

INDEX.

	PAGE
Notice of Appeal	1
Petition of Appeal	2
Final Decree	6
Bill of Complaint	14
Stipulation	21
Answer	22
Replication	24
Notice of Motion	25
Order	26
Amended Answer	27
Case	30
Conclusions	92

TESTIMONY.

Complainants' Witness:

Thomas McClelland—	
Direct	32
Cross	33

Defendants' Witnesses:

Frank J. Elbert—	
Direct	47
John Stroh—	
Direct	50
Joseph Haas—	
Direct	56
Greenwood A. Robinson—	
Direct	60
George A. Weisenfeld—	
Direct	62
Cross	71
Recalled:	
Direct	91

	PAGE
Samuel B. Weisenfeld—	
Direct	72
Annita Pierro—	
Direct	75
Cross	83
George Deubell—	
Direct	83
Isabel Walker—	
Direct	85
Anthony Abalone—	
Direct	87

EXHIBITS.

Defendants':

	<i>Offered</i>	<i>Printed</i>
	<i>Page</i>	<i>Page</i>
D-1. Tax bills for 1926 to 1929.....	72	94
D-2. Check for \$450.00 to the order of A. L. Pierro, signed by Paul Weisenfeld	79	94

Notice of Appeal.

(Filed June 7, 1930)

IN CHANCERY OF NEW JERSEY.

Between

HUDSON TRUST COMPANY and
ANNITA PIERRO,

Complainants,

and

PAUL WEISENFELD, *et ux, et als.*,
Defendants.

On Bill, &c. 10

The defendants, Paul Weisenfeld and Mollie Weisenfeld hereby appeal from the Final Decree, made in the above entitled cause on June 3rd, 1930, made by the Chancellor on the advice of Vice Chancellor James F. Fielder and from the whole and every part thereof to the COURT OF ERRORS & APPEALS IN THE LAST RESORT IN ALL CAUSES.

20

Dated, June 5th, 1930.

SAUL NEMSER,
Solicitor for and of Counsel with
Defendants, Paul Weisenfeld
and Mollie Weisenfeld.

30

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

SAUL NEMSER,
Of Counsel with Defendants, Paul
Weisenfeld and Mollie Weisenfeld.

Service of a copy of the within Notice of Appeal is hereby acknowledged this 7th day of June, 1930.

40

LEULY & MOSER,
Solicitors of Complainants.

Petition of Appeal.

(Filed June 13, 1930)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	HUDSON TRUST COMPANY and ANNITA PIERRO, Complainants-Respondents, vs. PAUL WEISENFELD, <i>et ux, et als.</i> , Defendants-Appellants.	}	On Bill, &c. On Appeal from the Court of Chancery.
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TO THE HONORABLE THE COURT OF ERRORS AND AP-
PEALS IN THE LAST RESORT IN ALL CAUSES:

20 The Petition of Paul Weisenfeld and Mollie Weisenfeld, the appellants in the above-entitled cause, respectfully show that,

30 1. Petitioners find themselves aggrieved by a Final Decree made in the Court of Chancery, by His Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date June 3rd, 1930 in a certain cause in said Court of Chancery, wherein the said Hudson Trust Company and An- nita Pierro were complainants and the said Paul Weisenfeld and Mollie Weisenfeld were defendants, in this respect, to wit: That the said Decree ad- judges

40 "That the mortgaged premises hereinabove described, be sold as aforesaid, to raise and satisfy the monies due to the said complainants, that is to say, to pay and satisfy unto the com-

Petition of Appeal.

plainant, Hudson Trust Company, the sum of Eighteen Thousand Dollars (\$18,000.00) and to the complainant, Annita Pierro, the sum of Fourteen Thousand One Hundred and Five Dollars (\$14,105.) together with lawful interest on the sum of Thirty-two Thousand One Hundred and Five Dollars (\$32,105.00), from the second day of June, Nineteen Hundred and Thirty, with complainants' costs to be taxed; together with a counsel fee of Three Hundred and Fifty Dollars (\$350.00) which is hereby allowed to said complainants; together with lawful interest thereon from the date last mentioned; and

That a Writ of fieri facias issue for that purpose out of this court, directed to the Sheriff of the County of Hudson, commanding him to make sale according to law of said mortgaged premises hereinabove described, and that out of the moneys arising from said sale he pay to the complainants or their solicitors, their said debts, interests and costs, and that in case more money shall be raised by said sale than shall be sufficient to answer such several payments, that such surplus be brought into this court, to abide the further order of this court, unless otherwise previously disposed of by this court, and that the Sheriff make return, without delay, of his proceedings by virtue of said writ.

And it is further ORDERED, Adjudged and Decreed that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises, when sold as aforesaid by virtue of this decree."

Petition of Appeal.

And petitioners appeal from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that

(1) The Chancellor should have dismissed the bill.

10 (2) The Chancellor should have found as a fact that the alleged default under complainants' mortgage was occasioned by accident and mistake.

(3) The complainants' seeking to enforce a forfeiture, the Chancellor should have relieved the defendants from said forfeiture on the ground of mistake and accident.

20 (4) The Chancellor should have found as a matter of law that the alleged failure of the defendants to pay the taxes for the year 1928 was due to accident and mistake over which these defendants had no control, and not due to any negligence on the part of these defendants.

(5) The Chancellor should have dismissed the bill as to the complainant, Hudson Trust Company.

30 (6) There was no evidence before the Chancellor which would warrant a decree that the entire mortgaged premises should be sold. The Chancellor should have ordered that the same should be sold in parcels and not in whole.

40 (7) The Chancellor should have found that the complainants had waived any alleged default in the payment of taxes for the year 1928 because the uncontradicted evidence is that the complainants had accepted interest due on April 1st, 1929 at the time the complainants knew that there had been a de-

Petition of Appeal.

fault in the payment of taxes for the year 1928, the complainant, Annita Pierro having admitted on cross examination that when she accepted the interest payment in April, 1929 that she had already known of the default in the taxes for the year 1928.

Petitioner therefore prays that the said Decree of the said Chancellor may be wholly reversed, set aside and for nothing holden and that petitioners may have such other relief in the premises as to this court shall seem proper. 10

SAUL NEMSER,
Solicitor for and of Counsel with Appellants.

Service of a copy of the within Petition of Appeal is hereby acknowledged this 11th day of June, 1930. 20

LEULY & MOSER,
Solicitors and of Counsel with Respondents.

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Final Decree.
(Filed June 3, 1930)

IN CHANCERY OF NEW JERSEY.

72-620.

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Between
HUDSON TRUST COMPANY and
ANNITA PIERRO,
Complainants,

and

PAUL WEISENFELD, *et ux, et als.*,
Defendants.

On Bill, &c.

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This cause coming on to be heard in the presence of George P. Moser, of the firm of Leuly & Moser, Solicitors of the Complainants and Saul Nemser, Solicitor of the defendants, Paul Weisenfeld and Mollie Weisenfeld, and upon reading the consent hereto annexed of Messrs. Platoff, Saperstein & Platoff, Solicitors of the defendant Frank F. Lange, and the court having read and considered the pleadings, and having taken testimony orally and in open court and having heard and considered the arguments of counsel thereon, and the consent of Messrs. Platoff, Saperstein & Platoff, Solicitors for the defendant, Frank F. Lange, endorsed hereto; and

30

The Court having found that on December 1, 1928, the taxes covering the premises described in the Bill of Complaint were due and payable, and further finding that the Bond and Mortgage heretofore given by Paul Weisenfeld, one of the defendants herein to Annita Pierro contained the following clause:

40

Final Decree.

“And it is thereby expressly agreed that should any default be made in the payment of said interest or any part thereon, on any day whereon the same is made payable as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable, and should the said interest remain unpaid and in arrears for the space of thirty days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of ninety (90) days, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods as the case may be, the aforesaid principal sum of Thirty Thousand (\$30,000.) Dollars, with all arrearage of interest thereon, shall, at the option of the said party of the second part, or her legal representatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything therein before contained to the contrary thereof in anywise notwithstanding”;

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And it further appearing that on the first day of May, 1929, the said taxes for the year 1928 remained unpaid, which said date was more than ninety days after the imposition of said taxes:

And it further appearing that there was no fraud practiced by the complainant, Annita Pierro, as alleged in the First Separate Defense set out by the defendants;

40

Final Decree.

And it appearing that the default was not occasioned by accident and mistake;

10 And it appearing that Frank F. Lange, one of the defendants in this suit filed a notice stating that he did not dispute the priority of complainant's mortgage, but desired to have his encumbrance reported upon;

And it appearing that the encumbrance held by the said Frank F. Lange is a lease dated April 9, 1928, between Paul Weisenfeld and the said Frank F. Lange, which lease was executed after the complainants' mortgage;

20 And it appearing that the said Frank F. Lange has no interest that could be reported upon;

30 And it appearing to the Court that the said Annita Pierro assigned the Bond and Mortgage to the Hudson Trust Company, one of the complainants herein, by two assignments dated October 16, 1926 and May 16th, 1927, respectively, which assignments are recorded in Book 174 of Assignments for Hudson County page 476 and Book 179 of Assignment for Hudson County at page 255, respectively, as collateral security for two certain notes given by the said Annita Pierro to the said Hudson Trust Company, which notes total Eighteen Thousand Dollars (\$18,000.00):

40 And it appearing that there is due to the said Hudson Trust Company, the sum of Eighteen Thousand (\$18,000) Dollars; and that there is due to the said Annita Pierro the sum of Twelve Thousand Dollars (\$12,000.00), together with interest on the

Final Decree.

full amount of the Bond and Mortgage, to wit: Thirty Thousand Dollars (\$30,000.) from the first day of April, 1929 to the date of this decree, which amounts to Twenty-one Hundred and Five Dollars (\$2,105.00).

And it appearing that it will be necessary to sell all of the mortgaged premises to raise and pay the monies due to the complainants, together with costs of this suit; and for that purpose sale should be made of: 10

"ALL that certain lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Union City, in the County of Hudson and State of New Jersey, and which on a certain map entitled, "Map of property in the Township of North Bergen, Hudson County, N. J., belonging to W. G. Plummer & T. Butts, surveyed by C. P. Colvin, City Surveyor, Hoboken, N. J." and duly filed in the Clerk's (now Register's) Office of the County of Hudson, on the twenty-seventh day of December, A. D., 1860, are designated and laid down as part of lots number four (4) and five (5) and more particularly described as follows: 20 30

COMMENCING at a point in the easterly side or line of Thirty-second Street (formerly Hackensack Turnpike) as shown on said map, distant one hundred and twenty-five feet and six inches (125' 6") southerly from the southeasterly corner of said Thirty-second Street and the road to Dallytown, as shown on said map, and running thence southerly and along the easterly line of said Thirty-second Street, 40

Final Decree.

10 twenty-five (25) feet; thence easterly and at right angles to said Thirty-second Street, fifty-eight feet and seven and one-half inches (58' 7½"); thence northerly on a course north fifty (50) degrees west twenty-six feet and eight and one-half inches (26' 8½"); thence westerly and at right angles with said Thirty-second Street, forty-nine feet and three inches (49' 3") to the easterly side or line of said Thirty-second Street, the point or place of beginning; said premises are also known as #588 Thirty-second Street (formerly Hackensack Plank Road).

20 Second Tract: ALL that certain lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Union City (formerly Town of Union) in the County of Hudson and State of New Jersey and which on a certain map entitled, "Map of property belonging to J. Geayer and T. Butts, situated at the Town of Union, N. J., surveyed and laid out by William Hexamer, Surveyor, Hoboken, N. J." and filed in the Clerk's Office (now Register's Office) of

30 the County of Hudson, is known and distinguished as lot number fifteen (15) in Block number two (2) fronting and facing on the southerly side of Thirty-fifth (formerly Jefferson) Street as shown on said map, and being one hundred (100) feet deep on each side, and twenty-five (25) feet wide in front and rear, as by reference to said map will more fully appear; said premises are also known as street

40 number 573 Thirty-fifth Street (formerly Jefferson St.).

Final Decree.

Third Tract: ALL that certain lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Union City (formerly Town of Union) in the County of Hudson and State of New Jersey, which on a map entitled, "Map of property in the Township of North Bergen, Hudson County, N. J., belonging to W. G. Plummer and T. Butts, surveyed by C. P. Colvin, City Surveyor, Hoboken, N. J." and filed in the office of the Clerk (now Register) of the said Hudson County, is known and distinguished as a part of lots numbers three (3) and four (4) particularly described as follows:

BEGINNING at a point on the northerly side or line of Thirty-second Street (formerly Hackensack Plank Road) distant two (2) feet easterly along the said line of the said Thirty-second Street from the point of intersection of the said line with the westerly line of lot number four (4) as laid down on said map; running thence (1) northerly and parallel with the westerly line of lot number four (4) forty-nine feet and three inches (49' 3") to the northerly line of said lot number four (4); thence (2) westerly along the northerly line of lots numbers four (4) and three (3) to a point on said line at a right angle distance of one (1) foot from the westerly line of lot number three (3) extended; thence (3) southerly and parallel with the line first run, to the northerly side or line of the said Thirty-second Street; thence (4) easterly and along the northerly side or line of the said Thirty-second Street,

Final Decree.

to twenty-five feet to the point or place of beginning."

10 It is on this 3rd day of June, 1930, ORDERED, Ad-
 judged and Decreed "that the mortgaged premises
 hereinabove described, be sold as aforesaid, to raise
 and satisfy the monies due to the said complainants,
 20 that is to say, to pay and satisfy unto the complain-
 ant, Hudson Trust Company, the sum of Eighteen
 Thousand Dollars (\$18,000.00), and to the com-
 plainant, Annita Pierro, the sum of Fourteen Thou-
 sand One Hundred and Five Dollars (\$14,105.)
 together with lawful interest on the sum of Thirty-
 two Thousand One Hundred and Five Dollars
 (\$32,105.00), from the Second day of June, Nine-
 30 teen Hundred and Thirty, with complainants' costs
 to be taxed; together with a counsel fee of Three
 Hundred and Fifty Dollars (\$350.00), which is
 hereby allowed to said complainants; together with
 lawful interest thereon from the date last men-
 tioned; and

30 That a writ of fieri facias issue for that purpose
 out of this court, directed to the Sheriff of the
 County of Hudson, commanding him to make sale
 according to law of said mortgaged premises here-
 inabove described, and that out of the moneys aris-
 ing from said sale he pay to the complainants or
 their solicitors, their said debts, interests and costs,
 and that in case more money shall be raised by said
 sale than shall be sufficient to answer such several
 payments, that such surplus be brought into this
 court, to abide the further order of this court, un-
 less otherwise previously disposed of by this court,
 and that the Sheriff make return, without delay, of
 40 his proceedings by virtue of said writ.

Final Decree.

And it is further ORDERED, Adjudged and Decreed that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises, when sold as aforesaid by virtue of this decree."

E. R. WALKER,
C. 10

Respectfully advised,
JAMES F. FIELDER,
V. C.

We consent to the form and entry of the above Decree.

PLATOFF, SAPERSTEIN & PLATOFF,
Solicitors for Defendant, 20
Frank F. Lange.

I consent to the form of the above Decree.

SAUL NEMSER,
Solicitor for Defendant,
Paul Weisenfeld & Mollie Weisenfeld.

30

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Bill of Complaint.

(Filed May 1, 1929)

IN CHANCERY OF NEW JERSEY.

TO THE HONORABLE EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey.

10 The complainants, Hudson Trust Company, a
banking corporation of the State of New Jersey,
and Annita Pierro of the Township of North Ber-
gen, in the County of Hudson and State of New
Jersey, respectfully show that:

20 1. On October 4th, 1926, Paul Weisenfeld, being
indebted to the complainant, Annita Pierro, in the
sum of Thirty Thousand Dollars (\$30,000.00), exe-
cuted to her a Bond of that date to secure that sum,
payable on October 4th, 1931, with interest at the
rate of six per cent. per annum, payable quarter
yearly, from the date of the Bond.

30 2. To secure the payment of the Bond, said Paul
Weisenfeld executed to said Annita Pierro, a pur-
chase money mortgage of even date with the Bond,
and thereby conveyed to her, in fee, the lands here-
inafter described, on the express condition that such
conveyance should be void, if payment should be
made according to the terms of the Bond, which
said mortgage having first been duly acknowledged,
and the certificate of acknowledgment duly en-
dorsed thereon, was recorded in the Office of the
Register of the County of Hudson in Liber 1389 of
mortgages for said County on page 563.

3. The mortgaged premises are described as
follows:

40 ALL that certain lot, tract or parcel of land
and premises, hereinafter particularly de-

Bill of Complaint.

scribed, situate, lying and being in the City of Union City, in the County of Hudson and State of New Jersey, and which on a certain map entitled, "Map of property in the Township of North Bergen, Hudson County, N. J., belonging to W. G. Plummer & T. Butts, surveyed by C. P. Colvin, City Surveyor, Hoboken, N. J." and duly filed in the Clerk's (now Register's) Office of the County of Hudson on the twenty-seventh day of December, A. D. 1860, are designated and laid down as part of lots number four (4) and five (5) and more particularly described as follows: "COMMENCING at a point in the easterly side or line of Thirty-second Street (formerly Hackensack Turnpike) as shown on said map, distant one hundred and twenty-five feet and six inches (125' 6") southerly from the southeasterly corner of said Thirty-second Street and the road to Dallytown, as shown on said map, and running thence southerly and along the easterly line of said Thirty-second Street, twenty-five (25) feet; thence easterly and at right angles to said Thirty-second Street, fifty-eight feet and seven and one-half inches (58' 7½"); thence northerly on a course north fifty (50) degrees west twenty-six feet and eight and one-half inches (26' 8½"); thence westerly and at right angles with said Thirty-second Street, forty-nine feet and three inches (49' 3") to the easterly side or line of said Thirty-second Street, the point or place of beginning; said premises are also known as #588 Thirty-second Street (formerly Hackensack Plank Road).

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Second Tract: ALL that certain lot, tract or parcel of land and premises, hereinafter par-

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Bill of Complaint.

10 particularly described, situate lying and being in the City of Union City (formerly Town of Union) in the County of Hudson and State of New Jersey, and which on a certain map entitled "Map of property belonging to J. Geayer and T. Butts, situated at the Town of Union, N. J., surveyed and laid out by William Hexamer, surveyor, Hoboken, N. J." and filed in the Clerk's Office (now Register's Office) of the County of Hudson, is known and distinguished as lot number fifteen (15) in Block number two (2) fronting and facing on the southerly side of Thirty-fifth (formerly Jefferson) Street as shown on said map, and being one hundred (100) feet deep on each side, and twenty-five (25) feet wide in front and rear, as by reference to said map will more fully appear; said premises are also known as street number 573 Thirty-fifth Street (formerly Jefferson Street).

20

30 Third Tract: ALL that certain lot, tract or parcel of land and premises, hereinafter particularly described, situate lying and being in the City of Union City, (formerly Town of Union) in the County of Hudson and State of New Jersey, which on a map entitled, "Map of property in the Township of North Bergen, Hudson County, N. J., belonging to W. G. Plummer and T. Butts surveyed by C. P. Colvin, City Surveyor, Hoboken, N. J." and filed in the office of the Clerk (now Register) of the said Hudson County, is known and distinguished as a part of lots numbers three (3) and four (4) particularly described as follows: BEGINNING at a point on the northerly side or line of Thirty-second Street (formerly Hackensack Plank Road) distant two (2) feet

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Bill of Complaint.

easterly along the said line of the said Thirty-second Street from the point of intersection of the said line with the westerly line of lot number four (4) as laid down on said map; running thence (1) northerly and parallel with the westerly line of lot number four (4) forty-nine feet and three inches (49' 3") to the northerly line of said lot number four (4); thence (2) westerly along the northerly line of lots numbers four (4) and three (3) to a point on said line at a right angle distance of one (1) foot from the westerly line of lot number three (3) extended; thence (3) southerly and parallel with the line first run, to the northerly side or line of the said Thirty-second Street; thence (4) easterly and along the northerly side or line of the said Thirty-second Street, twenty-five (25) feet to the point or place of beginning.

10

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BEING the same lands and premises conveyed to the defendant, Paul Weisenfeld, by deed dated Oct. 4th, 1926, made by complainant, Annita Pierro, and her husband; and said mortgage was a purchase money mortgage, given to secure part of the purchase money in said deed mentioned.

30

4. Both Bond and Mortgage contain an agreement that if any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them, should remain unpaid, and in arrear for the space of ninety days, then the whole of the principal sum, with all arrearage of interest thereon, shall, at the option of the mortgagee, or her legal representatives, become immediately due.

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Bill of Complaint.

5. On October 16th, 1926, the complainant, An-
nita Pierro, assigned her said mortgage, by Assign-
ment of Mortgage bearing said date, to the com-
plainant, the Hudson Trust Company, a banking
corporation of the State of New Jersey, to secure
the payment of a Note for Eight Thousand Dollars
(\$8000.00) made by her to, and discounted for her
10 by, said Hudson Trust Company, on said date,
which said Assignment of Mortgage was recorded
in the Hudson County Register's Office on October
16th, 1926, in Book 174 of Assignments of Mort-
gages for said county on page 456.

6. On May 16th, 1927, the complainant, Annita
Pierro, assigned her said mortgage by Assignment
of Mortgage bearing said date, to the complainant,
20 the Hudson Trust Company, a banking corporation
of the State of New Jersey, to secure the payment
of a Note for Ten Thousand Dollars (\$10,000.00)
made by her to, and discounted for her by, said
Hudson Trust Company, on said date, which said
Assignment of Mortgage was recorded in the Hud-
son County Register's Office in Liber 179 of assign-
ments of mortgages for said County on page 255,
on May 16th, 1927.

30 7. By virtue of which said Assignments of
Mortgage, the complainant, Hudson Trust Com-
pany, claims there is due the sum of Eighteen Thou-
sand Dollars (\$18,000.00).

8. On April 9th, 1928, the defendant, Paul
Weisenfeld, executed and delivered a lease to one
Frank F. Lange, for part of said premises, known
as number 588 Thirty-second Street, in the City of
Union City, Hudson County, New Jersey, for the
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Bill of Complaint.

term of three years, commencing May 1st, 1928, and ending May 1st, 1931, at the annual rental of Six Hundred Dollars (\$600.00), for the first year, payable Fifty Dollars (\$50.00) a month, in advance, on the first day of each and every month, and for the next two years, at an annual rental of One Thousand Dollars (\$1,000.00) per year, payable in equal monthly payments of Eighty-three Dollars and Thirty-three Cents (\$83.33), payable on the first day of each and every month, in advance. 10

Any interest which said Frank F. Lange has in said lands, is subject to the lien of complainants' mortgage.

9. Said Paul Weisenfeld is married and his wife's name is Mollie.

Any interest or claim which she may have by way of inchoate right of dower, or otherwise, is subject to complainants' mortgage. 20

10. Said Paul Weisenfeld failed and neglected to pay the taxtes assessed by the City of Union City in the County of Hudson and State of New Jersey, against said mortgaged premises, for the first and second half of the year 1928, amounting to Six Hundred and Eight Dollars and Thirteen Cents (\$608.13), which became due and payable as follows: First half thereof on June 1st, 1928, and the second half thereof, on December 1st, 1928; and complainants have elected that the whole of the said principal sum of said mortgage, with unpaid interest thereon, shall be now due. 30

11. The said Paul Weisenfeld and Frank F. Lange or one of them, has or have always been in possession of the mortgaged premises. 40

Bill of Complaint.

12. There is due on the principal sum of complainants' said Bond and Mortgage, the sum of Thirty Thousand Dollars (\$30,000.00) with interest thereon from April 4th, 1929.

Complainants are without adequate remedy in the courts of law and therefore pray:

10

1. That Paul Weisenfeld and Mollie Weisenfeld, his wife, and Frank F. Lange, who are the defendants to this suit may answer this Bill of Complaint, and each statement therein made.

2. That an account may be taken of the amount due on complainants' mortgage.

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3. That the defendants, or one of them, may be decreed to pay the complainants, the amounts so found due with interest and costs, by a short day to be appointed by this court, and that in default of such payment, they and each of them, be debarred and foreclosed from all equity of redemption, in said lands; or

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4. That a decree may be made for the sale of the mortgaged premises, to raise and pay to complainants, the amounts so found due on their mortgage, with interest and costs.

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

ALBERT LEULY,

Solicitor for and of Counsel with Complainants.

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Answer.
(Filed June 10, 1929)

IN CHANCERY OF NEW JERSEY.

10	Between HUDSON TRUST Co., <i>et als.</i> , Complainants, and PAUL WEISENFELD, <i>et ux, et als.</i> , Defendants.	}	On Bill, &c.
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The defendants, Paul Weisenfeld and Mollie Weisenfeld, his wife, answering the bill of complaint.

20 These defendants, residing in Jersey City, County of Hudson and State of New Jersey, answering the complaint:

1. They admit the allegations of Paragraph "1".
2. They admit the allegations of Paragraph "2".
3. They admit the allegations of Paragraph "3".
- 30 4. They admit the allegations of Paragraph "4".
5. They have no knowledge or information, sufficient to form a belief as to the allegations contained in Paragraph "5".
6. They have no knowledge or information, sufficient to form a belief as to the allegations of Paragraph "6".

Answer.

7. They have no knowledge or information, sufficient to form a belief as to the allegations contained in Paragraph "7".

8. They admit the allegations of Paragraph "8".

9. They admit the allegations of Paragraph "9."

10. They deny the allegations of Paragraph "10".

11. They admit the allegations of Paragraph "11".

12. They deny the allegations of Paragraph "12".

SAUL NEMSER,
Solicitors for Defendants,
Paul Weisenfeld and Mollie Weisenfeld.

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Notice of Motion.

(Filed May 22, 1930)

IN CHANCERY OF NEW JERSEY.

Between

HUDSON TRUST Co., *et als.*,
Complainants,

and

PAUL WEISENFELD, *et ux, et als.*,
Defendants.

On Bill, &c. 10

To:

Messrs. LEULY & MOSER,
Solicitors of Complainants.

SIRS:

PLEASE TAKE NOTICE: That on Monday, May 19th, 1930, I shall move before the Honorable James F. Fielder, the Vice Chancellor to whom the above entitled cause has been referred, at the Chancery Chambers, 1 Exchange Place, Jersey City, New Jersey, at 10 o'clock in the forenoon, or as soon thereafter as the court can attend to the same, for leave to file an amended answer on behalf of the defendants, Paul Weisenfeld and Mollie Weisenfeld, in this cause.

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Yours truly,

SAUL NEMSER,
Solicitor for Defendants,
Paul Weisenfeld and Mollie Weisenfeld.

Dated, May 15th, 1930.

40

Amended Answer.

(Filed May 22, 1930)

IN CHANCERY OF NEW JERSEY.

Between

HUDSON TRUST Co., *et als.*,
Complainants,

and

PAUL WEISENFELD, *et ux, et als.*,
Defendants.

On Bill, &c. 10

The defendants, Paul Weisenfeld and Mollie Weisenfeld, his wife, by their amended answer, say that:

1. They admit the allegations of Paragraph "1". 20
2. They admit the allegations of Paragraph "2".
3. They admit the allegations of Paragraph "3".
4. They admit the allegations of Paragraph "4".
5. They have no knowledge or information, sufficient to form a belief as to the allegations contained in Paragraph "5". 30
6. They have no knowledge or information, sufficient to form a belief as to the allegations of Paragraph "6".
7. They have no knowledge or information, sufficient to form a belief as to the allegations contained in Paragraph "7". 40

Amended Answer.

8. They admit the allegations of Paragraph "8".
9. They admit the allegations of Paragraph "9".
10. They deny the allegations of Paragraph "10".
- 10 11. They admit the allegations of Paragraph "11".
12. They deny the allegations of Paragraph "12".

FIRST DEFENSE.

20 If there has been a default in the payment of taxes for the first and second half of the year 1928, amounting to \$608.13 as alleged in Paragraph "10" of the bill of complaint, then said default was occasioned and brought about by the acts and connivance of the complainant, Anita Pierro, in that she did wilfully and deliberately cause the tax bill for said year 1928 to be mailed to her instead of to the defendants herein, and purposely and deliberately induced the Clerk in the office of the Tax Collector of Union City to mail said bill to her, for the purpose of misleading these defendants, so that they would not receive said tax bill and the said complainant, Annita Pierro, retained said tax bill until such time as there had been an alleged default.

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SECOND DEFENSE.

40 1. If there has been a default on the complainant's mortgage, by reason of the alleged failure of the defendants to pay the first and second half of

Amended Answer.

taxes for the year 1928, said default in the payment of taxes was not due to any acts or matter over which these defendants had control. This thing was brought about through accident and mistake, and the defendants are advised and believe that this court will refuse to enforce a forfeiture or penalty brought about by accident and mistake.

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2. Said accident and mistake consisted of the following: When the taxes for the year 1928 became due the Tax Collector's office of Union City in response to the defendants' demand, delivered to said defendants, tax bills on the said premises for 1928, and as said defendants assumed and believed, covered the entire premises upon which the complainants' mortgage is a lien, and said tax bill so delivered by the Tax Collector's office in Union City to the defendants, was promptly paid, and it was not until the institution of this suit that the defendants became aware and had knowledge of the fact that the taxes on a certain portion of the premises being foreclosed had not been paid, by reason of the accident and mistake aforesaid. There is no default or negligence on the part of the defendants; if the taxes for the year 1928 on any portion of the premises being foreclosed, were not paid according to the terms of the mortgage, the same was brought about through the accident and mistake aforesaid.

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SAUL NEMSER,
Solicitor for Defendants.

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Case.

IN CHANCERY OF NEW JERSEY.

10	Between HUDSON TRUST Co., <i>et als.</i> , Complainants, and PAUL WEISENFELD, <i>et als.</i> , Defendants.	}	On Bill, &c.
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TRANSCRIPT OF SHORTHAND NOTES OF TESTIMONY
 taken on final hearing in above stated cause, May
 22, 1930, at Chancery Chambers, Jersey City, be-
 fore His Honor, James F. Fielder, Vice Chancellor.

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APPEARANCES.

MESSRS. LEULY & MOSER (Mr. Moser) for com-
 plainants.

SAUL NEMSER, Esq., for defendants.

30 The Court: It is agreed that it shall be con-
 sidered that the complainants have filed a general
 replication to the defendants' amended answer.

COMPLAINANTS' CASE.

Mr. Moser: I offer in evidence bond made by
 Paul Weisenfeld to Annita Pierro, dated October
 4, 1926, to secure payment of \$30,000 October 4,
 1931, with interest at six per cent.

(Marked Exhibit C-1.)

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Case

Mr. Moser: I also offer in evidence mortgage made by Paul Weisenfeld to Annita Pierro, dated October 4, 1926; recorded October 5, 1926, in Book 1398 of Mortgages, on page 563, in the Hudson County Register's Office, given to secure payment of the bond marked Exhibit C-1.

(Marked Exhibit C-2.)

Mr. Moser: It is admitted by the defendant that on October 16, 1926, Annita Pierro assigned the bond and mortgage, Exhibit C-1 and Exhibit C-2, to the Hudson Trust Company, to secure the payment of her note for \$8,000; which assignment was recorded in the Hudson County Register's Office October 16, 1926, in Book 174 of Assignments, page 526; and that on May 16, 1927, the complainant Annita Pierro again assigned the mortgage to the Hudson County Trust Company to secure the payment of her note for \$10,000; which assignment was recorded in the Hudson County Register's office May 16, 1927, in Book 179 of Assignments of Mortgages, page 255.

It is conceded that there is due to Annita Pierro \$12,000, with interest on the full amount of the bond and mortgage, to wit, \$30,000, from April 1, 1929, and that there is due to the Hudson Trust Company under the assignments the sum of \$18,000.

It is admitted that the mortgage under foreclosure is a purchase money first mortgage on the premises described in the mortgage.

T. McClelland. Called by Complainants. Direct.

THOMAS MCCLELLAND, sworn as a witness on the part of the complainants, testifies as follows:

DIRECT EXAMINATION BY MR. MOSER:

- Q. Where do you live? A. 44 Forty Sixth Street, Union City.
- 10 Q. Are you employed by the City of Union City? A. I am.
- Q. In what capacity? A. Receiver of Revenue now. I have been Tax Collector.
- Q. For the old Union Hill district? A. Union Hill.
- Q. Is that the district in which the property on Thirty-Second Street, at or near the Boulevard and on Jefferson Street is located? A. Yes.
- 20 Q. Have you the records of your office for 1928 in court concerning the taxes due on this property? A. I have.
- Q. Turning now to block No. 12, lots 4, 26, parts of 3 and 5, can you tell us what property that comprises? A. Well, lots 4 and 26 in 1928 were assessed in the name of Louis Pierro.
- Q. That is 4 and 26? A. 4 and 26, the way the record is given to us through the City Engineer.
- 30 Q. Can you tell us what size property that is and where it is located? A. I have not got the maps to give you. Those belong to the Assessors.
- Q. Have you the maps in court? A. The assessors have those. As far as we know we go by our records that are handed to us.
- Q. Do you have the street number for this property? A. It shows here 573 Thirty Second Street.
- Q. Have you an address in Jefferson Street or Thirty-fifth Street? A. There isn't any given here.

T. McClelland. Called by Complainants. Cross.

Q. The properties known as lots 4 and 26, when were the 1928 taxes paid? A. May 3, 1929.

Q. Have you any record with you that will give us the position of lots 4 and 26 in block 12? A. Nothing outside of this, personally.

CROSS EXAMINATION BY MR. NEMSER:

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Q. According to your records, is there other property in the immediate vicinity of lots 4 and 26, which is owned by Mr. and Mrs. Pierro? A. Not that I know of.

Q. Are you familiar with their holdings? A. Not the particular holdings.

Q. Do you know who owns lot 3 in block 12? A. 1, 2 and 3, and 21 to 25, which is the corner lots, on the Hudson Boulevard, were owned in 1928 in the name of Paul Weisenfeld. 20

Q. In other words, that is, eight lots were in the name of Paul Weisenfeld? A. Yes; that is what this record says.

Q. Will you tell us when lot 3 was first assessed in the name of Paul Weisenfeld? A. No; not from these records.

BY THE COURT:

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Q. When were the taxes on those lots paid? A. July 2, 1928 one-half was paid. January 31, 1929 the second half was paid.

BY MR. NEMSER:

Q. According to your records, Mr. McClelland, can you tell us the number of feet on Thirty-second Street assessed to Mrs. Pierro? A. Those dimen- 40

T. McClelland. Called by Complainants. Cross.

sions are not given to us. Those belong to the assessors.

Q. You are the Tax Collector of Union City, isn't that so? A. Yes, sir.

Q. It is under your supervision that the tax bills are made out and mailed out?

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

A. The bills are made out and mailed out, according to our records—the records given to us.

BY THE COURT:

20 Q. His question is: It is under your supervision that the bills are sent out? A. Yes.

BY MR. NEMSER:

Q. You have been tax collector for how many years? A. In the neighborhood of twenty-three years.

Q. Do you know Mrs. Pierro? A. No, sir.

Q. Did you ever see her? A. Not that I know of.

30 Q. Did you ever talk to her in the tax office? A. Not that I know of. We talk to a lot of people.

Q. Did you ever hear her talk to anybody else about taxes? A. I don't know the lady.

40 Q. Will you tell us how your books are made up, from what are your books copied, or what other records are there? A. The assessors make these books and turn them over to the County Board of Taxation and they in turn hand to us, to the County Collector. We have nothing to do with making up the books.

T. McClelland. Called by Complainants. Cross.

Q. So far as your office is concerned, the amount of taxes, and the various properties assessed, are taken direct from the books of the Board of Assessors? A. (No answer).

BY THE COURT:

Q. This is the book made up by the Board of Assessors? A. Yes; they write the book. We do not. 10

BY MR. NEMSER:

Q. They write the book and you follow it exactly? A. Yes, sir.

Q. If the Board of Assessors book showed that 4 and 26 were assessed to Pierro, your record in your office should show it that way? A. The bills are made out that way. 20

Q. The amount of taxes depending on the book of the Board of Assessors? A. Yes.

BY THE COURT:

Q. To shorten the matter, let me ask you this, if it is not a fact when they make out tax bills they make them out from the record prepared by the Board of Assessors and eventually turned over to the Collector of Revenue; isn't that so? A. That is so. 30

BY MR. NEMSER:

Q. When a tax bill is mailed to a person whose name and address appears on the book of the Board of Assessors? A. They are. 40

T. McClelland. Called by Complainants. Cross.

Q. You do not mail it to any address that you may have yourself? A. We mail it to the property that appears, unless the parties come in and give us an address that they live elsewhere and make a request to mail it there.

10 Q. Will you turn to your records for 1924, lots 4 and 26 in Block 12. Can you tell us in whose name those lots were assessed? A. Louis Pierro.

Q. To whom was lot 3 in block 12 assessed? A. Also to Louis Pierro.

Q. According to your records, lot 3 is known as what street number? A. 590 Hackensack Plank Road.

20 Q. Now, will you turn to your records for the year 1926 and tell us in whose name lots 4 and 26 and lot 3 for the year 1926, were assessed? A. Lot 3 was assessed in the name of Louis Pierro on one bill, and lots 4 and 26 in the name of Louis Pierro—two separate bills.

30 Q. Now, turn to your records for 1927. In whose name were lots 3, 4 and 26 assessed? A. They were assessed in the name of Louis Pierro, lot 3, and lot 4 and lot 26 also. Then it appears that some one must have come along and said they were in the name of Paul Weisenfeld, 137 Mercer Street, and asked for the bill to be sent there.

Q. Will you point that out to me? A. (Indicating) There it is.

Q. According to page 12 of your records, lots 3 and 4 and 26 were assessed in the name of Louis Pierro? A. That is right.

Q. Then there appears in ink, in handwriting, over the name "Louis Pierro" the name "Paul Weisenfeld, 137 Mercer Street, Jersey City"? A.

40 Q. Do you know whose handwriting that is in? A. I cannot answer that.

T. McClelland. Called by Complainants. Cross.

Q. Now, will you turn to your records of the year 1928? To whom were lots 3, 4 and 26 assessed? A. Lots 4 and 26, in 1928, in the name of Louis Pierro.

Q. In whose name was lot 3 assessed? A. That is in with lots 1, 2, 3, 21 to 25, in the name of Paul Weisenfeld.

Q. Now, according to your records, were the tax bills for lots 4 and 26, for 1928, to be sent to a party mentioned on your book, namely Louis Pierro? A. It would be sent to 573 Thirty-second Street. 10

Q. Is that the address of Louis Pierro, according to your records? A. That is according to the record that he gave us.

Q. Do you keep any separate book or any separate record as to whom those bills were to be mailed? A. No. 20

Q. Now, will you turn to your books or records for the year 1929? To whom were lots 3, 4 and 26 assessed? A. Lots 1, 2, 3, 21 to 25 in the name of Paul Weisenfeld.

Q. And lots 4 and 26? A. Also in the name of Paul Weisenfeld.

Q. Referring again to your records for 1928, would you say by an examination of your records that the tax bills for 1928 on lots 4 and 26 were sent to Louis Pierro? A. According to this record, yes. 30

Q. I understood you to testify before, according to your records, lots 4 and 26 were assessed for the year 1927 to Louis Pierro; is that right? A. I will have to look and see.

Q. Refer to the book and be sure about it. According to your records, lots 4 and 26, for 1927, were assessed to Louis Pierro? A. By the Board of Assessors. 40

T. McClelland. Called by Complainants. Cross.

Q. Over the name of Louis Pierro is written the name "Paul Weisenfeld, 137 Mercer Street, Jersey City"—that is correct, is it not? A. That is correct.

10 Q. Will you tell us how it is that in 1928 you still carried the name of Louis Pierro? A. Someone comes in and says that they have purchased the property and they ask for the tax bills. These properties are sold in the mean time and we do the best we can.

BY THE COURT:

Q. Can you tell us when that name "Paul Weisenfeld" was written in the 1927 book over the name of Louis Pierro? A. No; I cannot tell you that.

20 Q. You do not know whether it was in 1927 or 1928? A. No, sir.

BY MR. NEMSER:

Q. Do you know in whose handwriting it is in? A. No; I do not.

Q. Do you know whose handwriting the name Louis Pierro is in? A. This is the Board of Assessors. I do not know.

30 BY THE COURT:

Q. The original record from the Board of Assessors? A. Yes.

BY MR. NEMSER:

40 Q. This is the Board of Assessors' book? A. No, sir; it is the Tax Collector's now, made up by the Board of Assessors. We have different clerks in the office and they do different work.

T. McClelland. Called by Complainants. Cross.

Q. Who would have charge of that—what clerks had charge of these books during the year 1927?

A. (No answer.)

BY THE COURT:

Q. Mr. McClelland, the fact is that you had charge of the office and these books were open to use of you and by the clerks in your office—by any clerk in your office? A. Yes. 10

BY MR. NEMSER:

Q. How many clerks did you have? A. Two and sometimes three.

Q. Who were they? A. Mr. Daly, Mr. Elbert and sometimes Mr. Nolan.

Q. Is that your handwriting? A. It is somewhat of my handwriting. 20

Q. Is it your handwriting? You can tell. Take a look at it. A. I have been looking at it.

Q. Which is your handwriting? A. It looks somewhat like mine and still looks somewhat like—

Q. Which name looks like yours—Pierro or Weisenfeld? A. The “Weisenfeld” looks like my handwriting.

Q. Would you say 137 Mercer street is in your handwriting? A. A. The whole thing would be in one party's writing. 30

BY THE COURT:

Q. Can you say whether or not that writing “Paul Weisenfeld, 137 Mercer Street, Jersey City”, is in your handwriting? A. You can tell from the bills if you want to—

T. McClelland. Called by Complainants. Cross.

Q. The question is whether it is yours in the tax book? A. We write different ways at times.

Q. Never mind that. Is this your handwriting in the book? A. It looks like it.

Q. Can you tell us whether "Paul Weisenfeld, 137 Mercer Street, Jersey City", is in your handwriting or not? A. Yes; it looks like it.

10 Q. You might have written it then? A. I might have.

BY MR. NEMSER:

Q. In whose handwriting is "Louis Pierro"? A. I don't know.

BY THE COURT:

20 Q. This book is prepared by the Board of Assessors. Somebody in the Board of Assessors' office prepared this book and handed it down to be passed upon by the County Board of Taxation, and they in turn turned it over to the Collector? A. Yes.

BY MR. NEMSER:

30 Q. I show you tax bill for 1927, lots 4 and 26, made out to Louis Pierro, and "Louis Pierro" stricken out and "Paul Weisenfeld" written over it. Do you know whose handwriting that is—both names? A. This (indicating) is mine.

BY THE COURT:

Q. "Louis Pierro" is in your handwriting? A. Yes.

T. McClelland. Called by Complainants. Cross.

Q. And "Paul Weisenfeld", is that in your handwriting? A. No.

Q. Whose is it? A. It looks like Mr. Elbert's.

BY MR. NEMSER:

Q. I show you another tax bill, lot 3, 1927? A. That is the same way. 10

Q. Made out to Louis Pierro and "Paul Weisenfeld", written over it? A. The same thing.

Q. 137 Mercer Street, Jersey City? A. The same thing.

Q. The name "Paul Weisenfeld" looks like your handwriting? A. No; that is not mine.

Q. "Louis Pierro" is? A. Yes.

Q. I show you a tax bill for 1928, lots 4 and 26, made out to L. Pierro. Is that your handwriting? A. Yes. 20

Q. Would you say you mailed that bill out? A. As far as I know, yes.

Q. I show you tax bill for 1928, for the same lots, including lot 3, made out in the name of Paul Weisenfeld. Is that in your handwriting? A. No, sir.

Q. Would you say that the bill made out in 1928, to L. Pierro, lots 4 and 26, was actually mailed by you? A. The way bills are supposed to be mailed— 30

BY THE COURT:

Q. The question is: Can you say whether this bill made out to L. Pierro for taxes for the year 1928, for lots 4 and 26, was mailed by you? A. Well, I cannot go back and say that these particularly were mailed by me.

T. McClelland. Called by Complainants. Cross.

BY MR. NEMSER :

Q. Can you say that this bill that we are referring to, for lots 4 and 26, was mailed or was it delivered? A. To the best of my knowledge it was mailed.

10 Q. To what address, do you know? A. The address would be here on the bill.

Q. "573 Thirty-fifth Street, Union City"? A. Yes.

BY THE COURT :

20 Q. That was the street number of the property as shown on the assessment. It would be mailed to the street number of the property as shown on the tax book and as shown on the tax bill? A. That is right; yes, sir.

BY MR. NEMSER :

30 Q. Can you tell us, Mr. McClelland, how it was that this tax bill for 1928, for lots 4 and 26, made out to L. Pierro, was mailed to 573 Thirty-fifth Street, when, according to your record, it should have been mailed to Paul Weisenfeld, 137 Mercer Street?

Mr. Moser: I object to that.

The Court: Objection sustained.

40 Q. Now, Mr. McClelland, can you tell us how it was that there were two tax bills made out for the year 1928, covering lots 1, 2, 3, 21 to 25 inclusive and 4 to 26, whereas in all previous years there were five or six different tax bills made out? A. There is the record right there. That is the way they appear.

T. McClelland. Called by Complainants. Cross.

BY THE COURT:

Q. Because the tax book showed it that way—that is the reason? A. Yes.

Mr. Memser: You mean the Assessors' books showed it that way?

The Court: I mean the books in the Collector's office showed it that way. 10

BY MR. NEMSER:

Q. Then does the Board of Assessors give you their original book or a copy of their book? A. These are the books our bills are made from.

Q. Where do you get them? A. The Board of Assessors. 20

BY THE COURT:

Q. Wait a minute. We are talking about your tax duplicate of 1928. Where did you get that from? A. From the Board of Assessors.

Q. It was all made up when you got it? A. Yes.

Q. You had no entries whatever to make in it at all? A. No.

Q. You sent out the bills according to the tax duplicate? A. Exactly. 30

BY MR. NEMSER:

Q. You say that during the years 1927 and 1928 you only had two or three clerks working in your office; is that correct? A. Yes.

Q. And their names were —? A. Mr. Daly, Mr. Elbert and sometimes Mr. Nolan. 40

T. McClelland. Called by Complainants. Cross.

Q. Was there anybody in your office by the name of Walker? A. No, sir.

Q. Or Mr. Robinson? A. No, sir.

Q. Or Mr. Haas? A. No, sir.

Q. Or Mr. Troures? A. No, sir.

Q. Or M. Avalong? A. No, sir.

Q. Do you know any of these people? A. Yes.

10 Q. Do you know who Mr. Haas is? A. A clerk of the Board of Assessors.

Q. Who are the other people? A. Mr. Robinson is in the Board of Assessors, and the other gentleman I forget—he is sitting in the room there—he is one of the clerks, and the young lady was a clerk.

Q. Do you know Mr. Paul Weisenfeld? A. I cannot say yes; I cannot say no—by coming to the window—

20 Q. Do you recall receiving a visit from him in 1927 in regard to tax bills on his properties? A. I remember people coming in.

Q. I am asking you if you recall him? A. Not Mr. Weisenfeld.

Q. Do you recall any of his sons? A. There was a young man came in and asked for—

BY THE COURT:

30 Q. (Indicating) Is this the young man? A. That is the man.

BY MR. NEMSER:

Q. Do you remember when that was? A. No; I don't know; he has been in several times.

Q. Did he ask for a bill for all of the lots on one tax bill? A. Not from me personally, I don't think; he might have from some of the others, some of the
40 clerks or somebody else.

T. McClelland. Called by Complainants. Cross.

Q. In making out the tax bills for 1928, did you refer to the books of 1927 at all? A. No.

Q. Did you have any address in your book for Annita Pierro?

The Court: In what book?

Mr. Nensen: In his tax book.

10

A. No, sir; I did not. This is the only name I know—Louis Pierro.

Q. Do you know him personally? A. No, sir; I do not.

Q. To whom were lots 4 and 26 assessed in 1930?

A. Paul Weisenfeld.

The Court: In the tax book for 1930 there appeared two assessments, one against lots 1, 2, 3, 21 to 25, and the other against lots 4 and 26, and both in the name of Paul Weisenfeld.

20

Q. According to your record of 1927, lots 4 and 26 were assessed to Louis Pierro over which the name of Paul Weisenfeld was written in your handwriting?

The Court: No; he said he thought it was his handwriting. What difference does it make whose handwriting it is?

30

Q. Why were not the tax bills in 1928 made out—

Mr. Moser: I object.

The Court: Objection sustained.

Q. How did it come about that the tax bills for the year 1928 were not mailed to Paul Weisenfeld?

40

T. McClelland. Called by Complainants. Cross.

Mr. Moser: I object.

The Court: Objection sustained.

10 Q. Can you tell us whether the 1927 bills that were mailed out were all delivered? A. They are mailed out every year and if they cannot be found they come back and when they do we do the best we can.

BY MR. MOSER:

Q. In your office, do you have any number of tax bills returned by the post office authorities? A. We do.

Q. Do you ever check those over? A. We do. We check them back and look up telephone books and see if we can trace the owner.

20 Q. If you cannot trace the owner, what do you do? A. Keep them there until somebody comes and asks for them.

Q. Do you know whether any of these bills were returned? A. I don't know. I cannot answer that. We have none of them up there this morning.

Q. I think you have testified that the name Anita Pierro does not appear on your books? A. No, si; it does not—no book that I know of.

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Complainants rest.

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Frank J. Elbert. Called by Defendants. Direct.

DEFENDANTS' CASE.

FRANK J. ELBERT, sworn as a witness on the part of the defendants, testifies as follows:

DIRECT EXAMINATION BY MR. NEMSER:

Q. Where do you live? A. 525 Forty-fourth Street, Union City. 10

Q. What is your occupation? A. Clerk in the Finance Department.

Q. Have you any connection with Mr. McClelland? A. I work with Mr. McClelland.

Q. Are you familiar with the tax record books in his office? A. Yes.

Q. Will you turn to the books for the year 1927, lots 4 and 26, shown as assessed to to Louis Pierro, with the name Paul Weisenfeld written over it? A. Yes. 20

Q. Do you know whose handwriting "Paul Weisenfeld" is in? A. It looks like Mr. McClelland's.

Q. Did you ever make any entries in these books yourself? A. Changing names?

Q. Yes. A. Yes, sir.

Q. Do you know Mr. Pierro? A. No; I do not.

Q. Do you know Louis Pierro? A. No, sir.

Q. Do you know Paul Weisenfeld? A. No, sir; I do not. 30

Q. Do you yourself mail out tax bills to the various tax payers? A. Yes; I assist in the work.

Q. Do you recall mailing out a tax bill for lots 4 and 26 for the year 1927? A. I do not.

Q. Or for the year 1928? A. No; I do not.

Q. I show you this tax bill for 1927, lots 3 and 4 and 26, and ask you in whose handwriting that is? A. Which name?

Frank J. Elbert. Called by Defendants. Direct.

Q. The name "Louis Pierro" with "Paul Weisenfeld" written over it? A. "Louis Pierro" is Mr. McClelland's and "Paul Weisenfeld" is mine.

Q. Can you explain why you scratched out the name of Louis Pierro? A. Because the party that paid the taxes came in and said they owned the property and wanted the name changed.

10 Q. That is the reason? A. 1927—4 and 26.

Q. I show you tax bill for the year 1927 for lots 4 and 26, having the name "Louis Pierro" crossed out? A. Right.

Q. Whose handwriting is that in? A. Mr. McClelland's.

Q. Right alongside of it is the name "Paul Weisenfeld". In whose handwriting is that? A. Mine.

20 Q. I show you tax bill for the year 1928, for lots 4 and 26, made out in the name of "Louis Pierro". In whose handwriting is that? A. In Mr. McClelland's.

The Court: Show him the tax bill for lot 3.

Q. I show you tax bill for the year 1927 for lot 3, bearing the name "Louis Pierro". In whose handwriting is that? A. Mr. McClelland's.

30 Q. With the name "Paul Weisenfeld, 137 Mercer Street, Jersey City," alongside. In whose handwriting is that? A. Mine.

BY THE COURT:

Q. You say the change was made to Paul Weisenfeld because when the tax bills for that year were paid, the person paying the bills told you that the new owner was Paul Weisenfeld? A. Yes, sir.

Frank J. Elbert. Called by Defendants. Direct.

BY MR. NEMSER :

Q. Do you know what that was? A. No, sir; I do not.

BY THE COURT :

Q. Will you tell me from your books of 1927, 10
when the taxes for that year were paid on lots 3, 4,
and 26? A. The first half on lot 3 was paid June 1,
1927, and the second half was paid February 29,
1928. On lots 4 and 26, June 1, the first half, and
March 30, 1928, the second half.

BY MR. NEMSER :

Q. Now, can you tell us, referring to page 12 of 20
your 1927 tax records, when the name "Paul Weis-
enfeld" was written in there? A. No; I cannot. It
was probably put in at the time the entry was made
in the book.

Mr. Moser: I move to strike out "probably".
The Court: Strike it out.

Q. Is there anything in that record which would 30
give you any information as to when it was actually
made? A. No, sir.

Q. In the natural course of business in your of-
fice, would this change in the 1927 record, "Paul
Weisenfeld" be carried over to 1928 books? A. We
would not have anything to do with that.

Q. That would be up to the tax assessors entire-
ly? A. Yes.

Mr. Moser: I now offer in evidence assign- 40
ment of mortgage from Annita Pierro to the

John Stroh. Called by Defendants. Direct.

Hudson Trust Company, dated October 16, 1926, assigning to the said Hudson Trust Company, mortgage bearing date the 4th day of October, 1926, made by Paul Weisenfeld to the said Annita Pierro, recorded October 5, 1926; No. 13,164.

(Marked Exhibit C-3.)

10 Mr. Moser: I also offer in evidence a further assignment of mortgage from Annita Pierro to the Hudson Trust Company bearing date the 16th day of May, 1927, purporting to assign mortgage bearing date October 4, 1926, made by Paul Weisenfeld to Annita Pierro, and recorded in book 1389 of mortgages for Hudson County, at page 563.

(Marked Exhibit C-4.)

20

JOHN STROH, sworn as a witness on the part of the defendants, testifies as follows:

DIRECT EXAMINATION BY MR. NEMSER:

Q. Where do you live? A. 123 Hauxhurst Avenue, Weehawken.

30 Q. What is your occupation? A. Vice-president of the Hudson Trust Company.

Q. You are here under subpoena served by my office? A. Yes, sir.

Q. Do you know Annita Pierro? A. Yes, sir.

Q. How long have you known her? A. I have known her since about the time we took this assignment, approximately.

Q. When was that? A. 1926, some time in the beginning of October.

40 Q. She borrowed \$8,000 from your institution?

John Stroh. Called by Defendants. Direct.

The Court: How is that material? There is an admission on the record as to the amount due on the assignments to the Hudson Trust Company.

Mr. Nemser: I want to show the entire history of the transaction between Mrs. Pierro and the Hudson Trust Company in so far as it affects her debt. 10

The Court: What difference does it make?

Q. Did you ever call on Mrs. Pierro to pay the taxes on the premises covered by the mortgage assigned to your institution?

Mr. Moser: I object to that.

A. I did not; no.

Q. Did anybody in your institution, to your knowledge? A. Well, it is the rule of the institution to do it. Whether it was done or not I could not say positively. I think it was. 20

Q. Is Mrs. Pierro still indebted to your bank? A. Yes, sir.

Q. Was the note ever presented to her for payment?

Mr. Moser: I object. 30

The Court: Objection sustained.

Q. Do you recall seeing Mrs. Pierro in the early part of 1929? A. No; I do not recall it. I have seen her so many times I could not say the dates when I did see her.

Q. Were you in full charge of the entire transaction involved? A. I have more than one clerk and— 40

John Stroh. Called by Defendants. Direct.

Q. Who was actually engaged in supervising this loan? A. In what respect?

Q. Who charge of the entire transaction between the bank and Mrs. Pierro? A. We turned it over to our attorney, Mr. Albert Leuly.

Q. When was that? A. About October 16, 1926.

10 Q. You permitted Mrs. Pierro to collect the interest on this mortgage from the very beginning, did you not?

Mr. Moser: I object.

The Court: Objection sustained.

Q. When was the matter turned over to Mr. Leuly for foreclosure? A. I could not say. As I say, it was turned over to him for foreclosure some time—

20 Q. (Interrupting) Do your records show whether the mortgage assigned to your bank was actually turned over to Mr. Leuly for foreclosure? A. No; they do not show it, not the records I have here.

Q. Do you know of your own knowledge? A. I know it was turned over; yes.

Q. When? A. I don't know when. I do not know the date.

30 Q. At the time it was turned over to Mr. Leuly, he was told to foreclose because of non-payment of taxes? A. Yes.

Q. How did you know the taxes had not been paid? A. Well.

Q. Whom did you ask? A. I don't know whom we asked. Whoever the owner was.

Q. Did you have charge of that yourself? A. I did not.

40 Q. Some subordinate? A. Some subordinate. I have four employees in that department. Anyone of them might have done it.

John Stroh. Called by Defendants. Direct.

Q. I want you to refer to this book that you have in front of you. I ask you what you call that book?

A. That is a record of our collateral loans.

Q. Page 139 refers to this loan to Mrs. Pierro?

A. Yes, sir.

Q. Is this page continued so far as she is concerned? A. No.

Q. (Showing witness) Referring to this card, I ask you what that is? A. This mortgage is secured by a note made for either three or four months and each time they come in there is a record kept of them and a new note given. 10

Q. What I want to know now is whether the Hudson Trust Company authorized this foreclosure or whether Mrs. Pierro authorized the foreclosure?

Mr. Moser: I object to that as immaterial. 20
The Court: I will admit the question.

A. To the best of my knowledge the Hudson Trust Company did.

Q. Is there anybody connected with your institution that has more knowledge of the transaction with Mrs. Pierro than yourself? A. No.

Q. Do you know Mr. Paul Weisenfeld? A. I do not.

Q. (Indicating) Do you know either one of these two gentlemen sitting here? A. No, sir. 30

Q. Did you ever see them before? A. Not to my knowledge.

Q. Did you ever see this gentleman (indicating) before? A. Not to my knowledge.

Q. Did you ever see him in May, 1929? A. Not to my knowledge.

Q. The time you turned the mortgage over to Mr. Leuly for foreclosure, you said you knew the taxes 40

John Stroh. Called by Defendants. Direct.

for 1928 had not been paid? A. No, sir; I did not say that.

Q. What did you say? A. I said I presumed that one of the employees had requested the tax bills to see whether they had been paid or not. That has been the custom of the bank.

10 Q. Did you yourself turn these papers over to Mr. Leuly for foreclosure, or was it somebody else?

A. No, sir; I did not. I did not actually turn them over to Mr. Leuly.

Q. Was the action taken up at any of your board meetings? A. It might have been.

Q. Do you know? A. I do not recollect it.

Q. At any rate, it would not have been turned over to Mr. Leuly for foreclosure unless it was authorized by the board? A. It would not, no—not
20 by the board—one of the executive committee.

Q. You say you assume the taxes were not paid—

The Court: Why would the mortgage be turned over for foreclosure unless it was for non-payment of taxes? The mortgage was not due and the interest was paid. There was only one reason for foreclosure.

30 Mr. Nemser: I want to call your Honor's attention to a provision in this assignment. There is a provision in both of these assignments that in case of default in the payment of the note the bank has the right to sell and dispose of the mortgage at public or private sale. I want to bring out the fact—I want to find out whether or not that was ever done.

40 The Court: That is a matter between borrower and the lender. You mean to ascertain whether the Hudson Trust Company put this mortgage up for sale and sold it to someone? I will allow that question.

John Stroh. Called by Defendants. Direct.

Q. When was the last due date on this note?

Mr. Moser: Objected to.

The Court: Objection sustained.

Q. Was the bond and mortgage assigned to your bank ever put up for sale at either public or private sale? A. No, sir; it was not. 10

Q. Did your bank ever attempt to collect this note from Mr. Pierro?

Mr. Moser: Objected to.

The Court: Objection sustained.

Q. I want you to take a good look at this gentleman here. I ask you again if you ever saw him before? A. Not to my knowledge.

Q. Did you ever see me with Mr. Weisenfeld? 20
A. I don't remember seeing you.

Q. In May, 1929? A. I don't remember.

Q. Do you not recall seeing anybody representing Mr. Weisenfeld in May, 1929, with reference to the foreclosure? A. I do not recollect it at all.

BY MR. MOSER:

Q. You might have seen him? A. I might have. I would not say I did not. I don't remember. 30

BY MR. NEMSER:

Q. Do you recall conversing with anybody representing the Weisenfelds after this suit was started?

A. It seems to me there was somebody came in.

Q. You mean in your bank? A. Yes.

Q. With reference to what matter? A. I presume it was about this mortgage, now that you mention these names. 40

Joseph Haas. Called by Defendants. Direct.

Q. Was not the gentleman you saw this gentleman? A. I don't remember.

Q. How soon after the suit was started was it? A. I could not say.

Q. Will you say within a day or two? A. I cannot say that.

10 Q. Whoever it was that you saw, what was the conversation? A. You are asking me a pretty hard question. You know this is not a thing with us that comes up once in a lifetime. We have these things happen mostly every day and I cannot recollect them all.

Q. Did you see this man (indicating) yesterday? A. I don't remember seeing him.

Q. Did he serve a subpoena on you? A. On me?

20 Q. You haven't a good memory for faces? A. I didn't look at him particularly.

Q. Will you swear now that he is not the gentleman that saw you—

The Court: He says that so far as he can recall, he never saw him before.

30 JOSEPH HAAS, sworn as a witness on the part of the defendants, testifies as follows:

DIRECT EXAMINATION BY MR. NEMSER:

Q. Where do you live? A. 313 Thirty-sixth Street.

Q. What is your business? A. I am at present secretary to the Board of Assessors.

40 Q. And have been for how long? A. Well, it is going on the second year. Prior to that I was a member of the Board of Assessors for two years.

Joseph Haas. Called by Defendants. Direct.

Q. And prior to that? A. I was out of the board for two years, and prior to that I was a member of the Board of Assessors about ten years.

Q. The Board of Assessors in Union City? A. Yes.

Q. Are you familiar with or do you know the location of lots 4 and 26 in block 12? A. Yes.

Q. Do you know to whom these lots are assessed at the present time? 10

Mr. Moser: Objected to.

The Court: Objection sustained.

Q. In 1928. A. Paul Weisenfeld.

Q. Will you point that out to me, please? Now, will you turn to your field book for 1927? A. This is the field book. 20

Mr. Nemser: This is not the book the other gentleman referred to.

BY THE COURT:

Q. What book is this that you are referring to?
A. The 1928 assessment book of the Board of Assessors. 30

BY MR. NEMSER:

Q. Have you no book for 1927? A. The book for 1927 is locked up in the vault. The companion to that is held by the Probe Commission of Union City.

Q. Will you describe briefly to the Court your system in making up assessments? A. We make investigation of the properties as to improvements 40

Joseph Haas. Called by Defendants. Direct.

and make up our assessments accordingly. We continue on through the block numbers. As to the addresses, we make no change unless by request of the owner.

BY THE COURT:

- 10 Q. How did you get the name of the owner for the 1928 assessment? A. These names were inserted by my secretary at the time while I was on the board. During that year I was not secretary.

BY MR. NEMSER:

- Q. When you make up your assessment book, is that book actually turned over to the Tax Collector? A. Not this book—a duplicate.
- 20 Q. In other words, the assessment is made in triplicate and one book is turned over to the Tax Collector? A. That is right. We make up three books. This is our field book. We make a duplicate copy for the County Board of Taxation, and we make a duplicate for the Collector of Taxes.
- Q. In other words, the names and addresses in the Tax Collector's office are the names and addresses placed in that book by the Board of Assessors? A. By the Secretary of the Board of Assessors.
- 30 Q. Now, just refer to lots 4 and 26, for 1928, you say the name Paul Weisenfeld was inserted by somebody connected with the Board of Assessors? A. Our Secretary.
- Q. As the owner of lots 4 and 26? A. That is right.
- Q. Should the book in the Tax Collector's office, the duplicate of this, be exactly similar to this
- 40 book?

Joseph Haas. Called by Defendants. Direct.

Mr. Moser: Objected to.

The Court: Objection sustained.

The evidence is that it is not.

Q. Is there anything in your records there showing that the lots 4 and 26 for the year 1926 were assessed to L. Pierro? A. Not in this book.

Q. Have you any records at all available that would show to whom the taxes for lots 4 and 26 were assessed for the year 1927, except the books locked up in the vault? A. I have only the County Board of Taxation record. 10

Q. In making up your assessment books, do you follow this record in the court house? A. Yes; they give us the county block and lot numbers. We change the names as we receive them from that.

Q. Do you know Mrs. Pierro? A. I do not. 20

Q. Do you know Mr. Pierro? A. I do not know him. I have seen Mrs. Pierro?

Q. Where have you seen Mrs. Pierro? A. It is a number of years ago, in a butcher shop.

Q. Did you ever see her in the Tax Collector's office and have a conversation with her about taxes? A. No. I would not know her.

Q. Is there any other book in your office, outside of the book that is locked up in the vault, showing the assessments against these particular lots? A. This is the only book prior to 1927. 30

Q. Does this book show the addresses of the various owners? A. No; they only take the addresses from the owners. The Collection department has that.

Q. Let me get this straight. The changed addresses of the various owners are supplied by the tax collector? A. Yes; they have the addresses of outside owners that live out of town. 40

G. A. Robinson. Called by Defendants. Direct.

Q. The assessment made has nothing to do with addresses of owners? A. We keep a record of out of town owners. All we do is keep a record of the assessments.

10 GREENWOOD A. ROBINSON, sworn as a witness on the part of the defendants. testifies as follows:

DIRECT EXAMINATION BY MR. NEMSER:

Q. What is your address? A. 247 Central Avenue, Union City.

Q. What is your occupation? A. I am at the present time in the Board of Collection—work on the Board of Collections.

20 Q. What were you doing in 1928? A. Secretary of the Board of Assessors, Union City.

Q. How long had you been secretary of the Board of Assessors? A. From March 1, 1927, to December 31, 1928.

Q. Are you familiar with the premises that were owned there by Mr. and Mrs. Pierro on the corner of Hackensack Plank Road and— A. I cannot say that I am very well acquainted with it, except that

30 I know the property.

Q. Did you assist in making up the Assessors book in the year 1928? A. That particular book was what we call Section No. 3; in other words, the whole section was known as Section No. 3.

BY THE COURT:

Q. Did you assist in making up the book? A. Not that particular book.

40

G. A. Robinson. Called by Defendants. Direct.

BY MR. NEMSER:

Q. Now, you know Mrs. Pierro? A. I do not.

Q. Do you know a man by the name of Saldarini; do you know anybody by that name? A. Yes; I know Mr. Saldarini.

Q. Does he live in your house? A. He is the owner of the house. 10

Q. Is he any relation of Mrs. Pierro? A. I haven't the slightest idea.

Q. Did you ever see Mrs. Pierro in that house? A. I don't even know Mrs. Pierro.

Q. Do you know Mr. Paul Weisenfeld? A. I know the gentleman who calls himself Paul Weisenfeld.

Q. When did you last see him? A. At the Board of Collections; he served me with a subpoena. 20

Q. When was that? A. Tuesday I think it was.

Q. Did you ever see him before that? A. Yes, sir; I have.

Q. In your office? A. No; not in the office. That was at the club one night; he called there to see me.

Q. Did you ever see him regarding the taxes on lots 4 and 26? A. He called to see me and asked me if I had any information relative to lots 4 and 26. 30

Q. What did you tell him? A. I told him I could not recollect anything; I did not recollect anything.

Q. Did you ever make any entries in any of the tax books in the collector's office of Union City?

Mr. Moser: I object.

The Court: Objection sustained.

G. A. Weisenfeld. Called by Defendants. Direct.

Q. Does your handwriting appear on the assessor's book that Mr. Haas mentioned a little while ago?

Mr. Moser: I object.

10 The Court: Objection sustained. I do not think that what this witness says about it would be material to the case.

Q. Did you have anything to do with making up the field assessor's book for the year 1928?

Mr. Moser: Objected to.

The Court: Objection sustained.

20 Q. Did you have anything to do with the delivery or makeup of the tax duplicate book delivered to the tax collector's office?

Mr. Moser: I object.

The Court: Objection sustained.

Mr. Nemser: I want to excuse this witness temporarily until I bring out a better foundation.

30

GEORGE A. WEISENFELD, sworn as a witness on the defendants, testifies as follows:

DIRECT EXAMINATION BY MR. NEMSER:

Q. You are a son of Paul Weisenfeld? A. I am.

Q. The owner of these premises being foreclosed?

A. Yes.

40

G. A. Weisenfeld. Called by Defendants. Direct.

Q. What is your business relation with your father; what do you do? A. I am his secretary and I take care of his affairs.

Q. And do you especially take care of his real estate? A. I do.

Q. And the taxes on his real estate? A. I do.

Q. Did you have anything to do with the payment of the 1928 taxes on lots 4 and 26? A. I did. 10

Q. (Showing witness) I show you a tax bill for 1928 on lots 4 and 26, made out to L. Pierro, showing the second half was paid May 3, 1929, and I ask you whether you paid that bill? A. I did.

Q. Will you tell the Court how you came to pay it?

Mr. Moser: I object.

The Court: Objection sustained. 20

Q. When was the last time, prior to May 3, 1929, that you were at the Tax Collector's office in Union City? A. When I paid the first half of the bill for 1928.

Q. Whom did you see there? A. I paid it to Mr. McClelland.

Q. He is the witness who testified here this morning? A. Yes.

Q. I show you a paid tax bill for 1928 covering lots 1, 2, 3, 21 to 25 inclusive, block 12, and ask you: Was it at the time that you paid that bill that you saw Mr. McClelland? A. It was the time previous to that, a month or two months, that I called for the bill. 30

Q. What did you see Mr. McClelland about?

Mr. Moser: I object.

The Court: Objection sustained. 40

G. A. Weisenfeld: Called by Defendants. Direct.

Q. Your father owns some other land besides the property he bought from Mrs. Pierro, in that neighborhood? A. He does.

Q. How many lots does he own there altogether? A. Ten. He owns ten lots as they are designated today.

10 Q. Are the tax bills for all the lots he owns there, the ten lots, one one bill or two bills? A. Today I know they are on two bills, but in 1929, when I paid the bills, there were eight designations. I know that by the additional bill that Mr. McClelland gave me, there was some eight designations.

Q. I show you bills for 1927 and ask you whether those bills cover the premises owned by your father in that locality, including the lots purchased from Mr. Pierro? A. Yes.

20 Q. How many bills did the tax collector give you in 1927? A. Five.

Q. Covering how many lots? A. All the lots.

Q. Any particular number? A. Eight designations—known as eight designations.

Q. I show you bill for 1927, covering lot 3, block 12, and ask you: Did you pay that bill? A. I did.

Q. As a matter of fact, did you pay all five of these bills? A. I did.

30 Q. I show you a series of bills for 1926, covering Mrs. Pierro's premises and the other premises occupied by your father and ask you whether you paid them? A. I did.

Q. Can you tell us how it was that during 1925, 1926, and 1927, your father received five or six different tax bills, and in 1928 there were two tax bills made out for the premises?

Mr. Moser: I object.

The Court: Objection sustained.

G. A. Weisenfeld. Called by Defendants. Direct.

Q. Now, I show you tax bill for 1928, made out in the name of Paul Weisenfeld, the first half of which was paid July 2, 1928, and the second half January 31, 1929, covering lots 1, 2, 3, 21, 22, 23, 24, and 25. Do you recall paying that bill? A. I do.

Q. What did you do after you paid that bill?

10

Mr. Moser: Objected to.

Q. What did you do with reference to seeing or talking to Mrs. Pierro? A. I did not speak to Mrs. Pierro about the bill.

Q. When you paid the bill, did you report to your father? A. I did.

Q. What did you report to him? A. He gave me a check and I told him I paid the taxes.

20

Q. How much? A. The first half—

Q. The entire bill. A. \$1,456.88.

Q. You assumed that that had paid all the assessments on the lots owned by your father?

Mr. Moser: I object as not binding on either one of the complainants here.

The Court: Objection overruled.

A. I did.

30

Q. Will you explain in detail to the Court what led you to believe that by paying this bill of \$1,456.88 you had paid taxes for the year 1928 on all the premises there?

Mr. Moser: I object, unless something Mrs. Pierro or the Hudson Trust Company said to him led him to believe that.

The Court: He may have thought he paid all the taxes. He evidently did not, and it does

40

G. A. Weisenfeld. Called by Defendants. Direct.

not make any difference in this case whether he made this mistake or who made the mistake.
Objection sustained.

Q. Did you talk to Mr. McClelland at the time that you paid this 1928 tax bill?

10 Mr. Moser: I object.
The Court: Objection sustained.

Q. Will you explain why it was that the taxes on 4 and 26 for 1928, second half, were not paid until May 3, 1929? A. Because Mr. McClelland told me that this included all of our property.

20 Q. What included all of your property? A. This bill amounting to \$1,456.88 covers all of the property owned by my father. I asked him for a bill for taxes on all his property. He gave me this and I knew there were eight designations, and I saw this showed eight designations and also the locations of the premises, Thirty-second Street and Thirty-fifth Street—

Mr. Moser: I object.
The Court: I will let it stand.

30 Q. By eight designations do you mean the eight lots? A. The way they are on the bills. There has been a change in the lots. They split them up.

Q. When you paid this bill for 1928, amounting to \$1,456.88, I understand you to say that it was after you had a conversation with Mr. McClelland? A. Yes.

Q. And you afterwards found out that you had not paid the taxes on lots 4 and 26? A. I did.

40 Q. Did you go back to see Mr. McClelland? A. I did.

G. A. Weisenfeld. Called by Defendants. Direct.

Q. What did you say to him?

Mr. Moser: I object.

The Court: Objection sustained.

Q. As a result of your conversation with Mr. McClelland, what did you do?

10

Mr. Moser: I object as immaterial. He has already testified that the taxes were paid May 3, 1929.

Q. What was the first time that you knew the taxes for 1928 on lots 4 and 26 had not been paid?

Mr. Moser: I object. I do not think it is material.

The Court: Objection overruled.

20

A. When we were served with foreclosure papers.

Q. When was it; what date was that?

The Court: The record shows May 3, 1929.

Q. What have you done since, after you were served with foreclosure papers, or since your father was served with foreclosure papers? A. I went right to the—I went and looked for the tax bills to see if the tax bills were paid, because I knew—

30

BY THE COURT:

Q. Did you go up and pay the taxes? A. When I found out.

BY MR. NEMSER:

Q. Where did you go before you paid the taxes?
A. I went down to my lawyer's office.

40

G. A. Weisenfeld. Called by Defendants. Direct.

Q. Who is your lawyer? A. You.

Q. Where did we go? A. We went up to the bank.

Q. What bank? A. Hudson Trust Company.

Q. We went up to a lawyer's office and— A. (Interrupting) Yes.

10 Q. Do you know who the lawyer was? A. Albert Luely.

Q. Was anybody else with us? A. My brother.

Q. Samuel Weisenfeld? A. Yes.

Q. After we came out of Mr. Luely's office, where did we go? A. Over to the tax office.

Q. What did you do over there; you went over and paid the taxes; is that right? A. Yes.

Q. Do you know Mr. Stroh, the vice president of the bank? A. I do not, except to see him in court.

20 Q. Can you tell us, Mr. Weisenfeld, how it is that the taxes against your father's entire holdings for the year 1928 consisted of two bills, whereas for previous years it consisted of five different bills?

Mr. Moser: Objected to.

The Court: Objection sustained.

Q. Did you ever see Mr. McClelland in 1927? A. I did.

30 Q. With reference to what matter? A. I went to tell him—

Q. Did you see him? A. I did.

Q. With reference to what matter was it?

Mr. Moser: I object.

The Court: Objection overruled.

A. The purchase of Pierro's property by my father, with reference to taking new bills out to Paul
40 Weisenfeld instead of Pierro.

G. A. Weisenfeld. Called by Defendants. Direct.

Q. Can you give us the exact date? A. It was in the early part of May, 1927, that I went up there and told him—

Q. Was there anybody else with you at the time you saw Mr. McClelland? A. No, sir.

Q. After you talked to Mr. McClelland was there any change made in the tax bills? A. No, sir.

Q. Did you see Mr. McClelland again after that? 10
A. Yes.

Q. When? A. That same month, May, 1927.

Q. With reference to your father's taxes? A. Yes.

Q. Was there any change made in your tax bills then? A. Yes.

Q. What change was made? A. The name of Louis Pierro was scratched out and Paul Weisenfeld placed above it.

Q. I show you the 1927 tax bill for lot 3, block 12, and ask you whether that is the bill you have reference to? A. That is. It is one of them. 20

Q. With the name Louis Pierro scratched out? A. Yes, sir.

Q. And Paul Weisenfeld, 137 Mercer Street, Jersey City, written in? A. Yes.

Q. That was written by whom, do you know? A. I do not know whom it was done by.

Q. Did you see it done then? A. No, sir.

Q. The same thing applies to the 1927 tax bill, lots 4 and 26? A. Yes. 30

Q. Did you give Mr. McClelland your father's name and address? A. I did.

Q. When did you see him after May, 1927? A. When I went back for the tax bills in 1928.

Q. Do you remember what month? A. I always go up in the month of May.

Q. Did you see him? A. I did.

Q. Did you get the tax bills? A. I did. 40

G. A. Weisenfeld. Called by Defendants. Direct.

Q. (Showing witness) Are these the two tax bills that you obtained? A. (Indicating) I got this one.

Q. What? A. (Indicating) This one here.

Q. Tax bill for 1928 made out to Paul Weisenfeld? A. Yes, sir.

10 Q. Covering lots 1, 2, 3, 21 to 25 inclusive? A. Yes, sir.

Q. Did you see Mr. McClelland personally? A. I did.

Q. After your conversation was over, did he hand you this tax bill, or what happened? A. I asked him for the tax bills—

Q. (Interrupting) You cannot tell us what you said. Tell us what happened after you got through talking to him? A. He gave me this bill.

20 BY THE COURT:

Q. Which bill? A. This bill here.

Q. Lots 1, 2, 3 to 21 to 25? A. Yes.

BY MR. NEMSER:

Q. Now, did he give you a tax bill for 1928 covering lots 4 and 26 at that time? A. No.

30 Q. When was the next time you saw Mr. McClelland? A. When he gave me this tax bill in 1929.

Q. Was that after the suit was started? A. Yes, sir; the same day.

Q. Did you talk to him about it? A. I did.

Q. Did you call his attention to the fact that the bill was made out—

Mr. Moser: Objected to.

40 The Court: Objection sustained.

G. A. Weisenfeld. Called by Defendants. Cross.

CROSS EXAMINATION BY MR. MOSER:

Q. In other words, you went there for the 1928 tax bills; is that right? A. Yes.

Q. You knew your father owned lots 4 and 26 block 12? A. In 1927 I knew they were designated as such.

Q. You had not heard, as manager of your father's property, of any change made in the lot or block numbers? A. I did know there was a change made when I was presented with the tax bill in 1928. 10

BY THE COURT:

Q. Before that you had not heard about it? A. No, sir. 20

BY MR. MOSER:

Q. Did you make any inquiry concerning lots 4 and 26 when you received that bill? A. I did not.

Q. Lots 4 and 26 were not on that bill, were they? A. No, sir; they were not.

Q. So that when you paid that bill you knew you were not paying for lots 4 and 26? A. I thought I was paying for them. 30

Q. Did you pay the taxes on lots 4 and 26 in block 12 in Union City for the year 1928 prior to May, 1929? A. I did not.

Mr. Nemser: I would like to offer in evidence the paid tax bills for all the ten lots acquired by Paul Weisenfeld.

The Court: I do not think the tax bills for 1925 are material. I am not so sure about 1926. The taxes for 1926 were assessed before 40

S. B. Weisenfeld. Called by Defendants. Direct.

he bought them. They might have been paid by the Pierros who sold the property and turned over the paid bill. I do not think it is of any moment. I will allow the tax bills for 1926 to 1929 to go in.

(Marked Exhibit D-1.)

10 BY THE COURT:

Q. You did not pay the 1925 taxes, did you? A. No, sir.

Q. These tax bills were turned over to your father by the seller? A. Yes.

Q. At the time he bought the property? A. Yes.

Q. And so were the 1926 tax bills, were they not? A. Yes, sir.

20

SAMUEL B. WEISENFELD, sworn as a witness on the part of the defendants, testifies as follows:

DIRECT EXAMINATION BY MR. NEMSER:

Q. Do you recall the time your father was served with process in this suit? A. I do.

30 Q. And the time you were served with subpoena? A. I do.

Q. Do you remember what day that was? A. May 3, 1929.

Q. Do you recall bringing the subpoena into my office? A. I do.

Q. And do you recall what we did after you brought the subpoena in? A. We went up to see Mr. Luely.

Q. Where? A. At the Hudson Trust Company.

40

S. B. Weisenfeld. Called by Defendants. Direct.

Q. Will you state the conversation you had with Mr. Luely? A. I asked him what the foreclosure was for, that I had no knowledge of what the proceedings were started for. He said that he was instructed by Mrs. Annita Pierro to institute foreclosure proceedings for non-payment of taxes.

Q. What did you say? A. I said: "Don't you think it is proper to notify us or notify me, as attorney, knowing me for several years, before you instituted proceedings?" He says: "I was told not to write any letters but to take immediate steps by my client". 10

Q. Was the interest on the Pierro mortgage paid to date?

Mr. Moser: I object.

The Court: That is absolutely immaterial. 20

Q. Was that the first time that you knew that the cause of foreclosure was the non-payment of taxes for 1928?

Mr. Moser: Objected to.

The Court: Objection sustained.

Q. After you left Mr. Luely's office, where did you go? A. I went downstairs and saw Mr. Stroh in the Hudson Trust Company. 30

Q. That is the gentleman who testified here this morning? A. Yes.

Q. Did you talk to him? A. Yes.

Q. Was I present at the time? A. Yes.

Q. What was said? A. We asked him if he instructed Mr. Luely to start foreclosure proceedings. He said no.

S. B. Weisenfeld. Called by Defendants. Direct.

Q. Was anything else said? A. We asked him if—He said that all matters of that sort were in the hands of Mr. Luely, that he was attorney for the bank, and that once a matter is transferred to Mr. Luely, Mr. Luely has charge of it.

10 Q. Was there anything else said? A. If he authorized—if he knew that the bank was a party complainant to this suit.

Q. What did he say?

Mr. Moser: I object.

The Court: Objection sustained.

Q. After your conversation with Mr. Stroh, where did you go? A. I went back to Mr. Luely's office.

20 Q. Did you have a conversation with Mr. Luely again? A. I did.

Q. What was said?

The Court: How is any further conversation with Mr. Luely material to this issue? I allowed the testimony originally for the purpose of permitting you to bring out the date of the first information you had as to non-payment of taxes.

30

Q. After you left Mr. Luely's office the second time where did you go? A. We went over to the tax office in Union City.

Q. What did you do there? Did you pay the taxes on lots 4 and 26 for the year 1928? A. Yes.

Q. Did you speak to any of the officers in the office there?

40

Mr. Moser: Objected to.

The Court: Objection sustained.

Annita Pierro. Called by Defendants. Direct.

Q. Did you see Mr. McClelland? A. Yes.

Q. And did you examine the books in his office?
A. Yes.

Q. Which books did you examine? A. Examined
the tax book and the assessor's book.

No cross examination.

10

ANNITA PIERRO, one of the complainants, sworn
as a witness on the part of the defendants, testi-
fies as follows:

DIRECT EXAMINATION BY MR. NEMSER:

Q. Are you the Annita Pierro who is one of the
complainants in this suit? A. Yes. 20

Q. Are you the lady who sold the property to
Mr. Weisenfeld in 1926? A. Yes.

Q. You are the lady who took back the purchase
money mortgage for \$30,000? A. Yes.

Q. Where do you live? A. 1133 Fourth Ave-
nue, North Bergen.

Q. How long have you lived there? A. Since
March 1, 1929.

Q. Where did you live before that? A. 737 An- 30
derson Avenue, Grantwood.

Q. How long did you live there? A. A year and
a half.

Q. Where did you live before that? A. 200
Thirty-fourth Street, Woodcliffe.

Q. How long did you live there? A. Two years.

Q. Were you living in Woodcliffe in 1928? A.
Yes, sir.

Q. Do you know a man named Salbarini? A. 40
Yes.

Annita Pierro. Called by Defendants. Direct.

Q. What is his first name? A. Joseph.

Q. Where does he live? A. 5 Kingswood Road, Weehawken.

Q. Do you know Mr. Robinson? A. I do not.

Q. The gentleman who was on the stand before?
A. I do not.

10 Q. Did you receive any tax bills in 1927? A.
I did not.

Q. For the property that you sold to Mr. Weisenfeld? A. I did not.

Q. Did you receive any tax bills in 1928? A. I did not.

Q. Through the mail? A. I did not.

Q. Is your husband's name Louis Pierro? A. Yes.

20 Q. Have you been getting your mail since 1928 at any post office box? A. I have not.

Q. Do you receive it at your house where you live? A. Yes.

Q. Do you know Mr. McClelland the tax collector of Union City? A. I do not.

Q. Have you ever been in his office? A. Once.

Q. When? A. April 15, 1929.

30 Q. Why did you go there? A. I went there because I got a letter stating that a tax bill had not been presented. I went down to see Mr. Luely, the attorney for the Hudson Trust Company—

BY THE COURT:

Q. That is why you went to see Mr. Luely. A. I asked him what to do. He said that I should go down to the Town Hall and request a tax bill.

Q. Mr. Luely sent you there to find out about the taxes? A. Yes.

40 Q. That is the reason you went there? A. Yes.

Annita Pierro. Called by Defendants. Direct.

BY MR. NEMSER:

Q. You found out that the taxes had not been paid? A. The taxes had not been paid, because I had the letter stating that the tax bill had not been presented—

Q. You found out that the taxes on those particular lots had not been paid? A. Yes. 10

Q. The tax on lot 3 had been paid? A. None of the taxes had been paid on any of the property I had sold to him.

Q. What did you do after that? A. I requested a tax search. I went back to Mr. Luely and told him that I had a tax search and went back—

BY THE COURT:

Q. You talk about a tax search, did you get a certificate of some kind from the collector? A. I just requested him— 20

Q. To tell you about the taxes? A. Yes.

BY MR. NEMSER:

Q. Whom did you talk to in the tax collector's office? A. I don't remember just the person I spoke to. I don't know anyone there. In fact, Mr. Salbarini was the gentleman who brought me there. 30

Q. At any rate, no matter who it was that you spoke to, you found that the taxes for 1928 had not been paid? A. Yes.

Q. And you went back and told that to Mr. Luely? A. I told that to Mr. Luely. I told him to take action.

Q. Did you give him any orders to start proceedings? A. To take action. 40

Annita Pierro. Called by Defendants. Direct.

- Q. What did you do? A. I told him that if the taxes were not paid, to take action of foreclosure.
- Q. Why didn't you call it to the attention of Mr. Weisenfeld? A. Why should I?
- Q. You did not, did you? A. I did not.
- Q. You say it was April 15, 1929, that you found out the taxes were not paid? A. Yes, sir.
- 10 Q. You had received your interest check that same month, had you not? A. Yes; I did.
- Q. You had not deposited that interest check at the time you found out that the taxes had not been paid? A. No, sir; I did not get it until the 29th, which I could not deposit it then.
- Q. When did you get the interest check that was due April 1, 1929? A. The 29th day of April, 1929.
- Q. Are you sure? A. Yes.
- 20 Q. (Showing witness) Is that the check? A. That is right.
- Q. \$450? A. \$450.
- Q. Dated April 4, 1929. A. Yes.
- Q. Made out to the order of A. L. Pierro? A. Yes.
- Q. And you say you got that check? A. The 29th day of April.
- Q. The 29th day of April, 1929? A. Yes.
- Q. I call your attention to the endorsement on the back of this check, "A. L. Pierro." A. Yes.
- 30 Q. And "Annita Pierro—" is that right? A. Yes.
- Q. I call you attention to the date stamped there, "Hudson Trust Company, April 19, 1929."? A. Well, it might have been a check previous to this that I got on the 29th and got upset on the date.
- Q. How many checks were coming to you for interest on this mortgage? A. One very three months.
- Q. This was the one due on April 1, 1929? A. Yes.

Annita Pierro. Called by Defendants. Direct.

Q. And you say you went to the tax collector's office April 15? A. April 15, 1929.

Q. Is it not a fact that the time you got the information from the tax collector's office that the taxes for 1928 had not been paid, you still had that check in your hands? A. I did not get the check. I know the day I got the check I went down and deposited it the same day. 10

Q. You said it was April 29? A. Perhaps it was the check before that.

Q. The question is: When did you get the check? A. The day I put it in the bank.

BY THE COURT:

Q. The date shows you put it in the bank April 19th. A. It may have been the 19th. 20

Mr. Nemser: I offer the check in evidence.

Mr. Moser: I object. It represents an interest payment and there is no contention as to the interest.

The Court: I will admit it.
(Marked Exhibit D-2.)

BY MR. NEMSER:

Q. Do you have a check account in the Hudson Trust Company? A. Yes. 30

Q. Does your husband have one there, too? A. No, sir.

Q. Why didn't you call upon Mr. Weisenfeld and ask him for a tax bill?

Mr. Moser: I object.

The Court: Objection sustained. 40

Annita Pierro. Called by Defendants. Direct.

Q. Why didn't you notify him that you were going to bring a foreclosure suit because the taxes were not paid?

Mr. Moser: Objected to.

The Court: Objection sustained.

10 Q. Has your husband any interest in this matter?

Mr. Moser: Objected to.

The Court: Objection sustained.

20 Q. I show you a check dated January 3, 1929, \$450, made out to A. L. Pierro, endorsed L. Pierro and Annita Pierro. Whose signature is that "L. Pierro"? A. It is mine—"Annita Pierro".

BY THE COURT:

Q. Whose signature is "L. Pierro." A. It is the signature of Louis Pierro.

Q. It is your husband's signature? A. I signed it myself.

Q. Is it your writing? A. Yes.

Q. Did he write? A. He did not; I wrote it.

30 BY MR. NEMSER:

Q. Why did you sign your husband's name on the back of that check?

Mr. Moser: I object.

The Court: Objection sustained.

40 Q. Did you make an affidavit in this case? A. I did.

Annita Pierro: Called by Defendants. Direct.

Q. You say you went to the tax collector's office April 15, 1929?

The Court: She said that at least twice.

Q. What fixes that date in your mind? A. Because I know the date I got the letter when I—

Q. You got a letter from the Hudson Trust Company? A. Yes. 10

Q. Have you got the letter with you? A. I have not.

Q. What did you do with it? A. I destroyed it. I didn't think it was necessary to keep it.

Q. Did you ever visit the tax collector's office after April, 1929? A. I did not.

Q. Did you refuse to take all the interest checks that Mr. Weisenfeld sent you after that? A. After taking action I did. 20

Q. Had the bank ever asked you about the taxes for the year 1927?

Mr. Moser: I object.

The Court: Objection sustained.

Q. Did you ever see Mr. Weisenfeld after April 1, 1929? A. No, sir.

Q. Did you ever see him before April 1, 1929? A. I did not. 30

Q. Never? A. Not regarding this matter, I did not.

Q. Regarding any matter? A. I saw him before when I got the loan from the Hudson Trust Company.

Q. How soon before? A. That was the second mortgage that I got—in reference to some survey that the bank required, or a search, and he could

Annita Pierro. Called by Defendants. Direct.

not find it. So I went down personally and asked him: "Will you kindly look through the papers?" Finally he—

BY THE COURT:

10 Q. He lent you a survey that he had? A. No; it was the survey I gave him.

Q. And you got it from Mr. Weisenfeld? A. I got it; he lent it to me.

Q. Then, did you return it to him? A. Mr. Luely must have returned it.

Q. Was it returned as far as you know? A. It was down there with Mr. Luely and Mr. Luely must have returned it.

BY MR. NEMSER:

20

Q. Did you have any talk with Mr. Weisenfeld about a lease on the property? A. No, sir.

Q. Did you have any negotiations with him about a lease? A. No, sir.

Q. You are in the butcher business with your husband? A. Yes, sir.

Q. Now, Mrs. Pierro, when you sold that property to Mr. Weisenfeld, what was the price?

30

Mr. Moser: I object.

The Court: Objection sustained.

Q. Did you sell it, or did your husband sell it to him?

Mr. Moser: I object.

The Court: Objection sustained.

40

Annita Pierro. Called by Defendants. Cross.
George Deubell. Called by Defendants. Direct.

CROSS EXAMINATION BY MR. MOSER:

Q. When you were informed that the taxes for 1928 were open of record, did you request that a search be made and a certificate tendered to someone? A. Yes, to Mr. Luely.

Q. Did you pay the fee that was required? A. 10
 Yes.

Q. Did Mr. Luely then get in touch with you concerning the receipt of the certificate? A. Yes.

Q. (Showing witness) Is that the certificate that Mr. Luely received? A. Yes, sir; that is the one.

Mr. Moser: I offer this certificate in evidence.

(Marked Exhibit C-5.)

20

GEORGE DEUBELL, sworn as a witness on the part of the defendants, testifies as follows:

DIRECT EXAMINATION BY MR. MOSER:

Q. You are a letter carrier? A. Yes, sir.

Q. Where do you live? A. I live at 370 Summit 30
 avenue, Jersey City.

Q. Where are you employed? A. In the Weehawken Branch of the Union City Post Office.

Q. You have been employed there how long? A. Nineteen years.

Q. Have you got any record with you from the post office? A. Yes, I got a card signed by Mr. Pierro the day that he moved, asking me to forward his mail to this address.

40

George Deubell. Called by Defendants. Direct.

BY THE COURT:

Q. Where did you get that card? A. Mr. Pierro gave it to me himself. This is his name.

Q. The address was 200 Thirty-Fourth street, Woodcliffe? A. Yes.

10 BY MR. NEMSER:

Q. Where was it that he lived when he gave you that card? A. He lived at 590 Thirty-second street, on my route.

Q. Did your route cover the neighborhood of the Hackensack Plank Road and Thirty-Fifth street? A. Yes, sir.

Q. The Boulevard? A. Yes, sir.

20 Q. Did you ever deliver mail to Mrs. Annita Pierro? A. Well, they are out of there quite a while now. I had mail for the whole family.

Q. I mean mail specifically addressed to Mrs. Annita Pierro? A. Not that I recollect.

Q. Do you ever recall delivering any mail to her in the last three or four years? A. No, sir.

Q. Was there a post office box in the name of Annita Pierro anywhereas that you know? A. Not that I know of.

30 Q. So that you would not deliver any mail to Woodcliffe? A. No, sir.

Q. Your territory is Weehawken and Union City? A. Yes, sir.

Q. Did you ever deliver any mail addressed to Annita Pierro in care of Salbarini? A. No, sir.

Q. Do you recall any occasion whatever of delivering any mail addressed to Annita Pierro? A. No, sir.

40 Q. Was there a box in the post office rented by Salbarini?

Isabel Walker. Called by Defendants. Direct.

Mr. Moser: Objected to.

The Court: Objection sustained.

Q. Was there a box in the post office by Annita Pierro? A. Why, I do not believe so; no, not that I know of.

Q. Was there any mail addressed to Annita Pierro delivered at a box in the post office standing in the name of somebody else? A. I could not tell you that. 10

No cross examination.

ISABEL WALKER, sworn as a witness on the part of the defendants, testifies as follows:

20

DIRECT EXAMINATION BY MR. NEMSER:

Q. Where do you live? A. 235 Hudson Boulevard, North Bergen.

Q. What is your occupation? A. A stenographer.

Q. Employed by whom? A. By the Bell Telephone Company.

Q. By whom were you employed in 1926? A. By the city of Union City.

Q. In what capacity? A. As stenographer. 30

Q. What department? A. In the Board of Assessors.

Q. Do you know Mr. Haas? A. Yes, sir; I do.

Q. Do you know Mr. McClelland? A. Yes; I do.

Q. Do you know that system that was used in making up the Assessor's books? A. Which system it that—

Q. In the Tax Assessor's office. A. I am faintly familiar with it. 40

Isabel Walker. Called by Defendants. Direct.

Q. Did you have access to those books? A. They were in the office.

BY THE COURT:

Q. Did you make out any bills? A. No; I had nothing to do with that department at all.

10

BY MR. NEMSER:

Q. Did you have anything to do with crossing out the names of Annita Pierro and L. Pierro? A. I never did.

20

Q. Did you make up the taxes or assist in making up the taxes; did you assist in making up the list of names and addresses of various property owners taken from the Tax Collector's books in his office, for the purpose of sending out tax bills? A. No.

Q. Did you have anything to do with making up the tax book from the Assessor's books? A. Only for the West Hoboken section; nothing to do with the town of Union.

Q. Who had charge of Union City? A. Union City is the consolidation of two towns, and I had nothing to do with the uptown section at all.

30

Q. Who was in charge of it, if you know? A. Mr. Abalone.

Q. Is he here in court? A. Yes; he is.

No cross examination.

Anthony Abalone. Called by Defendants. Direct.

ANTHONY ABALONE, sworn as a witness on the part of the defendants, testifies as follows:

DIRECT EXAMINATION BY MR. NEMSER:

Q. What is your business? A. Clerk.

Q. Employed by whom? A. At the present time?

Q. Yes. A. Decker & Company.

Q. By whom were you employed in 1928? A. City of Union City.

Q. In what capacity? A. Clerk.

Q. In what department? A. Board of Assessors.

Q. Under Mr. Haas' jurisdiction? A. Mr. Robinson's.

Q. Did you have anything to do with the making up of the assessor's books? A. I filled in the names and addresses, the same as copied from the previous book.

Q. What book would you copy from? A. 1926. In 1927 I copied from the 1926 book.

Q. What book? A. The Field Assessors books. They go out and bring in their assessments in October, I believe, and when the record was made, we take it from these field books.

Q. How many books are there in your office that you used—two books—a field book and another? A. We make up one book for the County Board of Taxation, one for the Tax Collector and one for the Assessor's office—three books.

Q. It was one of these three duplicate books that you are referring to? A. There are—

BY THE COURT:

Q. The Tax Collector's book is one of these three books? A. That is right.

Anthony Abalonè. Called by Defendants. Direct.

Q. Where did you get the names from for 1927?

A. Right off the field book.

Q. The field book for 1927 or 1926? A. 1926.

BY MR. NEMSER:

10 Q. In other words, you referred to the previous year? A. That is right.

Q. Where would you get the names and addresses of the owners to send out the tax bills in 1928?

The Court: They did not send out any tax bills.

BY THE COURT:

20 Q. You had nothing to do with that at all? A. No, sir.

Q. You would take, as I understand it, one of the duplicate books containing the names of various owners of property and make out a separate list containing those names; is that so? A. Make out a separate list?

30 Q. Yes. A. The only change we made in the book is when we get a certificate or deed to the property by the proper owner and they come in and tell us that they own the property; the same way with deeds; we change the name and then we get the names from the court house; once a week we change.

Q. You are talking about making changes in the Assessor's book; is that right? A. Yes.

BY THE COURT:

Q. That is all you worked on? A. Yes.

40 Q. You did not make up any separate list of names and addresses of taxpayers? A. No, sir.

Anthony Abalone. Called by Defendants. Direct.

BY MR. NEMSER:

Q. Did you make up the tax book that the Tax Collector used, which was a duplicate copy of the Assessor's book? A. Surely.

Q. Did you do that personally, I mean? A. No, sir; under orders.

10

BY THE COURT:

Q. Who actually did the writing—you and somebody else? A. I did most of it.

BY MR. NEMSER:

Q. You did most of the writing? A. Yes, sir.

Q. In other words, you used the Tax Assessor's book; is that right? A. That is right.

20

Q. And you would make up a copy for the County Board of Taxation? A. That is right.

Q. And also a duplicate copy for the Finance Department or the Tax Collector's department? A. That is right.

Q. These three copies had to agree; isn't that so? A. Yes, sir.

BY THE COURT:

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Q. They were supposed to be exact duplicates. A. supposed to be.

BY MR. NEMSER:

Q. If there was any difference in the name and address mentioned in the Field Assessor's book and the book in the Tax Collector's office, there would be a mistake on the part of somebody?

40

Anthony Abalone. Called by Defendants. Direct.

The Court: Not necessarily, because the Tax Collector might have received information and written it in himself in his own book. Besides, what has that to do with the case?

Mr. Nemser: It has this to do. He gets the Field Assessor's book for 1927 with the name and address—

10 The Court: He had nothing to do with the name and address written up by the Tax Collector.

Q. You had nothing to do with the Tax Collector's book itself?

The Court: After it was delivered to the collection department.

20 A. No; I had nothing to do with it.

Q. You had nothing to do with the tax bills? A. No.

Q. If the book in the Tax Collector's office had a name in there, such as L. Pierro, against a certain lot, did that have to correspond with the book in your office in every particular?

Mr. Moser: I object.

30 The Court: Objection sustained.
No cross examination.

G. A. Weisenfeld. Recalled. Direct.

GEORGE A. WEISENFELD, sworn as a witness on the part of the defendants, testifies as follows:

DIRECT EXAMINATION BY MR. NEMSER:

Q. How much taxes did your father pay on real estate in Hudson County in 1928?

10

Mr. Moser: I object.

The Court: Objection sustained.

Q. At the time you went in the Tax Collector's office, after the suit was started, did you see the books or some of the books which Mr. McClelland and Mr. Haas produced today? A. Yes.

Q. Did you find any difference in those books that you can point out, between the Assessor's book and the Collector's book?

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Mr. Moser: Objected to.

The Court: Objection sustained.

(At this point recess is taken until two o'clock in the afternoon.)

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Conclusions.

The Court (orally at close of argument):
The bond and mortgage under foreclosure constitute a contract between the maker and the payee, by which the maker agreed to pay \$30,000 to the obligee and mortgagee in 1931 and further agreed that the time for such payment should be accelerated in case of default for ninety days in payment of taxes, assessments or municipal charges. The mortgaged property was bought by the maker of the bond in 1926. At that time there was delivered to him the receipted tax bills for 1925 and 1926 and subsequently the maker of the bond, as owner of the property, paid the 1927 taxes. All these bills were in his possession in 1928, when the 1928 taxes fell due. They consist of five separate bills for each year, upon which certain lot numbers are given. Including the property in question, there were altogether some eight parcels of land assessed separately. Now, in 1928 we shall assume that the representative of the maker of the bond, the owner of the property, did exactly what he says he did, that he went to the Tax Collector's office and asked for a tax bill for all the property owned by the obligor, Paul Weisenfeld. A bill was given to him, one single bill, upon which there were designated lots 1, 2, 3, 21-25, which might seem to indicate but five parcels of land, but assuming that "21-25" means "21 to 25", there appears that there were eight parcels altogether covered by this one bill. The very fact that there was a difference in the number of lots, as compared with the 1927, 1926 and 1925 bills, and that there was one single bill given instead of five, even if the total assessed

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Conclusions.

valuation was practically the same as previous years, does not justify the obligor, the defendant owner of the property, in assuming, as against the complainant, that this one bill covered all the property that had been covered in the other bill and especially as the 1927 lot numbers differ from the 1925 lot numbers. In other words, there was in the possession of the owner of the property evidence that from time to time changes were made by the taxing authorities in the lot numbers of his property and that should have put him on guard. In any event, he was in a position where he was bound to make inquiry to ascertain for himself whether he was getting tax bills for and paying tax bills on all the property covered by the mortgage here in question. There was a mistake, and we will assume from the testimony on behalf of the defendant, that the mistake was an honest one on his part in failing to pay these taxes according to the terms of his contract, but nevertheless it was a mistake for which the complainant was in no way responsible—it was due to the neglect of the defendant, or his agent, or the failure of the tax collecting authorities to give him all the bills which he sought,—but that is not a fault to be attributed to the complainant and it cannot lessen the right of the complainant to have the contract made by the defendant with him, performed. I will therefore advise a decree for the complainant.

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1926

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT.
SATURDAYS 10 A. M. to 12 M.

1926

1926

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT.
 OFFICE HOURS, 10 A. M. to 4 P. M. SATURDAYS, 10 A. M. to 12 M.
 OFFICE OF THE

1926

COMMISSIONER OF FINANCE

Palisade Avenue and 38th Street
 CITY OF UNION CITY, HUDSON COUNTY, NEW JERSEY

M Paul Heisenfeld

Hudson County Board of Taxation will meet in the Council Chamber, City Hall, Palisade Ave. and 38th St. on Tuesday, June 15th, between the hours of 10 A. M. and 3 P. M. for the filing of 4520 petitions of appeal.

EDWARD McDERMOTT

To CITY OF UNION CITY, Dr.

TAXING DISTRICT—TOWN OF UNION

All Checks to be Drawn to the Order of THOMAS McCLELLAND, Collector.

RATES OF TAXATION APPORTIONED AS FOLLOWS:

Debt Service, Town of Union District.....	\$ 7.83
City Pages.....	24.15
County School Tax.....	7.41
State Road Tax.....	2.47
County Road Tax.....	1.01
Soldiers' Bonus.....	.18
State Bridges and Tunnels.....	.51
State Institutions.....	.03
District Court Tax.....	
Total.....	\$43.95

TAX RATE
\$43.95
 Per Thousand

STREET NO.	LOCATION OF PREMISES	BLOCK	LOT	ASSESSED VALUATIONS			POLL TAX	TOTAL AMOUNT OF TAXES
				LAND	IMPROVEMENTS	PERSONAL		
594	Hack Rd	12	1.2 21a	8600	9000		1	774.52

First Half Due June 1, 1926

Amount of Tax..... \$ 387.76

Interest..... \$

When Paid..... \$

COLLECTOR.

Second Half Due December 1, 1926

Amount of Tax..... \$ 387.76

Interest..... \$ 887

When Paid..... \$ 396.13

COLLECTOR.

Payments of Taxes shall be payable in **BANKABLE MONEY** the first half on the 1st day of June, 1926, and the second half on the 1st day of December, 1926, after which dates, if unpaid, they shall become delinquent and interest at the rate of 4% per annum will be added, together with all legal costs for collection.

EDWARD McDERMOTT, Commissioner of Finance.

1926

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT.
SATURDAYS, 10 A. M. to 12 M.

OFFICE HOURS, 10 A. M. to 4 P. M.

1026

1926

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT.
OFFICE HOURS, 10 A. M. to 4 P. M. SATURDAYS, 10 A. M. to 12 M.

1926

OFFICE OF THE COMMISSIONER OF FINANCE

Palisade Avenue and 38th Street
CITY OF UNION CITY, HUDSON COUNTY, NEW JERSEY

M *Paul Wrsinfeld*

DUPLICATE

To CITY OF UNION CITY, Dr.

TAXING DISTRICT—TOWN OF UNION

All Checks to be Drawn to the Order of THOMAS McCLELLAND, Collector.

RATES OF TAXATION APPORTIONED AS FOLLOWS:

TAX RATE
\$43.95
Per Thousand

Debt Service, Town of Union District	\$ 7.83
City Purposes	24.15
County Tax	7.41
State School Tax	2.47
State Road Tax	1.01
Soldiers Bonus	.18
State Bridges and Tunnels	.36
State Institutions	.51
District Court Tax	.03
Total	\$43.95

STREET NO.	LOCATION OF PREMISES	BLOCK	LOT	ASSESSED VALUATIONS			POLL TAX	TOTAL AMOUNT OF TAXES
				LAND	IMPROVEMENTS	PERSONAL		
<i>FR</i> <i>4408</i>	<i>Boulevard</i>	<i>12</i>	<i>Plot B</i>	<i>4200</i>	<i>1600</i>			<i>25491</i>

DUPLICATE

First Half Due June 1, 1926

Amount of Tax \$ *127.46*
 Interest \$ _____
 Total \$ *127.46*
 When Paid *June 1 - 1926*
Smcl
 COLLECTOR.

Second Half Due December 1, 1926

Amount of Tax \$ *127.45*
 Interest \$ *7.17*
 Total \$ *134.62*
 When Paid
 COLLECTOR.

SEP 2 1927
No. 100
134.62

Payments of Taxes shall be payable in BANKABLE MONEY the first half on the 1st day of June, 1926, and the second half on the 1st day of December, 1926, after which dates, if unpaid, they shall become delinquent and interest at the rate of 7% per annum will be added, together with all legal costs for collection.
EDWARD McDERMOTT, Commissioner of Finance.

1926

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT.
SATURDAYS, 10 A. M. to 12 M.
SUNDAYS, 10 A. M. to 4 P. M.

1000

1926

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT.
OFFICE HOURS, 10 A. M. to 4 P. M. SATURDAYS, 10 A. M. to 12 M.

1926

OFFICE OF THE
COMMISSIONER OF FINANCE
Palisade Avenue and 38th Street
CITY OF UNION CITY, HUDSON COUNTY, NEW JERSEY

M L Piero

Hudson County Board of Taxation will meet in the Council Chamber, City Hall, Palisade Ave. and 38th St. on Tuesday, June 15th, between the hours of 10 A. M. and 3 P. M. for the filing of protests against the assessment.

EDWARD McDERMOTT

To **CITY OF UNION CITY, Dr.**
TAXING DISTRICT—TOWN OF UNION

All Checks to be Drawn to the Order of THOMAS McCLELLAND, Collector.

RATES OF TAXATION APPORTIONED AS FOLLOWS:

Debt Service, Town of Union District	\$ 7.83
City Purposes	24.15
County Tax	7.41
State School Tax	2.47
State Road Tax	1.01
Soldiers' Bonus	.36
State Bridges and Tunnels	.51
State Institutions	.03
District Court Tax	.03
Total	\$43.95

TAX RATE
\$43.95
Per Thousand

STREET NO.	LOCATION OF PREMISES	BLOCK	LOT	ASSESSED VALUATIONS			POLL TAX	TOTAL AMOUNT OF TAXES
				LAND	IMPROVEMENTS	PERSONAL		
590	Hack Rd	12	3	1400	1800			14064
					74.58			
					72.41			
					147.29			

First Half Due June 1, 1926

Amount of Tax \$70.32
Interest \$4.56
Total \$74.88
When Paid
COLLECTOR.

Second Half Due December 1, 1926

Amount of Tax \$70.32
Interest \$2.09
Total \$72.41
When Paid
COLLECTOR.

Payments of Taxes shall be payable in **DEFERRED PAYABLE MONEY** the first half on the 1st day of June, 1926, and the second half on the 1st day of December, 1926, after which date, if unpaid, they shall become delinquent and interest at the rate of 7% per annum will be added, together with all legal costs for collection.

EDWARD McDERMOTT, Commissioner of Finance.

1000

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT.
SATURDAYS 10 A. M. TO 12 M.

1926

1926

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT.
OFFICE HOURS, 10 A. M. to 4 P. M.
SATURDAYS, 10 A. M. to 12 M.

1026

1926

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT.
OFFICE HOURS, 10 A. M. to 4 P. M. SATURDAYS, 10 A. M. to 12 M.

1926

OFFICE OF THE
COMMISSIONER OF FINANCE

Palisade Avenue and 38th Street
CITY OF UNION CITY, HUDSON COUNTY, NEW JERSEY

M *P. A. Heisenfeld*

Notice: Money should be received and paid to the Council Chamber, City Hall, Palisade Ave. and 38th St. on Tuesday June 15th, between the hours of 10 A. M. and 3 P. M. for the filing of 1926 petitions of appeal.

EDWARD McDERMOTT

Commissioner of Finance

To **CITY OF UNION CITY, Dr.**
TAXING DISTRICT—TOWN OF UNION

All Checks to be Drawn to the Order of THOMAS McCLELLAND, Collector.

RATES OF TAXATION APPORTIONED AS FOLLOWS:

Debt Service, Town of Union District.....	\$ 7.83
City Purposes.....	24.15
County Tax.....	7.41
State School Tax.....	2.47
State Road Tax.....	1.01
Soldiers' Bonus.....	.18
State Bridges and Tunnels.....	.36
State Institutions.....	.51
District Court Tax.....	.03
Total.....	\$43.95

TAX RATE
\$43.95
Per Thousand

STREET NO.	LOCATION OF PREMISES	BLOCK	LOT	ASSESSED VALUATIONS			POLL TAX	TOTAL AMOUNT OF TAXES
				LAND	IMPROVEMENTS	PERSONAL		
4410	Bowl	12	C	2800	1200		17580	

First Half Due June 1, 1926

Amount of Tax..... *87.90*

Interest..... \$.....

Total \$.....

When Paid..... *JUN 1 1926*

Second Half Due December 1, 1926

Amount of Tax..... *87.90*

Interest..... *2.02*

Total \$..... *89.92*

When Paid..... *MAR 2 1927*

COLLECTOR.....

Payments of Taxes shall be payable in **BANKABLE MONEY** the first half on the 1st day of June, 1926, and the second half on the 1st day of December, 1926, after which dates, if unpaid, they shall become delinquent and interest at the rate of 7% per annum will be added, together with all legal costs for collection.

EDWARD McDERMOTT, Commissioner of Finance.

1927

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT

OFFICE HOURS, 10 A. M. to 4 P. M.

SATURDAYS, 10 A. M. to 12 M.

1927

1927

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT

1927

OFFICE HOURS, 10 A. M. to 4 P. M.

SATURDAYS, 10 A. M. to 12 M.

NOTICE: All persons paying taxes will examine their bills and the City Assessment Map to see that they are paying upon the right property, as the City will not be responsible for or return money paid in error on the wrong property.

M Paul Heisefeld

To CITY OF UNION CITY, Dr.

City Hall, Palisade Avenue and 38th Street
HUDSON COUNTY, NEW JERSEY

TAXING DISTRICT—TOWN OF UNION

All Checks to be Drawn to the Order of THOMAS McCLELLAND, Collector.

Hudson County Board of Taxation will meet in the Council Chamber, City Hall, Palisade Avenue and 38th Street, Wednesday, May 25, 1927, between the hours of 10 A. M. and 3 P. M. for the filing of Petitions of Appeal.

TAX RATE
\$43.52
Per Thousand

RATES OF TAXATION APPORTIONED AS FOLLOWS:

City Purposes	\$31.62
County Tax	7.28
State School Tax	2.66
State Road Tax	1.00
Soldier's Bonus	.16
State Bridges and Tunnels	.27
State Institutions	.50
District Court Tax	.03
Total	\$43.52

Street No.	LOCATION OF PREMISES	Block	Lot	ASSESSED VALUATIONS			Poll Tax	Total Amount of Taxes		
				Land	Improvements	Personal				
4408	Bond	12	1st B	4200	1600			252	42	
	<i>1600 Val reduced by County Board amount off</i>								69	63
								182	79	
	<u>Corrected Bill</u>									

First Half Due June 1, 1927

Amount of Tax \$ 91.40
Interest \$ 1.34
Total \$ 92.74

When Paid

Collector.

Second Half Due December 1, 1927

Amount of Tax \$ 91.39
Interest \$
Total \$ 91.39

When Paid

Collector.

Payments of Taxes shall be payable in BANKABLE MONEY the first half on the 1st day of June, 1927, and the second half on the 1st day of December, 1927, after which dates, if unpaid, they shall become delinquent and interest at the rate of 7% per annum will be added together with all legal costs for collection.



1007

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT

1927

1927

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT
OFFICE HOURS, 10 A. M. to 4 P. M. SATURDAYS, 10 A. M. to 12 M.

1927

NOTICE: All persons paying taxes will examine their bills and the City Assessment Map to see that they are paying upon the right property, as the City will not be responsible for or return money paid in error on the wrong property.

M Paul Heissenfeld
To CITY OF UNION CITY, Dr.

City Hall, Palisade Avenue and 38th Street
HUDSON COUNTY, NEW JERSEY

TAXING DISTRICT—TOWN OF UNION

All Checks to be Drawn to the Order of THOMAS McCLELLAND, Collector.

Hudson County Board of Taxation will meet in the Council Chamber, City Hall, Palisade Avenue and 38th Street, Wednesday, May 25, 1927, between the hours of 10 A. M. and 3 P. M. for the filing of Petitions of Appeal.

TAX RATE
\$43.52
Per Thousand

RATES OF TAXATION APPORTIONED AS FOLLOWS:

City Purposes	\$31.62
County Tax	7.28
State School Tax	2.66
State Road Tax	1.00
Soldier's Bonus	.16
State Bridges and Tunnels	.27
State Institutions	.50
District Court Tax	.03
Total	\$48.52

Street No.	LOCATION OF PREMISES	Block	Lot	ASSESSED VALUATIONS			Poll Tax	Total Amount of Taxes	
				Land	Improvements	Personal			
4410	Bowl	12	C	2800	1200			174	08

First Half Due June 1, 1927

Amount of Tax \$ 87.04

Interest _____

Total \$ _____

When Paid MAY 31 1927

Collector. *[Signature]*

Second Half Due December 1, 1927

Amount of Tax \$ 87.04

Interest \$ 1.52

Total \$ 88.56

When Paid _____

Collector. *[Signature]*

Payments of Taxes shall be payable in BANKABLE MONEY, the first half on the 1st day of June, 1927, and the second half on the 1st day of December, 1927, after which dates, if unpaid, they shall become delinquent, and interest at the rate of 7% per annum will be added, together with all legal costs for collection.

1927

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT
OFFICE HOURS, 10 A. M. to 4 P. M.
SATURDAYS, 10 A. M. to 12 M.

1927

1927

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT

OFFICE HOURS, 10 A. M. to 4 P. M.

SATURDAYS, 10 A. M. to 12 M.

1927

NOTICE: All persons paying taxes will examine their bills and the City Assessment Map to see that they are paying upon the right property, as the City will not be responsible for or return money paid in error on the wrong property.

M Paul Heisenfeld 137 Mercer St Jc

To CITY OF UNION CITY, Dr.

City Hall, Palisade Avenue and 38th Street HUDSON COUNTY, NEW JERSEY

TAXING DISTRICT—TOWN OF UNION

All Checks to be Drawn to the Order of THOMAS McCLELLAND, Collector.

Hudson County Board of Taxation will meet in the Council Chamber, City Hall, Palisade Avenue and 38th Street, Wednesday, May 25, 1927, between the hours of 10 A. M. and 3 P. M. for the filing of Petitions of Appeal.

TAX RATE \$43.52 Per Thousand

RATES OF TAXATION APPORTIONED AS FOLLOWS: City Purposes \$91.62, County Tax 7.28, State School Tax 2.66, State Road Tax 1.00, Soldier's Bonus .16, State Bridges and Tunnels .27, State Institutions .50, District Court Tax .03, Total \$43.52

Table with columns: Street No., LOCATION OF PREMISES, Block, Lot, ASSESSED VALUATIONS (Land, Improvements, Personal), Poll Tax, Total Amount of Taxes. Row 1: 594, 32nd St, 12, 24, 8600, 9000, 1, 766.95

First Half Due June 1, 1927

Amount of Tax \$383.48, Interest, Total \$, When Paid

Second Half Due December 1, 1927

Amount of Tax \$383.47, Interest \$8.94, Total \$392.41, When Paid

Collector.

Collector.

Payments of Taxes shall be payable in BANKABLE MONEY the first half on the 1st day of June, 1927, and the second half on the 1st day of December, 1927, after which dates, if unpaid, they shall become delinquent and interest at the rate of 7% per annum will be added, together with all legal costs for collection.

1927

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT
SATURDAYS, 10 A. M. to 12 M.

1097

1927

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT

1927

OFFICE HOURS, 10 A. M. to 4 P. M.

SATURDAYS, 10 A. M. to 12 M.

NOTICE: All persons paying taxes will examine their bills and the City Assessment Map to see that they are paying upon the right property, as the City will not be responsible for or return money paid in error on the wrong property.

TAX RATE

\$43.52

Per Thousand

M *Leon Pizzo Paul Wisniewski*

To CITY OF UNION CITY, Dr.

City Hall, Palisade Avenue and 38th Street
HUDSON COUNTY, NEW JERSEY

TAXING DISTRICT—TOWN OF UNION

All Checks to be Drawn to the Order of THOMAS McCLELLAND, Collector.

Hudson County Board of Taxation will meet in the Council Chamber, City Hall, Palisade Avenue and 38th Street, Wednesday, May 25, 1927, between the hours of 10 A. M. and 3 P. M. for the filing of Petitions of Appeal.

RATES OF TAXATION APPORTIONED AS FOLLOWS:

City Purposes	\$31.62
County Tax	7.28
State School Tax	2.66
State Road Tax	1.00
Soldier's Bonus	.16
State Bridges and Tunnels	.27
State Institutions	.50
District Court Tax	.03
Total	\$43.52

Street No.	LOCATION OF PREMISES	Block	Lot	ASSESSED VALUATIONS			Poll Tax	Total Amount of Taxes	
				Land	Improvements	Personal			
588	32 nd St	17	4 ²⁶	3600	4000		1	331	75

First Half Due June 1, 1927

Amount of Tax \$ 165.88

Interest \$ _____

Total \$ _____

When Paid _____

Collector. *[Signature]*

Second Half Due December 1, 1927

Amount of Tax \$ 165.87

Interest \$ 3.85

Total \$ 169.72

When Paid _____

Collector. *[Signature]*

Payments of Taxes shall be payable in BANKABLE MONEY the first half on the 1st day of June, 1927, and the second half on the 1st day of December, 1927, after which dates, if unpaid, they shall become delinquent and interest at the rate of 7% per annum will be added, together with all legal costs for collection.

1927

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT

1927

WEDNESDAYS 10 A. M. to 12 M.

1927

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT

1927

OFFICE HOURS, 10 A. M. to 4 P. M.

SATURDAYS, 10 A. M. to 12 M.

NOTICE: All persons paying taxes will examine their bills and the City Assessment Map to see that they are paying upon the right property, as the City will not be responsible for or return money paid in error on the wrong property.

M. Leon Pierre Paul Wisniewski 137 Muren St. J.L.

To CITY OF UNION CITY, Dr.

City Hall, Palisade Avenue and 38th Street

HUDSON COUNTY, NEW JERSEY

TAXING DISTRICT—TOWN OF UNION

All Checks to be Drawn to the Order of THOMAS McCLELLAND, Collector.

Hudson County Board of Taxation will meet in the Council Chamber, City Hall, Palisade Avenue and 38th Street, Wednesday, May 25, 1927, between the hours of 10 A. M. and 3 P. M. for the filing of Petitions of Appeal.

TAX RATE
\$43.52
Per Thousand

RATES OF TAXATION APPORTIONED AS FOLLOWS:

City Purposes	\$31.62
County Tax	7.28
State School Tax	2.66
State Road Tax	1.00
Soldier's Bonus	.16
State Bridges and Tunnels	.27
State Institutions	.50
District Court Tax	.03
Total	\$43.52

Street No.	LOCATION OF PREMISES	Block	Lot	ASSESSED VALUATIONS			Poll Tax	Total Amount of Taxes
				Land	Improvements	Personal		
590	32 nd St	17	3	1400	1800			139.26

First Half Due June 1, 1927

Amount of Tax \$ 69.63

Interest \$ _____

Total \$ _____

When Paid _____

Collector. *M. C. Hill*

Second Half Due December 1, 1927

Amount of Tax \$ 69.63

Interest \$ 1.21

Total \$ 70.84

When Paid _____

Collector. *J. E.*

Payments of Taxes shall be payable in BANKABLE MONEY the first half on the 1st day of June, 1927, and the second half on the 1st day of December, 1927, after which dates, if unpaid, they shall become delinquent and interest at the rate of 7% per annum will be added, together with all legal costs for collection.

1000

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT

1928

1928

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT

OFFICE HOURS, 10 A. M. to 4 P. M.

SATURDAYS, 10 A. M. to 12 M.

1928

NOTICE: All persons paying taxes will examine their bills and the City Assessment Map to see that they are paying upon the right property, as the City will not be responsible for or return money paid in error on the wrong property.

M L. Perno

To CITY OF UNION CITY, Dr.

City Hall, Palisade Avenue and 38th Street

HUDSON COUNTY, NEW JERSEY

TAXING DISTRICT—TOWN OF UNION

All Checks to be Drawn to the Order of THOMAS McCLELLAND, Collector.

Hudson County Board of Taxation will meet in the Council Chamber, City Hall, Palisade Avenue and 38th Street, Monday, May 28, 1928, between the hours of 10 A. M. and 3 P. M. for the filing of Petitions of Appeal.

TAX RATE
\$43.75
Per Thousand

573-35 ST
588-32 ST

RATES OF TAXATION APPORTIONED AS FOLLOWS:

City Purposes	\$31.73
County Tax	7.60
State School Tax	2.74
State Road Tax	1.00
Soldiers' Bonus	.15
State Institutions	.50
District Court Tax	.03
Total	\$43.75

Street No.	LOCATION OF PREMISES	Block	Lot	ASSESSED VALUATIONS			Poll Tax	Total Amount of Taxes
				Land	Improvements	Personal		
573	35 St	12	26	7900	6000	-	608.13	
	323.76							
	313.11							
	<u>636.87</u>							

Payments of Taxes shall be payable in BANKABLE MONEY the first half on the 1st day of June, 1928, and the second half on the 1st day of December, 1928, after which dates, IF UNPAID, THEY SHALL BECOME DELINQUENT AND INTEREST AT THE RATE OF 7% PER ANNUM WILL BE ADDED, together with all legal costs for collection.

First Half Due June 1, 1928:

Amount of Tax \$ 304.07

Interest \$ 19.69

Total \$ 323.76

When Paid _____

Collector. _____

Second Half Due December 1, 1928

Amount of Tax \$ 304.06

Interest \$ 90.5

Total \$ 394.56

When Paid _____

Collector. _____

1928

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT

1928

OFFICE HOURS, 10 A. M. to 4 P. M.

SATURDAYS, 10 A. M. to 12 M.

NOTICE: All persons paying taxes will examine their bills and the City Assessment Map to see that they are paying upon the right property, as the City will not be responsible for or return money paid in error on the wrong property.

TAX RATE
\$43.75
Per Thousand

M

Paul Wisniewski

To CITY OF UNION CITY, Dr.

City Hall, Palisade Avenue and 38th Street

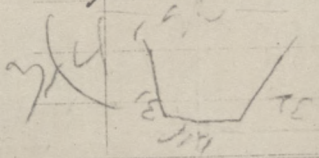
HUDSON COUNTY, NEW JERSEY

TAXING DISTRICT—TOWN OF UNION

All Checks to be Drawn to the Order of THOMAS McCLELLAND, Collector.

Hudson County Board of Taxation will meet in the Council Chamber, City Hall, Palisade Avenue and 38th Street, Monday, May 28, 1928, between the hours of 10 A. M. and 3 P. M. for the filing of Petitions of Appeal.

Street No.	LOCATION OF PREMISES	Block	Lot	ASSESSED VALUATIONS			Poll Tax	Total Amount of Taxes
				Land	Improvements	Personal		
	<i>Bldg - 35th - 32nd St</i>	<i>12</i>	<i>1-2-3 21-25</i>	<i>24300</i>	<i>9000</i>			<i>1456.88</i>



RATES OF TAXATION APPROPRIATED AS FOLLOWS:

City Purposes	\$31.73
County Tax	7.50
State School Tax	2.74
State Road Tax	1.00
Soldiers' Bonus	.15
State Institutions	.50
District Court Tax	.03
Total	\$43.75

Payments of Taxes shall be payable in BANKABLE MONEY the first half on the 1st day of June, 1928, and the second half on the 1st day of December, 1928, after which dates, IF UNPAID, THEY SHALL BECOME DELINQUENT AND INTEREST AT THE RATE OF 7% PER ANNUM WILL BE ADDED, together with all legal costs for collection.

First Half Due June 1, 1928

Amount of Tax \$ *728.44*

Interest \$ *4.24*

Total \$ *732.68*

When Paid

Mc

JUL 2 1928

Collector.

Second Half Due December 1, 1928

Amount of Tax \$ *728.44*

Interest \$ *8.50*

Total \$ *736.94*

When Paid

Mc

Collector.

1929

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT

OFFICE HOURS, 10 A. M. to 4 P. M.

SATURDAYS, 10 A. M. to 12 M.

1929

NOTICE: All persons paying taxes will examine their bills and the City Assessment Map to see that they are paying upon the right property, as the City will not be responsible for or return money paid in error on the wrong property.

TAX RATE
\$51.82
Per Thousand

Wx 47

M

J. Keisenfeld

Nº 2885

137 Mercer St Jersey City

To CITY OF UNION CITY, Dr.

City Hall, Palisade Avenue and 38th Street
HUDSON COUNTY, NEW JERSEY

TAXING DISTRICT—TOWN OF UNION

All Checks to Be Drawn to the Order of CITY OF UNION CITY.

Hudson County Board of Taxation will meet in the Council Chamber, City Hall, Palisade Avenue and 38th Street, Mon., May 20th, and Tues., May 21st, 1929, between the hours of 10 A. M. and 3 P. M. for the filing of Petitions of Appeal, or Appeals may be filed with Hudson County Board of Taxation at Hudson County Court House on or before June 15th, 1929.

RATES OF TAXATION APPORTIONED AS FOLLOWS:

City Purposes.....	\$40.40
County Tax.....	7.11
State School Tax.....	2.66
State Road Tax.....	.99
Soldiers' Bonus.....	.14
State Institutions.....	.49
District Court Tax.....	.08
Total.....	\$51.82

Street No.	LOCATION OF PREMISES	Block	Lot	ASSESSED VALUATIONS			Poll Tax	Total Amount of Taxes
				Land	Improvements	Personal		
<i>573</i>	<i>32 St</i>	<i>12</i>	<i>4</i> <i>26</i>	<i>7900</i>	<i>6000</i>		<i>72030</i>	

Payment of Taxes shall be payable in **BANKABLE MONEY** the first half on the 1st day of **June, 1929**, and the second half on the 1st day of **December, 1929**, after which dates, **IF UNPAID, THEY SHALL BECOME DELINQUENT AND INTEREST AT THE RATE OF 7% PER ANNUM WILL BE ADDED**, together with all legal costs for collection.

First Half Due June 1, 1929

Amount of Tax \$ *360.15*

Interest \$ *2.03*

Total \$ *367.18*

When Paid *Mc*

Collector.

JUN 29 1929

Second Half Due December 1, 1929

Amount of Tax \$ *360.15*

Interest \$ *77*

Total \$ *360.92*

When Paid *JE*

Collector.

DEC 11 1929

1929

BRING THIS TAX BILL WITH YOU WHEN MAKING PAYMENT
OFFICE HOURS, 10 A. M. to 4 P. M. SATURDAYS, 10 A. M. to 12 M.

1929

NOTICE: All persons paying taxes will examine their bills and the City Assessment Map to see that they are paying upon the right property, as the City will not be responsible for or return money paid in error on the wrong property.

TAX RATE
\$51.82
Per Thousand

M Paul Heimfeld

No 258

137 Mercer St Jersey City N.J

To CITY OF UNION CITY, Dr.

City Hall, Palisade Avenue and 38th Street
HUDSON COUNTY, NEW JERSEY

TAXING DISTRICT—TOWN OF UNION

All Checks to Be Drawn to the Order of CITY OF UNION CITY.

Hudson County Board of Taxation will meet in the Council Chamber, City Hall, Palisade Avenue and 38th Street, Mon., May 20th, and Tues., May 21st, 1929, between the hours of 10 A. M. and 3 P. M. for the filing of Petitions of Appeal, or Appeals may be filed with Hudson County Board of Taxation at Hudson County Court House on or before June 15th, 1929.

RATES OF TAXATION APPORTIONED AS FOLLOWS:

City Purposes.....	\$40.40
County Tax.....	7.11
State School Tax.....	2.66
State Road Tax.....	.99
Soldiers' Bonus.....	.14
State Institutions.....	.49
District Court Tax.....	.08
Total.....	\$51.82

Street No.	LOCATION OF PREMISES	Block	Lot	ASSESSED VALUATIONS			Poll Tax	Total Amount of Taxes
				Land	Improvements	Personal		
	<i>Blvd 35 St</i>	<i>12</i>	<i>1.23 21-25</i>	<i>24300</i>	<i>9000</i>		<i>1.72561</i>	
	<i>r 32 "</i>							

Payment of Taxes shall be payable in BANKABLE MONEY the first half on the 1st day of June, 1929, and the second half on the 1st day of December, 1929, after which dates, IF UNPAID, THEY SHALL BECOME DELINQUENT AND INTEREST AT THE RATE OF 7% PER ANNUM WILL BE ADDED, together with all legal costs for collection.

First Half Due *June 1, 1929*

Amount of Tax \$ *862.81*

Interest *JUN 2* \$ *4.87*

Total *867.68*

When Paid *Mc*

Collector.

Second Half Due *December 1, 1929*

Amount of Tax \$ *862.80*

Interest \$ *1.84*

Total \$ *864.64*

When Paid *JE*

Collector.

DEC 1 1929

76

011

20



Paul Weisenfeld ^{The} Central

Successor to BREWING CO.

450000

No. 16690

APR 4 1929

192

JERSEY CITY,

PAY TO THE ORDER OF

R. L. Piro

\$ 450⁰⁰

452

Paul Weisenfeld
JERSEY CITY, N. J.

☆☆\$450AND00CTS

DOLLARS

The New Jersey Title Guarantee & Trust Company

55-38

83-85 MONTGOMERY STREET

JERSEY CITY, N. J.

Paul Weisenfeld

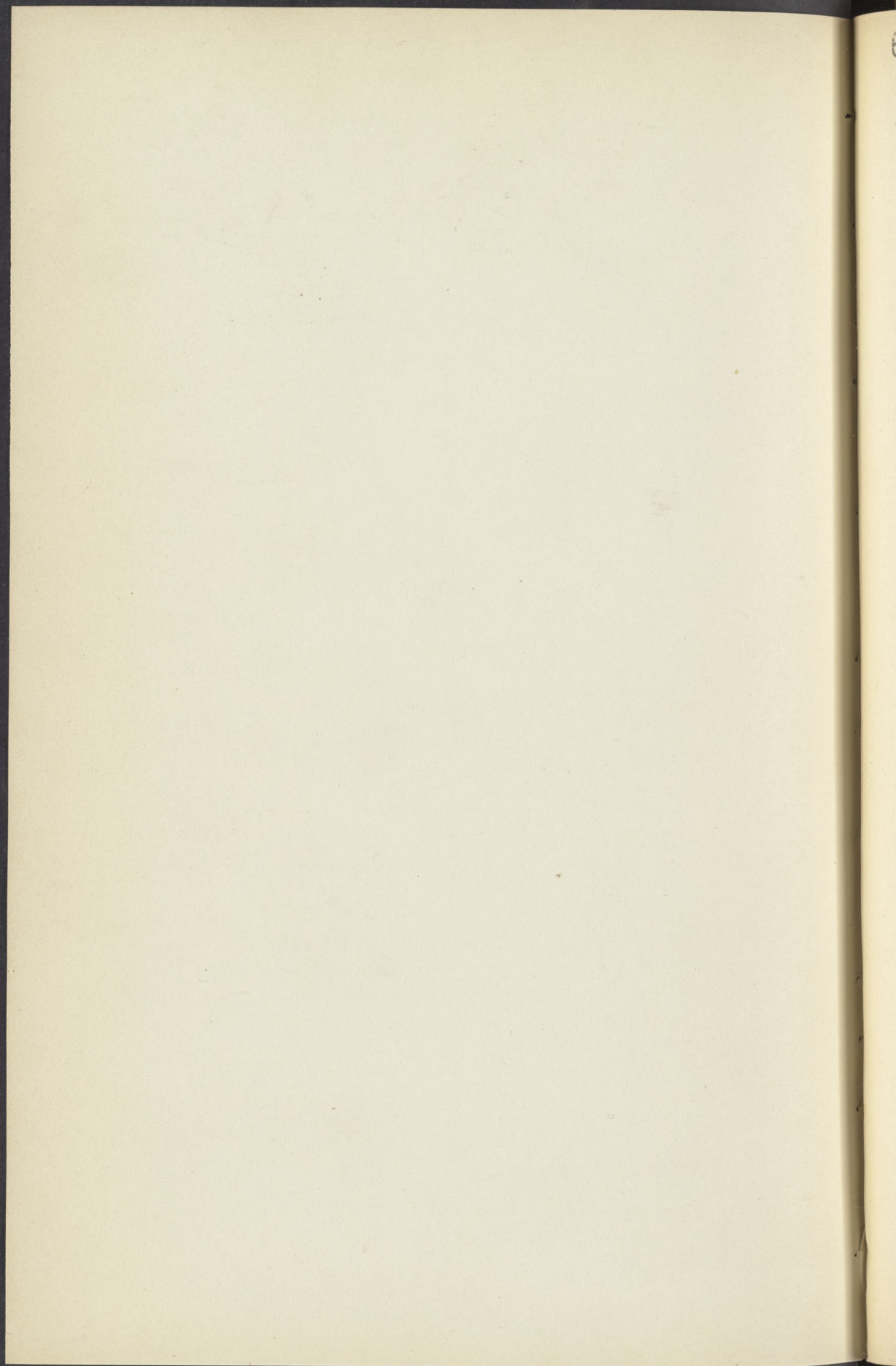
THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING.

DATE	AMOUNT	
		Interest Mortgage
500/90	- 32"	St. J.
57/13	800.00	St. J.
		R. L. Piro
		Anna Piro
		TOTAL
		AMOUNT OF CHECK

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

450000

RECEIVED PAYMENT THROUGH
THE ENDORSEMENT QUALIFIER
APR 19 1929
HUDSON TRUST CO.
UNION CITY, N. J.



New Jersey Court of Errors and Appeals

HUDSON TRUST COMPANY and
ANNITA PIERRO,
Complainants-Respondents,

vs.

PAUL WEISENFELD, *et ux, et als.*,
Defendants-Appellants.

On Appeal
from the
Court of
Chancery.

BRIEF FOR APPELLANTS.

Statement of Case.

This is an appeal from the Final Decree entered in the Court of Chancery on June 3rd, 1930, in a suit instituted by the complainants to foreclose a purchase money mortgage of Thirty Thousand (\$30,000.00) Dollars, dated October 4th, 1926, and executed by the defendant, Paul Weisenfeld to the complainant, Annita Pierro. The ground for the foreclosure was the alleged non-payment of the taxes for the year 1928 upon *part* of the lands and premises covered by the mortgage, which taxes amounted to Six Hundred and Eight Dollars and Thirteen Cents (\$608.13); the mortgage containing an acceleration clause providing that in the event of the non-payment of the taxes for a period of ninety days, the mortgagee would have the right to declare the entire principal due at her option.

The defendants, Paul Wiesenfeld and Mollie Weisenfeld, his wife, in their amended answer in defense to the foreclosure, contended that while the 1928 taxes had not been paid within ninety days

after they became due, that the failure to pay the same was due to accident and mistake, and to matters over which they had no control and because of the fact that equity would relieve against the enforcement of a forfeiture or penalty, contended on the final hearing that the foreclosure of the mortgage in question should not be decreed on account of the said accident and mistake.

The learned Vice Chancellor, however, held that while there may have been an *honest mistake* on the part of the defendants in failing to pay the taxes in time, that such mistake did not have the effect of relieving the defendants from the terms of the acceleration covenant contained in the mortgage, and advised a decree as above mentioned.

The defendants, Paul Weisenfeld and Mollie Weisenfeld, his wife, now appeal to this honorable Court and respectfully urge as they urged in the Court below, that the failure to pay the 1928 taxes was due to accident and mistake, and it was error for the learned Vice Chancellor to have decreed the foreclosure under the circumstances.

Facts.

On October 4th, 1926, complainant, Annita Pierro, and her husband, Leon Pierro, conveyed the premises, covered by the mortgage to the defendant, Paul Weisenfeld. The mortgage was for the principal sum of Thirty Thousand (\$30,000.00) Dollars and was a purchase money first mortgage due and payable on October 4th, 1931, with quarterly interest at the rate of six per cent per annum (Bill of Complaint, p. 14). The premises sold by Mrs. Pierro and her husband to Weisenfeld are described in the mortgage as three separate and distinct tracts, and are presently known and described as Nos. 588 Hackensack Plank Road and 590 Hacken-

sack Plank Road (now known as Thirty-second Street), Union City, New Jersey, and No. 573 Jefferson Street (now known as Thirty-fifth Street), Union City, New Jersey.

The premises are also described on the Union City Tax Map as lots 3, 4 and 26 in block 12; lot 4 is the first tract described in the mortgage; lot 26 is the second tract described in the mortgage and lot 3 is the third tract described in the mortgage.

The mortgage contained a covenant providing

“that if any taxes were in arrears for the space of ninety days the mortgagee could at her option, declare the principal amount immediately due and payable” (p. 17, par. 4).

The complainant, Annita Pierro, made two separate assignments of the mortgage to the other complainant Hudson Trust Company to secure the payment of a note for Eight Thousand (\$8,000.00) Dollars and another note for Ten Thousand (\$10,000.00) Dollars, representing a total sum of Eighteen Thousand (\$18,000.00) Dollars which the complainant, Annita Pierro had borrowed from the Hudson Trust Company, on her notes and had given the mortgage in the suit, as collateral security for the payment thereof (Bill of Complaint, p. 18, pars. 5, 6 and 7).

The final decree provided that there was due to the complainant, Hudson Trust Company, the sum of Eighteen Thousand (\$18,000.00) Dollars, with interest, and to the complainant, Annita Pierro, the sum of Twelve Thousand (\$12,000.00) Dollars with interest (pp. 8 and 12).

The ground for the foreclosure as alleged in the bill (p. 19, par. 10) was the failure on the part of the defendants to pay the first and second half of taxes for 1928 amounting to Six Hundred and Eight Dollars and Thirteen Cents (\$608.13), which


had not been paid at the time of the filing of the bill on *May 1st, 1929*, but which were paid by the defendants on *May 3rd, 1929*, the same day that they were served with the subpoena to answer in the cause.

The 1928 taxes amounting to Six Hundred and Eight Dollars and Thirteen Cents (\$608.13) were unpaid on that portion of the mortgaged premises known as lots 4 and 26 in block 12. The taxes for 1928 on lot 3 *had been paid*; the first half on July 2nd, 1928, and the second half on January 31st, 1929 (Exhibit D-1, p. 94).

At the time, the complainant, Annita Pierro, and her husband conveyed the premises to Paul Weisenfeld, she delivered to the defendant, Paul Weisenfeld, the 1926 tax bills covering the premises in question (p. 92). There was a separate bill covering lot 3 in block 12 and another bill covering lots 4 and 26 in block 12 (Ex. D-1, p. 94).

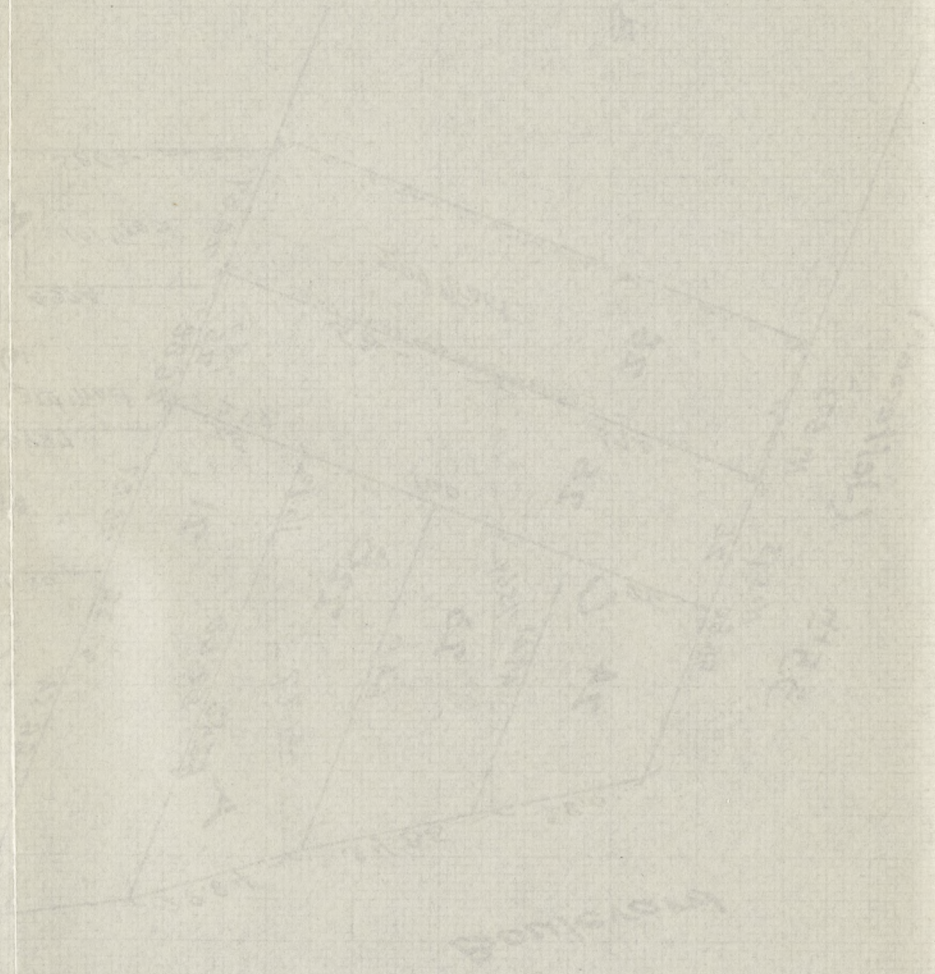
The 1927 tax bills for the premises in question, consisted of a separate bill for lot 3 and another bill for lots 4 and 26 (Ex. D-1, p. 94).

The 1928 tax bill listed lots 4 and 26 on one bill and lot 3 on a separate bill, together with lots 1 and 2, and 21-25, which latter lots are premises owned by the defendant, Weisenfeld, *other* than the premises conveyed to him by Annita Pierro and her husband, but adjacent to the premises conveyed by Mrs. Pierro and her husband, viz.: Known as lots 3, 4 and 26; in other words, lots 1 and 2, and 21-25 in block 12, owned by the defendant had been acquired by him from *other owners prior to October, 1926*, the date that he acquired the title to lots 3, 4 and 26 from Pierro. To better enable the court to understand the physical layout of the premises in question, I have inserted a sketch of the premises involved in the foreclosure and the adjoining premises, copied from the Union City Tax Map on June 12, 1929.



Handwritten notes on the left side of the page, including the phrase "The (spoke) was seen".

Handwritten notes on the left side of the page, including the name "Robert".



North

South

The 1926 Tax Bills covering *all* the premises, owned by the defendant, Weisenfeld, including lots 3, 4 and 26 purchased from Annita Pierro, are *five* in number (Ex. D-1, p. 94).

The 1927 tax bills are also *five* in number.

The 1928 tax bills consist of two separate bills: One covers lots 4 and 26, and the other covers lots 1, 2, 3 and 21-25.

The 1929 tax bills are the same as 1928, in so far as the listing of the various lots are concerned.

It will be noted that the defendant, Weisenfeld owns and is assessed for *ten* lots, *altogether*, including the *three* lots which he purchased from the complainant, Annita Pierro (Ex. D-1, p. 94).

It will be noted that the 1926 tax bills for lots 3, 4 and 26 (which are the premises covered by the mortgage in question) are made out to L. Pierro; but that the 1927 tax bills for the same premises are made out to Leon Pierro, the words "Leon Pierro" evidently stricken out and the name "Paul Weisenfeld" written alongside of the same; that the 1928 tax bills for lots 4 and 26 are made out to L. Pierro, but the tax bill covering lot 3 (and other lots) is made out to the defendant, Paul Weisenfeld. The 1929 tax bills for lots 3, 4 and 26 are made out to Paul Weisenfeld, 137 Mercer Street, Jersey City, New Jersey, which is the residence of the defendant.

The first knowledge that the defendants had that the 1928 taxes covering lots 4 and 26, amounting to Six Hundred and Eight Dollars and Thirteen Cents (\$608.13), being a *part* of the mortgaged premises, had not been paid, was on May 3rd, 1929, when process was served upon the defendant, Weisenfeld, within two days after the filing of the bill (p. 67, ll. 14-25).

Samuel B. Weisenfeld, one of the defendants' witnesses, and who is the son of the defendant, Paul Weisenfeld, testified (p. 72) that on May 3rd, 1929, on which day his father was served with process, that he visited Mr. Leuly, solicitor of the complainants, and asked him what the foreclosure was for, and was told that he, Leuly, had been instructed by Mrs. Pierro to institute foreclosure proceedings for the non-payment of taxes. Upon Weisenfeld remonstrating with Leuly for not being informed first, before the foreclosure bill was filed, Leuly answered "*I was told not to write any letters, but to take immediate steps by my client*" (p. 73). After the visit to Mr. Leuly's office was concluded, he went downstairs in the same building, and saw a gentleman connected with the Hudson Trust Company, and that this gentleman was asked if Mr. Leuly had been instructed to start foreclosure proceedings and this gentleman answered "No" (p. 73, l. 38). Weisenfeld further testified that immediately after he left Mr. Leuly's office, that he went to the tax collector's office in Union City, and paid the 1926 taxes covering lots 4 and 26 (p. 74, ll. 31-35).

George A. Weisenfeld, another son of the defendant, Paul Weisenfeld, testified (p. 62) that he acts as secretary for his father, and especially takes care of the real estate taxes on his father's property, and that he paid the 1928 taxes on lots 4 and 26 on *May 3rd, 1929* (p. 63, l. 12); he also testified that his father altogether owns ten lots and that he recalls paying the 1928 taxes covering lots 1, 2, 3, 21, 22, 23, 24 and 25, and that after paying these taxes, he reported the same to his father (Paul Weisenfeld, the defendant in this suit) and informed his father that the taxes had been paid, amounting to Fourteen Hundred and Fifty-six Dollars and Eighty-eight Cents (\$1,456.88) (p. 65).

George A. Weisenfeld was also asked the following question and gave the following answer, viz.:

“Q. You assumed that that had paid all the assessments on the lots owned by your father?”

Mr. Moser: I object as not binding on either one of the complainants here.

The Court: Objection overruled.

A. *I did*” (p. 65, ll. 22-30).

He also testified (p. 66 and p. 67):

“Q. Will you explain why it was that the taxes on 4 and 26 for 1928, second half, were not paid until May 3, 1929? A. Because Mr. McClelland told me that this included all of our property.”

Q. What included all of your property? A. This bill amounting to \$1,456.88 covers all of the property owned by my father. I asked him for a bill for taxes on all his property. He gave me this and I knew there were eight designations, and I saw this showed eight designations and also the locations of the premises, Thirty-second Street and Thirty-fifth Street—

Mr. Moser: I object.

The Court: I will let it stand.

Q. By eight designations do you mean the eight lots? A. The way they are on the bills. There has been a change in the lots. They split them up.

Q. When you paid this bill for 1928, amounting to \$1,456.88, I understand you to say that it was after you had a conversation with Mr. McClelland? A. Yes.

Q. And you afterwards found out that you had not paid the taxes on lots 4 and 26? A. I did.

Q. Did you go back to see Mr. McClelland? A. I did.

Q. What did you say to him?

Mr. Moser: I object.

The Court: Objection sustained.

Q. As a result of your conversation with Mr. McClelland, what did you do?

Mr. Moser: I object as immaterial. He has already testified that the taxes were paid May 3, 1929.

Q. *What was the first time that you knew the taxes for 1928 on lots 4 and 26 had not been paid?*

Mr. Moser: I object. I do not think it is material.

The Court: Objection overruled.

A. *When we were served with foreclosure papers.*

Q. When was it; what date was that?

The Court: The record shows May 3, 1929.

Q. What have you done since, after you were served with foreclosure papers, or since your father was served with foreclosure papers? A. I went right to the—I went and looked for the tax bills to see if the tax bills were paid, because I know—

BY THE COURT:

Q. *Did you go up and pay the taxes? A. When I found out."*

He also testified that he was with his brother, Samuel Weisenfeld at the time of the visit on May 3rd, 1929 to Mr. Leuly's office (p. 68). He says that he saw Mr. McClelland in 1927 (p. 68, l. 27). Mr. McClelland is Tax Collector of Union City (p. 32). That the subject matter of his visit to Mr. McClelland, in 1927, was the purchase of Pierro's property by his father and for the purpose of getting new tax bills made out to Paul Weisenfeld instead of Pierro (p. 68, l. 38). This occurred in the early part of May, 1927 (p. 69, l. 1). That he again saw Mr. McClelland in the same month in 1927, with reference to the change in his father's tax bill, due to the fact that his father had acquired the Pierro property in October, 1926; and that on this second visit to Mr. McClelland's office, the name of Louis Pierro on the tax bill was scratched

out and the name "Paul Weisenfeld" placed above it (p. 69). He did not personally see the name of Louis Pierro scratched out and changed to Paul Weisenfeld; that the foregoing change had reference to lot 3 in block 12, and that the same thing happened to the 1927 tax bill covering lots 4 and 26 (p. 69). He gave Mr. McClelland his father's name and address and that he did not see Mr. McClelland again until he called to obtain the tax bills in May, 1928 (p. 69). At that time (May, 1928), he saw Mr. McClelland personally and did obtain *one* tax bill for 1928 which covered lots 1-2-3, 21-25 inclusive, and that he conversed with Mr. McClelland personally at the time, *but that Mr. McClelland did not give him the 1928 tax bill covering lots 4 and 26 at that time* (p. 70, l. 28). The next time he saw Mr. McClelland was in *May, 1929, the same day* that suit was started.

On cross examination, Weisenfeld testified that he went to Mr. McClelland's office for the purpose of obtaining the 1928 tax bills on his father's property. That in 1927 he knew that lots 4 and 26 in block 12 were owned by his father, but that he had not heard of any change being made in the lot and block numbers until he was presented with the *single* tax bill on the occasion of his visit to Mr. McClelland's office in May, 1928, and that prior to that time he had never heard about any change; that when he received the *single* tax bill in May, 1928 (for lot 3 and other lots) that he made no inquiry concerning lots 4 and 26 and that lots 4 and 26 were not on that bill. Then he was asked on cross examination (p. 71 and p. 72) :

"Q. So that when you paid that bill you knew you were not paying for lots 4 and 26?

A. *I thought I was paying for them.*

Q. Did you pay the taxes on lots 4 and 26 in block 12 in Union City for the year 1928 prior to May, 1929? A. I did not.

Mr. Nemser: I would like to offer in evidence the paid tax bills for all the ten lots acquired by Paul Weisenfeld.

The Court: I do not think the tax bills for 1925 are material. I am not so sure about 1926. The taxes for 1926 were assessed before he bought them. They might have been paid by the Pierros who sold the property and turned over the paid bill. I do not think it is of any moment. I will allow the tax bills for 1926 to 1929 to go in.

(Marked Exhibit D-1.)

BY THE COURT:

Q. You did not pay the 1925 taxes, did you?

A. No, sir.

Q. Those tax bills were turned over to your father by the seller? A. Yes.

Q. At the time he bought the property? A. Yes.

Q. And so were the 1926 tax bills, were they not? A. Yes, sir."

Annita Pierro was called as a witness for the defendants, and testified (p. 75) that her husband's name is Louis Pierro and that in April, 1929 she ascertained that *none* of the taxes had been paid on *any* of the property that she had sold to Weisenfeld. She evidently was in error in making this statement, because it conclusively appears from the *single* 1928 tax bill, covering lots 1, 2 and 3, 21-25 inclusive, that the taxes had been paid for the first half of 1928 on July 2nd, 1928 and for the second half of 1928 on January 31st, 1929, and if she had been told at the Tax Collector's Office in April, 1929, that the taxes had not been paid (as she testified she had been told), she was evidently misinformed by somebody in the Tax Collector's Office. Thereupon, on obtaining this information she visited Mr. Leuly and instructed him to commence foreclosure proceedings. She was asked why she did not call

the matter of the unpaid 1928 taxes to the attention of Mr. Weisenfeld. Her answer was "*Why should I?*" As a matter of fact, she admits that she did not call it to Mr. Weisenfeld's attention. She admits that she had received her interest check in April, 1929, amounting to Four Hundred and Fifty (\$450.00) Dollars and notations on the back of the check show that it was paid through Mrs. Pierro's bank on *April 19th, 1929*; so that there cannot be any question but that on April 15th, 1929, when she testified she found out that the 1928 taxes had not been paid, that she deliberately accepted the interest from Weisenfeld after *knowing* that there had been a default in the payment of the 1928 taxes; and in spite of this knowledge and the acceptance of the interest check, she instructed her attorney, Mr. Leuly to commence immediate foreclosure proceedings without notifying Weisenfeld. In fact, she admits that she endorsed her husband's name on the back of the check. She also admits that after the institution of the foreclosure, she refused all the interest checks tendered to her by Weisenfeld (p. 81, ll. 18-20).

Mr. McClelland, the tax collector of Union City, one of the complainant's witnesses testified (p. 37) :

"Q. Now, according to your records, were the tax bills for lots 4 and 26, for 1928, to be sent to a party mentioned on your book, namely Louis Pierro? A. *It would be sent to 573 Thirty-second Street.*

Q. Is that the address of Louis Pierro, according to your records? A. *That is according to the record that he gave us.*"

and again,

"Q. *Referring again to your records for 1928, would you say by an examination of your records that the tax bills for 1928 on lots 4 and 27 were sent to Louis Pierro? A. According to this record, yes.*"

It is, therefore, of the greatest significance that the 1928 tax bills for lots 4 and 26 evidently had been mailed to Louis Pierro and that is the reason why this tax bill on these two lots was not delivered to Weisenfeld's son at the time he obtained the single 1928 tax bill for lots 1, 2 and 3, 21 to 25 from Mr. McClelland in May, 1928.

The present bill to foreclose was brought on the very ground that the 1928 taxes on lots 4 and 26, amounting to Six Hundred and Eight Dollars and Thirteen Cents (\$608.13) had not been paid within the time limited by the covenant in the mortgage.

McClelland also testifies (p. 37 to p. 42) reluctantly that the words "Paul Weisenfeld" written after the words "Louis Pierro" on the 1927 tax bills, covering lots 4 and 26 were in his handwriting, and also the 1928 tax bills for lots 4 and 26 made out to L. Pierro were also in his handwriting and that he recalls mailing this latter bill to Louis Pierro, 573 Thirty-fifth Street, Union City, New Jersey.

George Deubell, called as a witness by the defendants, testified (p. 83), that he, is a letter carrier and produced a card signed by Mr. Pierro on the day that Pierro moved, asking that his mail be forwarded to his new address, and the new address given by Mr. Pierro was 200 Thirty-fourth Street, Woodcliff, New Jersey. Pierro's former address was 590 Thirty-second Street, Union City, N. J.

POINT I.

The chancellor should have dismissed the bill on the ground that the alleged failure of the defendants to pay the 1928 taxes on lots 4 and 26, amounting to six hundred and eight dollars and thirteen cents (\$608.13), was due to accident and mistake.

The learned Vice Chancellor in his conclusions at the close of the case (p. 92) evidently placed a strict construction on the acceleration clause contained in the mortgage. The learned Vice Chancellor evidently found that the failure of the defendants to pay the 1928 taxes on Lots 4 and 26 was due to an honest mistake on the part of the defendants, but that such mistake could not be attributed to the complainants and was not a ground for relieving the defendants from the forfeiture, sought to be enforced by the complainants by their bill.

The due date of the mortgage is October 4th, 1931. The defendants had paid their taxes and interest. The first intimation that they had that the 1928 taxes on Lots 4 and 26 which are a *part* of the mortgaged premises, had not been paid, was on May 3rd, 1929, when the subpoena was served. No notice whatever was ever given by the complainants to the defendants, nor was a demand ever made upon the defendants to pay these taxes. Mrs. Piero when asked why she did not call the failure of the defendants to pay the taxes to the attention of the defendants, answered, "*Why should I?*" (p. 78).

The foreclosure under the circumstances already related, is an extreme hardship upon the defendants. The defendant, Paul Weisenfeld, had assumed that he had paid *all* the 1928 taxes on *all* of his properties, including the taxes on Lots 3, 4 and

26, which were purchased from Mrs. Pierro and covered by the mortgage in the suit, and that when the tax collector in *May, 1928*, delivered to the defendant's son, George Weisenfeld, the *single* 1928 tax bill covering Lots 1, 2, 3, 21-25 in Block 12, the defendant naturally assumed that this single tax bill covered *all* of his property, and honestly believed that the taxes had been paid an *all* of the property, *including Lots 4 and 26*.

Why the 1928 tax bill on Lots 4 and 26 was made out to L. Pierro and mailed to him by Mr. McClelland when the tax collector's records showed that Paul Weisenfeld, 137 Mercer Street, Jersey City, N. J. was the owner of the same, does not seem to be explained by the complainants. If the 1928 tax bill for Lots 4 and 26 were mailed to Mr. Pierro at his address, 573 Thirty-second Street, as Mr. McClelland testifies it was mailed, it is natural to assume that this tax bill must have been received by Mr. Pierro, or at least by his wife, Annita Pierro, one of the complainants herein.

Yet, it is significant that Mr. Pierro, her husband, was not produced as a witness to deny the receipt of the 1928 tax bill covering Lots 4 and 26 which McClelland says he mailed to him.

For some reason or other, the complainant, Annita Pierro, was extremely anxious to exercise an unconscionable advantage over the defendants. Her failure, at least, to notify the defendants that they had failed to pay the taxes for 1928 on Lots 4 and 26, and her acceptance of the interest check in April, 1929, *after she knew of the default in the taxes*, certainly disclose the grasping attitude of this lady and her desire to exact a "pound of flesh".

Is it unfair or unreasonable to infer from all the circumstances, in view of Mrs. Pierro's attitude toward Weisenfeld, that the 1928 tax bill for Lots 4 and 26, which McClelland, the tax collector, mailed to her husband, *was actually received* by either Mrs.

Pierro or her husband? Especially in view of the fact that the letter carrier testified that Mr. Pierro had given him a card to forward his mail to the new address, viz., 200 Thirty-fourth Street, Woodcliff? Either Mr. Pierro or Mrs. Pierro must have obtained the 1928 tax bill covering Lots 4 and 26. They apparently retained the same, for the deliberate and fraudulent purpose of conniving at a default on the part of Weisenfeld in the payment of said taxes, and thus take advantage of the tax acceleration clause in the mortgage. Certainly the conduct of Mrs. Pierro is not such as to commend itself to a court of conscience and certainly she should not be assisted in an unfair and unconscionable attempt to enforce a forfeiture.

To say the least, the tax collector, consciously or innocently, misled the defendant's son when the 1928 tax bill covering lots 1, 2, 3 and 21-25 were delivered to the defendant's son, and the 1928 tax bill on lots 4 and 26 was not delivered to him.

Why wasn't the 1928 tax bill covering lots 4 and 26 delivered to the defendant's son by the Tax Collector's Office at the time he visited Mr. McClelland in May, 1928, and ask him for *all* the tax bills on *all* of his father's property? What was the purpose of the Tax Collector in inducing the defendant's son to believe that the single 1928 tax bill which was delivered to him, covered all the lots owned by the defendant? Must the defendant be penalized because of a mistake made by the Tax Collector's Office?

Wasn't it entirely natural and reasonable for the defendant's son to have believed, under the circumstances, that the single 1928 tax bill which was delivered to him and which he paid, covered *all* of his father's properties?

That the defendant was not negligent in assuming under the circumstances, that the single 1928 tax bill which he paid, covered all his property, in-

cluding lots 4 and 26, appears from an inspection of the tax bills (Ex. D-1, p. 84).

The 1926 tax bills being five in number, show a payment of the aggregate amount of Sixteen Hundred and Eighty Dollars and Eighty-nine Cents (\$1680.89) and disclose a total assessed valuation of Thirty-five Thousand Two Hundred (\$35,200) Dollars.

The 1927 tax bills, being five in number, show an aggregate amount of taxes paid of Fifteen Hundred and Ninety-four Dollars and Eighty-three Cents (\$1594.83) and an assessed valuation of Thirty-six Thousand Six Hundred (\$36,600.00) Dollars.

The 1928 tax bills covering lots 1, 2 and 3, 21, 22, 23, 24 and 25 (8 lots including lot 3, part of the mortgaged premises) amounts to Fourteen Hundred and Fifty-six Dollars and Eighty-eight Cents (\$1456.88), and the assessed valuation on this single tax bill amounts to Thirty-three Thousand Three Hundred (\$33,300.00) Dollars.

From these figures, it is entirely reasonable to assume that when the 1928 tax bill was delivered to the defendant's son, and the taxes amounting to Fourteen Hundred and Fifty-six Dollars and eighty-eight Cents (\$1456.88) were paid, that the defendant's son and the defendant were justified in believing that they were paying *all* the taxes on *all* their property, especially in view of the fact that the taxes for 1926 amounted to Sixteen Hundred and Eighty Dollars and Eighty-nine Cents (\$1680.89) and the taxes for 1927 amounted to Fifteen Hundred and Ninety-four Dollars and Eighty-three Cents (\$1594.83), a slight variation in each year, but close enough to lead the defendant to believe that the amount he was paying for the 1928 taxes were approximately the same as the taxes he had paid in 1927 and 1926.

An examination of the valuations for the years 1926, 1927 and 1928, show that they vary but little; the assessed valuation for 1926 being Thirty-five Thousand Two Hundred (\$35,200.00) Dollars, the assessed valuation for 1927 being Thirty-six Thousand Six Hundred (\$36,600.00) Dollars and the assessed valuation for 1928 being Thirty-three Thousand Three Hundred (\$33,300.00) Dollars.

It is also fair to assume from the circumstances that if the 1928 tax bill covering lots 4 and 26 had been delivered to the defendant, that they would have been paid, together with the other 1928 tax bill, covering lot 3.

Mrs. Pierro was so intent upon taking advantage of Weisenfeld that she testified that the information that she received from the tax collector's office in April, 1929, was that *none* of the taxes for 1928 had been paid on *any* of the premises covered by the mortgage. Either Mrs. Pierro testified to an untruth when she made this statement, or else the tax collector's office was again in error, because the undisputed fact is that in April, 1929, the 1928 taxes for *all* the lots owned by Weisenfeld (with the exception of lots 4 and 26) had been paid a number of months before (Ex. D-1, p. 94).

The learned Vice Chancellor says in his conclusions that although the defendant may have been honestly mistaken, that it was a mistake for which the complainant was in no way responsible—it was due to the neglect of the defendant, or his agent, or the failure of the tax collecting authorities to give him all the bills which he sought—but that is not a fault to be attributed to the complainant.

In answer to this it may be said that from all the facts, the inference is irresistible that the failure to pay the 1928 taxes on lots 4 and 26, within the time limited in the acceleration clause in the mortgage, was due to a mistake which is attribut-

able to the tax collector's office, and is that sort of a mistake over which a Court of Equity has jurisdiction to relieve against; especially when the complainant prays for the enforcement of a forfeiture. Although the proofs in the case may not be strong enough to convict Mrs. Pierro beyond a reasonable doubt, of deliberately conniving at and inducing the creation of a default in the payment of the taxes, her precipitous conduct, to say the least, is extremely suspicious and sufficient to cause a Court of Equity to pause and hesitate in granting Mrs. Pierro the relief she seeks.

Mrs. Pierro has a first mortgage on the premises in question. The mortgage by its terms becomes due in October, 1931. Certainly, she cannot be harmed by waiting until the maturity date of the mortgage. The defendants have offered her the interest since the bill was filed (which she refused to accept, p. 81), and the interest was paid to her regularly prior to that time. The defendants have at all times been willing to pay her the interest; even after the bill was filed, the defendants paid the 1929 taxes promptly (Ex. D-1, p. 94).

The failure to pay taxes is a mere technical default which is cured by prompt payment by the mortgagor when his attention is called thereto.

- Germania Life Insurance Co. vs. Potter*,
124 App. Div. 814, 109 N. Y. Supp. 435;
Shaw vs. Wellman, 13 N. Y. Supp. 527;
Verplanck vs Godfrey, 42 App. Div. 16; 58
N. Y. Supp. 784;
Noyes vs. Anderson, 124 N. Y. 175; 26 N.
E. 316;
Towbridge vs. Malex Realty Corp., 191 N.
Y. Supp. 97;
Bard vs. Rabinfried Realty Co., 213 N. Y.
Supp. 44.

And it has been held that the mortgagee's right to take advantage of the acceleration clause is divested by the mortgagor paying the delinquent taxes after the foreclosure suit is commenced.

Shaw vs. Wellman, supra.

CONCLUSION.

It is respectfully submitted that the Decree of the Court of Chancery should be reversed, set aside and for nothing holden.

SAUL NEMSER,
Of Counsel with Appellants.

New Jersey Court of Errors and Appeals

HUDSON TRUST COMPANY and
ANNITA PIERRO,
Complainants-Respondents,

v.

PAUL WEISENFELD, *et ux., et al.,*
Defendants-Appellants.

On Appeal from
Court of
Chancery.

BRIEF OF COMPLAINANTS- RESPONDENTS.

Statement of Facts.

The appeal is one from a final decree entered in the Court of Chancery, on June 3rd, 1930, in a suit instituted by the complainants, to foreclose a certain mortgage made by one of the defendants, Paul Weisenfeld, to the complainant Annita Pierro, and assigned as security for two certain notes to the Hudson Trust Company, the second complainant in the cause.

The bond and mortgage were not printed in the state of the case, but it is conceded that both bond and mortgage contain the following clause:

“And it is thereby expressly agreed that should any default be made in the payment of said interest or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become

due and payable, and should the said interest or any part thereof, remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien or any or either of them, remain unpaid and in arrear for the space of ninety days, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of Thirty Thousand Dollars (\$30,000.00) with all arrearage of interest thereon, shall at the option of the said party of the second part, or her legal representatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof, may not then have expired, anything thereinbefore contained to the contrary thereof, in anywise notwithstanding."

Annita Pierro testified (p. 76) :

"Q. Do you know Mr. McClelland, the Tax Collector of Union City? A. I do not.

"Q. Have you ever been in his office? A. Once.

"Q. When? A. April 15th, 1929.

"Q. Why did you go there? A. I went there because I got a letter stating that a tax bill had not been presented. I went down to see Mr. Leuly, the attorney for the Hudson Trust Company.

"Q. That is why you went to see Mr. Leuly? A. I asked him what to do. He said that I should go down to the Town Hall and request a tax bill.

"Q. Mr. Leuly sent you there, to find out about the taxes? A. Yes.

"Q. That is the reason you went there? A. Yes."

Annita Pierro further testified (p. 77, l. 20) :

"Q. You talk about a tax search. Did you get a certificate of some kind from the Tax Collector? A. I just requested him.

"Q. To tell you about the taxes? A. Yes."

George A. Weisenfeld testified (p. 63, l. 12) :

"Q. I show you a tax bill for 1928, on lots 4 to 26, made out to L. Pierro, showing the second half was paid May 3, 1929, and ask you whether you paid that bill. A. I did."

which date was after the filing of the bill to foreclose.

The brief submitted to the respondents sets forth that a sketch of the premises involved in the foreclosure, is attached, for the convenience of the Court, but in fact, it was not attached; but if it is a true sketch, and is attached to the brief, filed by the appellants, we respectfully submit that the property is so situated and alined that no consideration can be given to that part of the appellants' brief, wherein it is alleged that the bill was filed for the alleged non-payment of the taxes, on part of the lands. The lands in question were involved in one sale, have been and always shall be considered as one parcel, by the parties.

The petition of appeal filed in the cause, sets forth seven specific grounds for reversal, but the appellants have argued only three grounds, namely: two, three and four, but have set them forth under one sub-title—"Point I."

Your respondents desire to argue separately, the question of accident and mistake, and the question of forfeiture.

POINT I.

The exercise of the option set forth in the acceleration clause in the bond and mortgage in question, is not a forfeiture.

The parties to this foreclosure, on the date of closing of title, by delivering the bond and mort-

gage in question, made a valid and binding contract between them, that if the taxes on the premises in question were not paid within ninety days after they became due, the entire principal of the mortgage, would then become due and payable.

The taxes assessed against the premises in question became due: the first half on June 1st, 1928, and the second half on December 1st, 1928, and admittedly were not paid until May 3rd, 1929, three days after the filing of the bill of complaint, in this cause.

The taxes having been unpaid prior to May 1st, and which date was more than ninety days after they became due, the complainants merely exercised their rights, under the contract made between the parties, and are merely seeking to enforce their legal right.

In the case of *Weiner v. Cullens*, 97 N. J. Eq. 523, the facts are as follows:

The complainant filed her bill of complaint to foreclose a mortgage given by the defendants to the complainant, on property in Camden County, which mortgage was given by the defendants to the complainant as part of the purchase price of said premises.

The gravamen of the bill is that the defendants failed to comply with the terms of the mortgage, as set forth in the bill of complaint, in that they failed to produce receipt for taxes, and further that the defendants had failed and neglected, to pay all of the assessments levied against the property.

From the uncontradicted testimony it appeared that there was an assessment of \$76.71, levied against the property on October 25th, 1922. The bill of complaint was filed in March, 1923. On August 24th, one-fifth of the amount due on the assessment was paid by the defendants.

As in the case at bar:

The defendants admitted that there was a curb and gutter assessment levied against the property, *but attempted to excuse this default by the plea that they did not become aware of the existence of the assessment, until a few months after it was levied*, and that when they were made aware of its existence, they paid one-fifth of the assessment and made arrangements with the Borough to pay the balance in installments.

The late Justice KALISCH in his opinion filed in the cause said:

“The basic principle appears to be, as illustrated by the cases in this court, that it is competent for the parties to a contract to agree that the time fixed therein, for the prompt payment of sums due or to grow due affecting the property mortgaged, shall be the essence of the contract and to further agree that a failure to perform, at the time or times fixed therein, shall render the principal to become immediately due and payable. Thus it becomes at once apparent that it is of no material significance whether the default is made in the prompt payment of interest due on the mortgage or in the payment of taxes or assessments levied upon the property mortgaged, if the time or times for their prompt payment is or are made the essence of the contract.

Nor can it be properly said that such a stipulation is in the nature of a forfeiture since it is quite obvious that all the defendants are required to pay to the plaintiff, is the amount justly due and owing from them to her—the time for payment of the same having been shortened by several years seemingly through the defendants' neglect and fault.”

Your respondents, therefore, submit that the exercise of the option stated in the acceleration

clause in the bond and mortgage, is not a forfeiture, and therefore the contention of the appellants in the Court of Chancery, that a Court of Equity should have intervened in this cause, to prevent a forfeiture, can be of no avail to them.

POINT II.

Complainants-respondents did not take advantage of the defendants.

The appellants have argued under the single point in their brief, that the complainants-respondents have taken advantage of the defendant-appellants, because one of the complainants, Annita Pierro, did not advise the appellants of the default, and further attempted to show, although there is no testimony to bear out their contention, that Annita Pierro, one of the complainants, connived, or did something to prevent the receipt of the tax bill by the defendants.

To the contrary, Annita Pierro testified as follows (p. 76, l. 6):

“Q. Do you know Mr. Robinson? A. I do not.”

Line 9:

“Q. Did you receive any tax bills for 1927?

A. I did not.

“Q. For the property you sold to Mr. Weisenfeld? A. I did not.

“Q. Did you receive any tax bills for 1928?

A. I did not.

“Q. Through the mail? A. I did not.

“Q. Have you been getting your mail since 1928, at any post office box? A. I have not.”

Line 23:

“Q. Do you know Mr. McClelland, the Tax Collector of Union City? A. I do not.”

Quite contrary to the allegations of the appellants, the complainants-respondents contend that the Hudson Trust Company, a trust company organized under the laws of the State of New Jersey, and supervised by the Banking Department, must have requested tax bills from the appellants, for we find in the testimony of Annita Pierro (p. 76, l. 26):

“Q. Why did you go there? A. I went there because I got a letter stating that a tax bill had not been presented. I went down to see Mr. Leuly, the attorney for the Hudson Trust Company.”

It has never been contended that the Hudson Trust Company did anything to prevent the receipt of the bills or payment of them.

Therefore, it is contended that there is no testimony, indicating that either the complainant Anita Pierro or the Hudson Trust Company did anything that in any way prevented the appellants from paying the taxes.

However, in the case of *Weiner v. Cullens, supra*, it is held, where a similar contention was raised:

“There is no merit in the contention that the foreclosure proceedings were prompted by any improper motives on the part of the complainant, and that therefore, the defendants were entitled to equitable relief. A party cannot be properly deprived of the enforcement of a legal right upon any such ground as suggested.”

Davis v. Flagg, 35 N. J. Eq. 491;

Hodge v. United States Steel Corp., 64 N. J. Eq. 111;

Robert v. Tompkins, 75 N. J. Eq. 580;

Eggers v. Newark, 77 N. J. Law 201;

Camden v. Public Service Railway Co.,
84 N. J. Law 308.

THE DEFAULT.

^{NON-}The payment of taxes did not arise as the result of accident or mistake, but was the direct result of neglect.

The complainants-respondents in this cause were not dealing with an individual who owned one piece of property, and who might have received a tax bill in error, covering the adjoining property owned by himself or someone else, and have paid it in absolute error, but were dealing with a person who owned so much property that his son, George A. Weisenfeld, whose testimony is set forth in the state of the case, beginning at page 62, takes care of his various affairs, and it is established without question, that the lot numbers three (3), four (4) and twenty-six (26) are exactly the same, from 1926 right down through 1929, as will appear by reference to the photostatic copies of the tax bills annexed to the state of the case, and therefore, it would have been a very simple matter for the defendant's secretary or the defendant himself, to have checked up by lot and block number, which they did not do. Therefore, not having exercised reasonable care in checking up the lot numbers, the default was not occasioned by mistake or error, *but by neglect*, and therefore the contract made between the parties, being an enforceable one, cannot be defeated, because of the neglect of the defendants.

In the case of *Best, et al. v. Katz*, Court of Chancery, 105 N. J. Eq., page 655, from opinion by V. C. INGERSOLL, filed January 7th, 1930, it was held:

"In the suit, which was one to foreclose a mortgage, for failure to produce tax receipts, as required by the terms of the mortgage, the court, following the case of *Weiner v. Cullens*,

supra, 97 Eq. page 523, decreed that the acceleration clause is a contract between the parties, and the failure to produce tax receipts in that case was such a breach of that contract, as to permit the complainant's foreclosure."

In conclusion, the complainants-respondents contend that the appeal sued out by the defendants-appellants is not taken in good faith, and in support of that contention refer to the brief filed by counsel, in the case.

Although there is a distinct line of cases in the State of New Jersey touching directly on the effect of an acceleration clause in a bond and mortgage, nevertheless, counsel does not attempt to distinguish those cases or in any way touch upon them, but, at the conclusion of his brief, offers the citation of several cases alleged by him to be reported in the State of New York, but does not even attempt to give the Court or counsel for the complainants-respondents any intimation that the cases set forth the principle alleged by counsel.

Complainants-respondents respectfully submit that there are cases directly in point in the State of New Jersey, and there is certainly no obligation upon this Court to go to New York, seeking the legal or equitable doctrine set forth in those cases.

Complainants-respondents therefore respectfully submit that following the line of cases particularly set forth in *Weiner v. Cullens, supra*, the default in the case at bar was not brought about by accident or mistake, and the effect of the acceleration clause, in the bond and mortgage is not a forfeit, and therefore the appeal should be dismissed.

LEULY & MOSER,

Solicitors for Complainants-Respondents.

GEORGE P. MOSER,

Of Counsel.