ("Exhibit B," State of Case, pages 6 and 7), claiming $25,000 from the estate of Aaron S. Cades, deceased, by virtue of his agreement with Cades above-mentioned. This claim was disputed by the executors by notice filed June 6, 1928.

9. On May 12, 1928, respondent entered a judgment against the Kwass Realty Co. and Martin I. Isen for $22,227.72 damages and costs, upon the two collateral notes above mentioned, no part of which has been paid.

10. At some time unknown to respondent, Isen assigned his interest in and to his claim against the estate of Aaron S. Cades, deceased, and Sadie Cades, to Ashor Salaman, and on September 12, 1928, said Salaman instituted a suit in the New Jersey Supreme Court against the defendants herein for $25,000, with interest from November 26, 1927, basing his claim upon the claim that the said defendants were indebted to Martin I. Isen under the agreement dated November 26, 1926, between the said Isen and Cades. Judgment by default was entered against the Cades' Estate on October 5, 1928, and a rule to show cause why the judgment should not be

opened to permit the said executors to defend, was discharged on December 11, 1928. On the same day the answer of defendant, Sadie Cades, was stricken and judgment entered against her.

11. On October 24, 1928, respondent filed a petition to be admitted a party to the within suit, and a rule to show cause granted thereunder resulted in the order upon which this appeal is had.

First Point.

Appellant contends that respondent has no interest in the subject-matter of the suit. The uncontradicted testimony shows a verbal agreement between respondent and Isen made on or about October 1, 1926, and also discloses two collateral note agreements, the first dated October 1, 1926, and the second, February 3, 1927, under which respondent is entitled to the payment of $25,000 from Cades. The written agreement which forms the basis of this suit provides that respondent is to take title to and hold the $45,000 mortgage in question, and upon the payment of $25,000 to respondent, it, the respondent, was to surrender the said mortgage of $45,000 to Cades. Appellant is not entitled to the benefit of the judgment herein because he cannot deliver or surrender the $45,000 mortgage to Cades.

The cases cited by appellant are not in point because respondent, while not a party to the contract, is to receive the benefit thereof.

Second Point.

The objection that nothing can be accomplished by admitting respondent after judgment final is ren-

dered, misses the point of the controversy. Respondent filed its petition as soon as it learned of the pending suit, before judgment was entered against Sadie Cades and while an application was pending to open the default judgment entered against the executors, to permit them to defend.

If appellant had any other relevant facts to offer than are now before the Court, he did not think so when the testimony was taken upon which the order entered by Justice Katzenbach was based. Under the admitted facts in this case respondent is entitled to receive out of any moneys collected under the within judgment its claim of $22,227.72, with interest, and the surplus, if any, belongs to appellant.

Third Point.

Concerning the contention that the Court cannot make an endless restraint when no forum is provided in which to determine the issue, respondent contends that the issues have been determined and that the order is not a restraint.

All the facts that have any bearing on the case are before the Court. Respondent contends that any interest of appellant is subject and subsequent to respondent's claim. The assignment under which appellant is proceeding was taken with notice of appellant's rights and subject thereto.

Appellant is a non-resident, appealing to the courts of this State for relief, and the Court so appealed to may and should exercise its right to undertake a complete determination of the controversy between any parties who may ask to intervene therein.

Respectfully submitted,

MORRIS BLOOM,

Attorney for Equitable Trust Co.,
Plaintiff-Respondent.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between
ASHOR SALAMAN,
Plaintiff-Appellant,
EQUITABLE TRUST COMPANY,
Plaintiff-Respondent,
and
SADIE CADES, individually, and LEWIS LIBERMAN and
EDWIN CADES, executors of the Estate of
AARON S. CADES, deceased,
Defendants.

ON APPEAL FROM SUPREME COURT.

BRIEF FOR PLAINTIFF-APPELLANT.

This is an appeal from an order made December 11, 1928, by Justice Frank S. Katzenbach, Jr., in the Supreme Court. The order thus appealed from decrees "that the Equitable Trust Company, a banking corporation of New Jersey, be and it is hereby admitted as a party-plaintiff with the plaintiff, Ashor Salaman, in the above-entitled cause."

FACTS.

1. On September 12, 1928, appellant, Salaman, commenced this suit in the Supreme Court against Sadie Cades, individually, and Lewis Liberman and Edwin Cades, executors of the estate of Aaron S. Cades, deceased, seeking to recover, as assignee of one, Martin I. Isen, the sum of $25,000.00 alleged to be due upon a written contract existing between Isen on the one hand and Mr. and Mrs. Cades on the other hand, prior to the death of Mr. Cades.

2. The contract was introduced in evidence and marked Exhibit "E4" and may be found on page 28 of the State of the Case. It is admitted by all the parties that the Equitable Trust Company was not a party signatory thereto.

3. Assessment of damages was made by the clerk, and a rule for judgment by default was entered on October 5, 1928, see pages 9, 10 and 11 of the State of the Case.

4. Subsequently application was made by Equitable Trust Company to be admitted as a party plaintiff. This application was based upon depositions taken on notice, see pages 12 to 38 of the State of the Case. A similar application to be admitted as a party-plaintiff was made by Isaac D. Sinderbrand and the depositions referred to both applications to be admitted as party-plaintiff.

5. It is admitted by the Equitable Trust Company that it was not a party to the contract sued upon, but

the trust company seeks to be admitted as a party-plaintiff on the theory that prior to the assignment to appellant, Isen, the assignor, orally agreed with Mr. Reed, the Vice-President of the trust company, that "all the moneys received—that Isen was to receive from Cades' estate was to go towards the liquidation" of an indebtedness due from Isen to the trust company.

6. Nowhere is it alleged that the assignee, Salaman, knew of any such oral arrangement, but it is admitted that the agreement constituting the basis of this suit refers to a mortgage of $45,000.00 then belonging to Isen and by said agreement sold to Cades. $20,000.00 was paid on account of Cades' obligation under said agreement, leaving $25,000.00 to be paid. It is also admitted that the mortgage was assigned by Isen to the Equitable Trust Company, to be assigned by the Equitable Trust Company to Cades upon the payment of the balance of $25,000.00 so due.

7. The trust company admits receiving the mortgage "in escrow." Exhibit "E7," page 37 of the State of the Case, is a letter from the vice-president and trust officer of the bank, in which the bank writes to Mr. Isen "we have agreed to hold in escrow" the mortgage in question to be assigned to Cades upon payment of the balance of $25,000.00 aforementioned. Exhibit "E8," page 38 of the State of the Case, the bank writes to Mr. Cades "our institution is holding the mortgage in escrow" to be assigned to Cades, pursuant to the agreement above mentioned.

8. The fact of the assignment from Isen to plain-

tiff, Ashor Salaman, is charged in paragraph 9 of the complaint, page 4 of the State of the Case, lines 18 to 22. The assignment is not denied by the respondent, nor any inquiry made in the depositions aforementioned as to its validity and legality. By lack of denial, the fact of the assignment is therefore admitted.

STATEMENT.

Appellant, at the time of the taking of the depositions, entered objections to the same on the point that the evidence and exhibits introduced were irrelevant to the case as the action is pending between Salaman and Cades, and that the Equitable Trust Company was neither a party to the agreement nor to the mortgage, nor in any wise interested in the assignment which was made to it solely in escrow for the parties to the agreement—Isen and Cades. The introduction of the notes given or endorsed by Isen to the bank was objected to by appellant, for the reason that the debts upon the notes had been reduced to judgment, creating a merger of the terms of the notes in the judgment. Appellant denied that under the terms of the notes, Equitable Trust Company would be entitled to any part of the amount sued upon in this suit; but urged that even if the Equitable Trust Company had been entitled to some interest in the subject-matter of the present suit, by reason of said notes, then the entry of judgment by the trust company against the makers of the notes merged the terms of the notes in the judgment obtained by the bank against the maker and endorser of the notes. It was stipulated on page 17, lines 4

to 11, that the Equitable Trust Company entered judgment against the maker and endorser of the notes. This judgment is not to be confused with the judgment referred to in paragraph 3 of this brief and set forth on pages 9, 10 and 11 of the State of the Case, the latter being the judgment in the case at bar.

This appeal comes before this Appellate Court upon three grounds of appeal, which are printed on page 48 of the State of the Case, as follows:

1. Because Equitable Trust Company had not proved itself to possess any interest in the subject-matter of said suit, nor did said Equitable Trust Company have such an interest therein as entitled it to be admitted as a party-plaintiff to said suit under the statute in such cases made and provided.

2. Because, as to the estate of Aaron S. Cades, deceased, the application to admit Equitable Trust Company as a party-plaintiff was served after final judgment was entered in favor of plaintiff, Ashor Salaman, and therefore, the application to admit the party-plaintiff came after all the issues in the case had been determined and at a time when no issue remained which could be determined in said suit in the Supreme Court.

3. Because the order appealed from was made by the Supreme Court solely to restrain the plaintiff, Salaman, from disposing of the proceeds of said judgment until the adverse claims of plaintiff, Salaman, and the Equitable Trust Company to said fund could be determined in the Court of Chancery or elsewhere other than in the Supreme Court, when the dispute between plaintiff, Salaman, and the said

Equitable Trust Company was not at issue therein nor available for determination in said Supreme Court suit in any event.

FIRST POINT.

Respondent has no interest in the subject-matter of this suit.

The application to admit Equitable Trust Company as party-plaintiff was made under the Practice Act of 1912, wherein it is provided that "where a person, not a party, *has an interest* or title which the judgment will affect, the Court, on his application, shall direct him to be made a party."

It is not claimed by the Equitable Trust Company that it is in any way privy to the contract sued upon. It is not claimed by the Equitable Trust Company that it gave any consideration moving as a part of said contract, but on the other hand it is admitted that the contract was between Isen, plaintiff's assignor on the one hand, and Cades on the other hand; and that the mortgage referred to in contract was simply left with the bank in escrow. (See contract, Exhibit "E4," page 28 of the State of the Case, and see letter marked Exhibit "E7," page 37, and letter marked Exhibit "E8," page 38.) It is not claimed by the Equitable Trust Company that the contract in question was made for the benefit, in any way at all, of Equitable Trust Company, but rather that long after the making of the contract, Isen made an oral arrangement which is very indefinitely testified to by Davis C. Reed (see pages 17 to 25 of the State of the Case), that "all the money received—

that Isen was to receive from Cades' estate was to go towards the liquidation" of certain indebtedness due from Isen to the bank.

Justice Trenchard, speaking for the entire Court of Errors and Appeals, in a unanimous opinion, in *Stand. Gas Power Corp. v. New Eng. Cas. Co.,* 90 N. J. L. 570, at page 573, says:

> "Now, the statute upon which the plaintiff relies, permitting a third party not privy to a contract, and who has given no consideration, to sue thereon, is limited to those for whose benefit the contract is made and does not extend to third parties who indirectly and incidently would be advantaged by its performance."

To the same effect are *Styles v. Long Co.,* 67 N. J. L. 413, and a long line of cases. The cited case was confirmed by the Court of Errors and Appeals in 70 N. J. L. 301, where Justice Swayze, speaking for a unanimous Court, at page 305, says:

> "Neither the cases nor the statute go so far as to permit a suit upon contract to be maintained by persons with whom the defendant never meant to enter into contractual relations. It is not enough that the plaintiff may be benefited by the performance of the contract."

This settled principle of law is again approved in the case of *Lawrence v. Union Insurance Co.,* 80 N. J. L. 135.

The clause in the contract sued upon providing "party of the first part agrees at the expiration of one year to pay to the Equitable Trust Company of Atlantic City, to whom this mortgage will be assigned, $25,000.00, and, upon the payment of said sum, this mortgage is to be surrendered to the party

of the first part," is easily explained by reference to the letters Exhibits "E7" and "E8," pages 37 and 38 of the State of the Case. It is perfectly clear that (a) Isen, plaintiff's assignor, owning the mortgage referred to in the agreement, contracted to sell it to defendant, Cades, and that no one else but Isen and Cades were parties signatory nor beneficially interested in the contract; (b) that the arrangement was that Isen should assign the mortgage to the Equitable Trust Company in escrow, to be assigned by the Equitable Trust Company to Cades upon payment by Cades of the balance of $25,00.00 due under the agreement. The fact that the first payment of $20,000.00 was made by Cades direct to Isen or at least not through the hands of the Equitable Trust Company shows conclusively that the bank did not intend to be, at the time of the making of the agreement, in any way beneficially concerned therein. The proof of arrangements made with the bank subsequent to the execution of the agreement are indefinite as to time, are entirely oral and of a parole nature, and do not in any way connect up the plaintiff, Ashor Salaman, Isen's assignee. We therefore respectfully submit that under the statute and the weight of the authorities, Equitable Trust Company has failed to comply with the requirements of the statute which provides that "where a person, not a party, *has an interest* or title which the judgment will affect, the Court, on his application, shall direct him to be made a party," and that the order of the Court below admitting the Equitable Trust Company as party-plaintiff ought to be reversed.

SECOND POINT.

Nothing could be accomplished by admitting Equitable Trust Company after final judgment rendered.

The suit in which the order appealed from was entered, is a suit between Ashor Salaman, plaintiff, and Sadie Cades, individually, and Lewis Liberman and Edwin Cades, executors of the estate of Aaron S. Cades, deceased.

Final judgment was entered as to the executors of the Cades' estate on October 5, 1928. From that date on the issues between those parties are a complete finality. Subsequently application was made by Equitable Trust Company to be admitted as party-plaintiff, and on November 7, 1928, depositions are taken on notice in which the Equitable Trust Company attempts to show its interest in the subject-matter. It fails completely in this effort, but in any event, appellant respectfully submits that even if the trust company had an interest in the subject-matter (which we deny), the application to admit the trust company was made too late because the Court had therefore made a final adjudication upon plaintiff's complaint and nothing more could possibly be determined in the suit. Supposing the Equitable Trust Company had a half interest in plaintiff's contract, to admit the Equitable Trust Company after final judgment was entered between plaintiff and defendant, would deprive plaintiff of denying that the Equitable Trust Company had such an interest—there would be no opportunity afforded for a further trial in the suit; in order to finally col-

lect his judgment plaintiff would need to make some forced settlement with the Equitable Trust Company without any chance to litigate in this suit as to whether or not the trust company is actually entitled to any interest in the proceeds of the judgment so rendered. It needs no citation of authorities to show that such action would be an empty thing for the Court to do, and that nothing could be accomplished by admitting Equitable Trust Company as a party-plaintiff after plaintiff, Ashor Salaman, had already obtained judgment against defendants, the executors of the Cades' estate.

We therefore respectfully submit that the order made by the Court below on December 11, 1928, ought to be reversed particularly as to the executors of the Cades' estate, against whom final judgment had been rendered on October 5, 1928, in favor of plaintiff, Ashor Salaman.

THIRD POINT.

This Court cannot make an endless restraint when no forum is provided in which to determine the issue, nor any issue is present to be determined.

The opinion of the Court below which is printed on pages 40, 41 and 42 of the State of the Case shows plainly that the Court realized that no determination was being made by him, nor could be made in this suit, as to the validity of the alleged interest which the Equitable Trust Company claimed to have in the proceeds of the judgment rendered in this suit in favor of plaintiff, Salaman, against the defen-

dants. Parts of the opinion may be quoted as follows:

> "The Equitable Trust Company of Atlantic City has applied to be made a party to the proceedings in the above-entitled cause. The attitude of the Equitable Trust Company, as I gather it from the argument of counsel, is that they have an interest in the fund or moneys which may be paid by Cades' estate or Sadie Cades growing out of the contract of November 26, 1926.
>
> While I think that this case will eventually have to go into the Court of Chancery to have the respective rights of the parties litigated, yet, in view of the condition in the agreement that the money was to be paid to the Equitable Trust Company of Atlantic City, I will make an order that they be made a party-plaintiff.
>
> I cannot, personally, see how this will avail the Equitable Trust Company to any extent, because, the question has ultimately got to be determined as to whether the plaintiff in this action is entitled to the consideration or the Equitable Trust Company.
>
> The Equitable Trust Company claims * * * that it holds notes upon which Isen is a party as guarantor or otherwise, which should be paid out of this twenty-five thousand dollars when realized. *This is a question that cannot be determined upon this application;* it depends upon a great many facts not as yet disclosed, and upon numerous propositions of law which have not been raised or argued.
>
> I am doing this merely to prevent Salaman, in the present stage of the proceedings, from getting away with the twenty-five thousand dol-

> lars. It is only, in my opinion, postponing the day, evil or otherwise, when this entire subject will have to be threshed out, because, of course, it is quite impossible for twenty-five thousand dollars to be used to pay some three claimants. Money, unfortunately, cannot be utilized in this manner."

It is respectfully submitted that the Court below failed to catch the essence of the case at bar, for the facts are as above outlined, to wit, that Salaman, as Isen's assignee, sued Cades upon a written agreement had with Isen whereby Cades owed Isen $25,000.00. The only person claiming the fund in the suit at bar was the plaintiff, Ashor Salaman, until after judgment had been rendered in favor of Salaman and against Cades' estate, whereupon the Equitable Trust Company attempted to set up an interest in the fund to the extent of certain notes. So that there were not three parties claiming the fund even at this late date, but rather, two; that is to say, Salaman and the Equitable Trust Company.

The Court below states frankly that the controversy between Salaman and the Equitable Trust Company, could not be determined upon an application to admit the Equitable Trust Company at this stage of the case. It is plain that the remedy which the Equitable Trust Company should have taken, would have been to have demanded that the executors of the Cades' estate pay the judgment to it, the trust company, rather than to the plaintiff, Salaman, whereupon the executors of the Cades' estate (if they regarded the claim as sufficiently important to require judicial direction) would have been in a position to pay the money into the Court of Chancery upon a bill of interpleader and permit Salaman

and the Equitable Trust Company to interplead over the fund so in dispute.

At any rate, it seems to us very well established both by the statute and the decisions in this jurisdiction that to be entitled to be admitted to a suit the applicant must prove *an interest* in the subject-matter thereof. It follows as a matter of logic that an opportunity must be afforded to the party opposing the application, to test out this interest in an appropriate forum *before* the applicant is so admitted or in the same suit in which the applicant is being admitted. It is illogical to admit the Equitable Trust Company to this suit *on the theory that some time in the future its right to share in the fund may be determined in some other suit in Chancery* or otherwise. Perhaps such a suit in Chancery will never be brought, and in that event the plaintiff, Salaman, would be unable to satisfy his judgment of record without being forced to settle with the Equitable Trust Company to whom he owes nothing. To state the proposition is to realize its falsity; to consider the principle is to understand how impossible it is; to study the result is to comprehend the error into which the Court below, fell.

It is therefore respectfully submitted on behalf of the appellant, Ashor Salaman, that the order made by the Court below admitting the Equitable Trust Company as a party-plaintiff herein should be set aside by this Court, and entirely reversed, because under the statute and the cases above cited the order is erroneous for the following reasons:

(a) Since the Equitable Trust Company has not shown itself to possess such an interest in the subject-matter of this suit as entitles it at this time, to be admitted as a party-plaintiff.

(b) Since, as to the executors of the Cades' estate, the motion to admit the Equitable Trust Company was made too late, notice thereof being served after judgment final had been entered herein in favor of the plaintiff.

(c) Since the order admitting the Equitable Trust Company was made strictly as a restraining order until the controversy between plaintiff, Salaman, and the trust company could be determined, in some other suit, when no other suit was pending in which such controversy was being put at issue and when the adjudication of such controversy was and is impossible in the suit at bar.

Respectfully submitted,
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