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Notice of Appeal.

(Filed, July 25, 1928.)

IN CHANCERY OF NEW JERSEY.

Between PETER BENTLEY, Receiver of Bradley Hotels System, Inc., Complainant, and CLARENCE E. F. HETRICK and COAST HOLDING CORPORATION, Defendants.	On Bill, &c. Notice of Appeal.

The complainant hereby appeals from the final decree made in this court, in the above stated cause, by Honorable Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Honorable James F. Fielder, Vice Chancellor, dismissing the bill of complaint, to the Court of Errors and Appeals in the last resort in all causes.

Dated, July 24, 1928.

HERBERT CLARK GILSON,
Solicitor and of Counsel with Complainant.

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

HERBERT CLARK GILSON,
Of Counsel with Complainant.

Service of the within notice is acknowledged this 25th day of July, 1928.

JAMES A. HAMILL,
Solicitor of Defendant,
Clarence E. F. Hetrick.

WALL, HAIGHT, CAREY & HARTPENCE,
Solicitors of Defendant,
Coast Holding Corporation.

Petition of Appeal.

(Filed, July 27, 1928.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between PETER BENTLEY, Receiver of Bradley Hotels System, Inc., Appellant, and CLARENCE E. F. HETRICK and COAST HOLDING CORPORATION, Respondents.	On Appeal from Chancery. Petition of Appeal.

TO THE HONORABLE THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES:

The petition of Peter Bentley, receiver of Bradley Hotels System, Inc., the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date the 16th day of July, 1928, wherein the said Peter Bentley, receiver of Bradley Hotels System, Inc., was complainant, and the said Clarence E. F. Hetrick and Coast Holding Corporation were defendants, in this respect, to wit: that the said decree adjudges that the bill of complaint be dismissed. And your petitioner appeals from the said decree of the Chancellor upon the ground that the same is erroneous, for that the said bill of complaint should not have been dismissed and complainant was entitled to the relief prayed for in his bill of complaint.

Your petitioner therefore prays that the said decree of the said Chancellor may be reversed, set aside and for nothing holden. And your petitioner may have such relief in the premises as to this honorable court shall seem meet.

HERBERT CLARK GILSON,
Solicitor for and of Counsel with Appellant.

Answer to Petition of Appeal.
(Filed, July 28, 1928.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between PETER BENTLEY, Receiver of Bradley Hotels System, Inc., Appellant, and CLARENCE E. F. HETRICK and COAST HOLDING CORPORATION, Respondents.	On Appeal from Chancery. Answer.

The Answer of Respondent, COAST HOLDING CORPORATION to the Appeal of the Appellant, PETER BENTLEY, Receiver, &c.

This Respondent, not admitting the truth of all or any of the matters in the said Petition of Appeal contained, for answer thereto, nevertheless admits that a Final Decree was on the 16th day of July, 1928, made and entered in the Court of Chancery of New Jersey in the above entitled cause for the purpose in said Petition mentioned and as therein set forth, but as to the substance and form of said Order, this Respondent begs leave to refer thereto when the same shall be produced.

And this Respondent is advised and believes that all portions of said Decree which apply to this Respondent are agreeable to equity and good conscience and prays that all said portions of said Decree which apply to this Respondent be affirmed.

WALL, HAIGHT, CAREY & HARTPENCE,
Solicitors for and of Counsel
with Coast Holding Corporation.

Answer to Petition of Appeal.

(Filed July 28, 1928.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between PETER BENTLEY, Receiver of Bradley Hotels System, Inc., Appellant, and CLARENCE E. F. HETRICK and COAST HOLDING CORPORATION, Respondents.	On Appeal from the Court of Chancery. Answer to Petition of Appeal.

The answer of CLARENCE E. F. HETRICK, one of the above named respondents, to the petition of appeal of Peter Bentley, Receiver of Bradley Hotels System, Inc., the above named appellant.

This respondent, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that a final decree was, on the 16th day of July, 1928, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said final decree, this respondent begs leave to refer thereto when the same shall be produced.

This respondent is advised and believes that the said final decree is agreeable to equity; and he prays that the same may be affirmed with costs to be taxed in favor of this respondent.

JAMES A. HAMILL,
Solicitor for and of Counsel with
Respondent, Clarence E. F. Hetrick.

Bill of Complaint.

(Filed March 7, 1927.)

IN CHANCERY OF NEW JERSEY.

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

The complainant, Peter Bentley, receiver of the Bradley Hotel System, Inc., of Red Bank, Monmouth County, New Jersey, respectfully shows:

1. Complainant was appointed receiver of the said Bradley Hotel System, Inc., a corporation of the State of Delaware, by this Court, on May 11, 1926, under the provision of an "Act Concerning Corporations, Revision of 1896," and its supplements and amendments, and by virtue of the statute and the order of this court appointing him receiver as aforesaid, he is vested with title to all property of said corporation, and is the representative of said corporation, and its creditors and stockholders.

2. The said corporation was promoted by the defendant, Clarence E. F. Hetrick, who caused its incorporation and upon its incorporation became a director and Vice President thereof, and continued to be such until the appointment of the complainant as receiver.

3. Said corporation was incorporated by the said Clarence E. F. Hetrick for the purpose of taking over an option obtained by the said Clarence E. F. Hetrick for the purchase of three tracts of land in Asbury Park, Monmouth County, New Jersey.

4. The said Clarence E. F. Hetrick caused the said Bradley Hotels System, Inc., to issue to him in payment of said option, 51,000 shares of stock of

said corporation without par value, and to pay to him the sum of $5,000. in cash. Upon obtaining said 51,000 shares of said common stock without par value of said corporation, the said Clarence E. F. Hetrick disposed of said stock, or part of it, to various persons. There was also issued and there are now outstanding 529 shares of Preferred Stock of said corporation of the par value of $100. per share, upon which latter issue of stock the sum of $1,201. has been paid, leaving the sum of $41,699. unpaid thereon. Claims filed with complainant and allowed by him amount to the sum of $29,533.67. The amount collected and received by complainant, as receiver, is the sum of $171.37, being all the assets of said corporation except choses in action on unpaid subscriptions to stock.

5. On the procurement of the said defendant Clarence E. F. Hetrick said option was renewed from time to time upon payments being made by the said Bradley Hotels System, Inc., and finally the said Clarence E. F. Hetrick represented to the officers and directors of the Bradley Hotels System, Inc. that it was impractical for the Bradley Hotels System, Inc. to proceed with the development of the land to be purchased under said option, and that if they would allow him, and a company to be organized by him, to take over the property mentioned in said option, that he and the said company would pay the creditors and stockholders of the Bradley Hotels System, Inc. the full amount of their claims and the amounts paid in on account of the capital stock of said corporation.

6. The directors and officers of the said Bradley Hotels System, Inc., relying upon the representations and the promise of the said defendant, Clar-

ence E. F. Hetrick, as aforesaid, allowed the said option to expire; the said Clarence E. F. Hetrick thereafter organized and formed the defendant corporation, Coast Holding Corporation, under the laws of the State of New Jersey, of which, he, the said Clarence E. F. Hetrick, became the president, and in or about the month of April, 1925, the said Coast Holding Corporation, entered into a contract, or option, to purchase the same lands and premises which were covered by the option held by the said Bradley Hotels System, Inc.

7. At the time the said Coast Holding Corporation entered into the contract to purchase the said property as aforesaid, it knew of the representations made by the said Clarence E. F. Hetrick, to the officers and directors of the Bradley Hotels System, Inc., by which he had induced the said officers and directors of the Bradley Hotels System, Inc. to take no steps to keep said option alive, which said representations are hereinbefore set forth, and which representations were made to induce the officers and directors of the said Bradley Hotels System, Inc. to so act as to permit the said Clarence E. F. Hetrick, and a corporation to be incorporated by him, to secure a contract for the purchase of said lands and premises, and knew of the agreement made by the said Clarence E. F. Hetrick, aforesaid; and complainant charges that the said Coast Holding Corporation assumed all of the obligations of the said Clarence E. F. Hetrick under said agreement and agreed with the said Clarence E. F. Hetrick that it would pay, or cause to be paid, all of the creditors of the said Bradley Hotels System, Inc., and to the stockholders of the said Bradley Hotels System, Inc., all of the monies actually paid by such stockholders for stock of said corporation.

8. Complainant further says that the option held by the said Bradley Hotels System, Inc., and which was permitted to lapse under the circumstances aforesaid, was reasonably worth the sum of $100,000. and that by reason of the matters aforesaid, the said Clarence E. F. Hetrick, while an officer and director of the said Bradley Hotels System, Inc. and with knowledge secured to himself, and to a corporation to be formed by him as aforesaid, the benefit of said option as aforesaid and took away from the Bradley Hotels System, Inc. its only asset, knowing at the time that the said Bradley Hotels System, Inc. would have no monies or property whatsoever wherewith to pay its creditors, and to represent the value of its capital stock, 51,000 shares of the Common Stock having been issued upon the faith of the value of said option as represented by the said Clarence E. F. Hetrick, notwithstanding the promise of the said Clarence E. F. Hetrick as hereinbefore set forth, neither he nor the defendant, Coast Holding Corporation has paid the creditors of the said Bradley Hotels System, Inc., nor any amount on account thereof, nor have they paid the stockholders of the Bradley Hotels System, Inc., the amounts due to them for monies paid for their stock.

9. Complainant shows and charges that it was by reason of the matters aforesaid that the said Coast Holding Corporation secured the property to which it took title on or about the 12th day of May, 1925, and that complainant has an equitable lien upon said property for the amount due the creditors and stockholders of the Bradley Hotels System, Inc., as aforesaid, or in the alternative, for the value of said option, which has been converted to the use of the said Clarence E. F. Hetrick, and the said Coast Holding Corporation.

10. Said lands and premises are described as follows:

All that certain lot, tract or parcel of land and premises situate, lying and being in the City of Asbury Park, County of Monmouth and State of New Jersey, and bounded and described as follows:

FIRST PARCEL: Situate as aforesaid and bounded and described as follows,

Bounded on the north by Eighth Avenue, on the east by Ocean Avenue, on the south by Seventh Avenue, and on the west by Kingsley Street, accordingly as the lines of the said Avenues and street are laid down on the official map of the City of Asbury Park, N. J. made by Parker N. Black, Civil Engineer, dated 1893 on file in the City Clerk's office of said City of Asbury Park.

SECOND PARCEL: situate as aforesaid and bounded and described as follows:

BEGINNING at the northeast corner of Eighth Avenue and Kingsley Street as laid down on the official map of the City of Asbury Park, N. J. made by Parker N. Black Civil Engineer, dated 1893 on file in the City Clerk's office of said City of Asbury Park, thence (1) eastwardly along the northerly line of Eighth Avenue, two hundred and ninety seven (297) feet, more or less, to the northwest corner of Eighth Avenue and Ocean Avenue as laid down on said map, thence (2) northwardly, along the westerly line of Ocean Avenue, three hundred feet (300) more or less, to the southwest corner of

Deal Lake Drive, as now laid out, and Ocean Avenue; thence (3) westwardly, along the southerly line of Deal Lake Drive as now laid out and parallel with Eighth Avenue, two hundred and eighty eight feet and two inches (288′ 2″) more or less to the point of intersection of the southerly line of Deal Lake Drive as now laid out with the easterly line of the aforesaid Kingsley Street, thence (4) southwardly, along the easterly line of Kingsley Street, three hundred (300) feet, more or less to the Place of Beginning, Being the block of land bounded on the south by Eighth Avenue, on the north by Deal Lake Drive as now laid out, on the east by Ocean Avenue and on the west by Kingsley Street to be the dimensions thereof more or less.

THIRD PARCEL: situate as aforesaid and bounded and described as follows:

BEGINNING at the northeast corner of Eighth Avenue and Webb Street thence (1) eastwardly along the northerly line of Eighth Avenue, eighty seven feet and six inches (87′ 6″) more or less, to the south west corner of a lot of land conveyed by James A. Bradley and Helen M. his wife, to Belle H. Lockwood, by deed bearing date December 31 A.D. 1906 and recorded in the Clerk's Office in and for the County of Monmouth in Book 795 of deeds for said County at pages 329 &c; thence (2) northwardly at right angles to Eighth Avenue, one hundred and fifty (150) feet; thence (3) eastwardly parallel with Eighth Avenue, one hundred and eighty seven feet and six inches (187′ 6″) more or less, to the westerly line of Kingsley Street,

thence (4) northwardly, along the westerly line of Kingsley Street, one hundred and fifty (150) feet, more or less to the southwest corner of Deal Lake Drive, as now laid out, and Kingsley Street, thence (5) westwardly, along the southerly line of Deal Lake Drive, as now laid out, and parallel with Eighth Avenue two hundred and seventy-five (275) feet more or less, to the point of intersection of the southerly line of Deal Lake Drive, now laid out, with the easterly line of the aforesaid Webb Street, thence (6) southwardly along the easterly line of Webb Street three hundred (300) feet more or less, to the place of Beginning.

Said three parcels being the same premises which were conveyed to the party of the first part, by Samuel H. Gillespie as executor and Trustee etc., of James A. Bradley, deceased by deed dated May 8, 1925 and recorded in the Monmouth County Clerk's office on May 9, 1925, in Book —— of deeds, at pages ——.

Subject to covenants and restrictions.

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

1. That Clarence E. F. Hetrick and the Coast Holding Corporation, who are defendants to this suit, may answer this bill of complaint without oath, and each statement therein made.

2. That the defendants, or one of them, may be decreed to pay complainant the amount of the claims of the creditors of the Bradley Hotels System, Inc., and the amount paid by the stockholders upon their subscriptions to the capital stock of the Bradley Hotels System, Inc., or in the alternative,

the value of the option held by the said Bradley Hotels System, Inc., as in the bill of complaint set forth.

3. That complainant may be decreed to have an equitable lien upon the lands and premises set forth in the bill of complaint, for the amount found due to him, and that said lands and premises, or the right and interests of the said Clarence E. F. Hetrick, and the Coast Holding Corporation in said lands and premises, be sold for the purpose of satisfying the amount of said lien.

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

HERBERT CLARK GILSON,
Solicitor for and Counsel with Complainant.

Answer of Coast Holding Corporation.
(Filed April 26, 1927.)

IN CHANCERY OF NEW JERSEY.

Between PETER BENTLEY, Receiver of The Bradley Hotels System, Inc., Complainant, and CLARENCE E. F. HETRICK, and COAST HOLDING CORPORATION, Defendants.	On Bill, &c. Answer of Coast Holding Corporation.

COAST HOLDING CORPORATION, a corporation of New Jersey having a principal office at Room 108 Municipal Building, 710 Bangs Avenue, Asbury Park, New Jersey, answering says:

1. This defendant has no knowledge concerning the truth of the allegations of Paragraph 1 and leaves complainant to make such proof thereof as may be proper.

2. This defendant has no knowledge concerning the truth of the allegations of Paragraph 2 and leaves complainant to make such proof thereof as may be proper.

3. This defendant has no knowledge concerning the truth of the allegations of Paragraph 3 and leaves complainant to make such proof thereof as may be proper.

4. This defendant has no knowledge concerning the truth of the allegations of Paragraph 4 and

leaves complainant to make such proof thereof as may be proper.

5. This defendant has no knowledge concerning the truth of the allegations of Paragraph 5 and leaves complainant to make such proof thereof as may be proper.

6. This defendant has no knowledge concerning the reliance of the directors and officers of Bradley Hotels System, Inc., upon any representations or promises of said Hetrick or of their actions in reference to the option referred to. Said Hetrick was an incorporator of said Coast Holding Corporation and later was elected its President, and on May 12th, 1925, this defendant purchased certain lands and premises from Eastern Parkway-Bedford Avenue Corporation, a corporation of New York. But this defendant denies that said lands and premises were covered by the option referred to in said paragraph. The other allegations of said paragraph are denied.

7. This defendant denies that it knew at the time it purchased the said property of any representations made by said Hetrick to the officers and directors of the Bradley Hotels System, Inc., by which he had induced said officers and directors to take no steps to keep said option alive and for what purpose said representations, if any, were made; and denies that it knew of any agreement made by said Hetrick, and this defendant denies that it assumed any obligations of said Hetrick under the agreement alleged or that it agreed with said Hetrick that it would pay or cause to be paid all or any of the creditors and stockholders of

Bradley Hotels System, Inc., any moneys actually paid by such stockholders for stock of said corporation.

8. This defendant denies the allegations of Paragraph 8 that the option referred to was reasonably worth the sum of $100,000. or any other sum, and says that said option was worthless.

This defendant has no knowledge as to the actions of said Hetrick while an officer and director of said Bradley Hotels System, Inc., or his relations with the same, and therefore denies said allegations; but this defendant admits that it has not paid the creditors and stockholders of the Bradley Hotels System, Inc., any amount and says that this defendant has no privity with or relation to the said Bradley Hotels System, Inc.

9. This defendant denies the allegations of Paragraph 9.

10. The lands and premises described in Paragraph 10 are the same lands and premises as this defendant purchased from Eastern Parkway-Bedford Avenue Corporation on May 12, 1925.

On or about April 1st, 1925, this defendant's predecessor in title, Eastern Parkway-Bedford Avenue Corporation, (hereinafter referred to as defendant's grantor) entered into an agreement for the purchase of the lands described in said Paragraph 10 with Samuel H. Gillespie, sole acting executor and surviving trustee under the will of James A. Bradley, deceased, by which said executor agreed, in consideration of $345,000., to sell to defendant's grantor by executor's deed, said lands for $345,000. —payable in cash upon the execution of the agree-

ment, $25,000. and the balance of $320,000. on delivery of deed June 1st, 1925.

Pursuant to said agreement of sale on the 8th day of May, 1925, the said executor delivered his deed dated on said day and received the full consideration provided for in the agreement and deed.

On May 12th, 1925, this defendant purchased from defendant's grantor said lands and gave as consideration three purchase money mortgages dated May 12th, 1925, maturing three years from said date, duly recorded in the office of the Clerk of Monmouth County.

At a meeting of the Board of Directors of this defendant held on said May 12th, 1925, one Isaac Marshall exhibited to the Board an agreement dated May 15th, 1925, between this defendant and the defendant Hetrick, individually, in regard to certain moneys to be paid under circumstances as set forth in the agreement. The agreement was read to the Board and the following resolution was duly put to vote and carried:

> "RESOLVED, That the action of the officers of the corporation in signing the agreement be and the same is hereby ratified, approved and confirmed."

The said agreement recited the purchase of the property in question from defendant's grantor and recited the statement of defendant Hetrick that he desired to make payment of the sum of $36,223. which he wished to receive from this defendant under the circumstances set forth in said agreement which were that for a valuable consideration this defendant agreed to pay to said Hetrick an amount which should not exceed $36,223. which the said Hetrick desired to use for the purpose of reimburs-

ing certain persons known to him who were associated with him in transactions concerning the property subsequently acquired by this defendant.

Under the terms of said agreement it was provided that said amount would be paid by this defendant out of any proceeds made by this defendant after the payment of $745,000., the amount of the mortgages then liens on the property had been paid plus interest and all charges payable by this defendant. It was further agreed that the liability of this defendant for the amount of any money should not accrue until this defendant had paid the then present mortgage on the property amounting to $745,000. plus interest and any charges and expenses payable by it, and that the amount should in no event exceed $36,223. and that no interest should be payable or allowed on said sum.

The agreement further provided that in no event should it enure to the benefit of any person or persons other than the said Hetrick and no other person or persons should at any time have any claim or right to the whole or any part of said $36,223.

This defendant has not paid the mortgages referred to in the agreement and no liability on the part of this defendant has yet accrued under said agreement.

This defendant has sold to bona fide purchasers all of said lands described in Paragraph 10 of the bill, except the second parcel. Said purchasers are in no way connected either as officers or directors or otherwise with this defendant. Sales were made in the ordinary course of business on various dates between November 14th, 1925, and September 17th, 1926. Some of these purchasers are now being prevented from selling their lands so purchased from this defendant because the complainant herein, despite the fact that the record disclosed said sales,

filed a lis pendens against the property covered by said sales, with the result that in instances where this defendant has given warrantee deeds, the purchasers from it are making demands that this defendant comply with its covenants of warranty, and as a practical situation said purchasers are unable to market their lands thus causing unnecessary hardship to said purchasers and to this defendant because all of said sales were entered into in good faith by this defendant and in good faith by said purchasers before the bill of complaint was filed herein.

Before purchasing said property, Coast Holding Corporation secured several appraisals of the value thereof by disinterested, impartial and exceedingly competent appraisers whose appraisals, in the judgment of Coast Holding Corporation entirely justified the price for which said corporation purchased said property.

The question of the purchase of said lands by Coast Holding Corporation was first brought to its attention by one Isaac Marshall, who with Henry H. Pettit had been interested for some years in property adjacent to the property described in Paragraph 10 of the bill, and before Eastern Parkway-Bedford Avenue Corporation purchased the property described in Paragraph 10 from the executor of the Bradley Estate, the said Marshall informed the directors of said Eastern Parkway-Bedford Ave- Corporation that a clear, marketable title in and to the property described in said paragraph could be purchased by the said corporation from said executor.

For a further defense to the bill of complaint herein, this defendant says that neither the said defendant Hetrick or any other officer of Coast Hold-

ing Corporation had authority to bind this defendant by any promise of the character described in the bill, nor was any such promise or undertaking within the scope of the authority of any officer or officers of the company.

For a further defense this defendant says that the promise alleged on the part of this defendant upon which complainant seeks to hold this defendant, was not in writing and consequently is not binding for such promise as alleged is a promise to answer for the debt default and miscarriage of another person than this defendant and therefore is contrary to an act of the Legislature of the State of New Jersey entitled "An Act for the prevention of Frauds and Perjuries."

WALL, HAIGHT, CAREY & HARTPENCE,
Solicitors for Defendant,
Coast Holding Corporation.

Answer of Clarence E. F. Hetrick.

(Filed May 2, 1927.)

IN CHANCERY OF NEW JERSEY.

Between PETER BENTLEY, Receiver of The Bradley Hotel System Inc., Complainant, and CLARENCE E. F. HETRICK, et al, Defendants.	On Bill, &c. Answer of Defendant, Clarence E. F. Hetrick.

The defendant, Clarence E. F. Hetrick, residing in the City of Asbury Park, Monmouth County, New Jersey, says that:

1. He has no knowledge of the allegations contained in paragraph 1 of the complaint herein, but is informed and believes they are true.

2. He denies that he promoted said corporation or caused its incorporation but admits that after its incorporation he became a director and Vice President thereof and continued to be such until the appointment of complainant as receiver.

3. He denies paragraph 3 of the complaint.

4. He denies that he caused the Bradley Hotel System Inc. to issue to him in payment of said option fifty-one thousand shares of stock of said corporation without par value and denies that he caused the said corporation to pay to him the sum of five thousand dollars ($5,000.00) in cash but alleges

that the said corporation voluntarily fixed the value of the option and issued to him fifty-one thousand shares of the stock of said corporation without par value upon the express understanding that he was to turn back to the said corporation, to be lodged in the treasury thereof, all of said fifty-one thousand shares except thirty-four hundred shares; and further alleges that the sum of five thousand dollars ($5,000.00) was paid by the said corporation to the owner of the lands covered by the said option under the terms thereof, and defendant Hetrick simply acted as the medium of delivery and delivered the said sum of $5,000.00 to the owner of the said lands. He denies that he obtained fifty-one thousand shares of stock of the said corporation except in the manner aforesaid and denies that he disposed of said stock or part of it to various persons, or to any persons. He has no knowledge of the number of shares of preferred stock issued and outstanding or the amount paid thereon or the amount unpaid thereon; nor of the claims filed with complainant and allowed by him; nor of the amount collected and received by complainant as receiver; nor whether the amount so collected by him, except choses in action or unpaid subscriptions to stock, constitute all the assets of the said corporation; that his information concerning these matters is derived solely from the allegations of the bill of complaint.

5. He denies that the said option was renewed from time to time on his procurement upon payments being made by the said Bradley Hotel System Inc. but alleges that the said Bradley Hotel System Inc. was obliged under the terms of the said option to make the payments required to be made thereunder in order to keep the said option alive

and further alleges that whatever payments were made by said corporation, were made voluntarily and in pursuance of the terms of said option. He denies that he finally represented to the officers and directors of the Bradley Hotel System Inc. that it was impractical for the Bradley Hotel System Inc. to proceed with the development of the land to be purchased under said option and that if they would allow him and the company to be organized by him to take over the property mentioned in said option that he and the said company would pay the creditors and stockholders of the Bradley Hotel System Inc. the full amount of their claims and the amounts paid in on account of the capital stock of said corporation and further denies that he made any representations of any kind for the purpose of inducing the Bradley Hotel System Inc. or the officers or the directors thereof to abandon the said option; and further denies that he had at any time made the alleged promises.

6. He denies that the directors and officers of the said Bradley Hotel System Inc., relying upon representations and promises alleged to have been made by him, allowed the said option to expire. He denies that thereafter or at any time, he organized and formed the defendant corporation, Coast Holding Corporation. He admits that the said Coast Holding Corporation entered into a contract or option to purchase the same lands and premises which were covered by the option held by the said Bradley Hotel System Inc. and that subsequently he became president of the Coast Holding Corporation.

7. He denies the allegations contained in paragraphs 7, 8 and 9 of the bill of complaint.

8. He admits paragraph 10 of the bill of complaint.

FIRST SEPARATE DEFENSE.

There was no agreement in writing nor was there any memorandum or note in writing of the alleged agreement as required by the statute in such case made and provided, or at all.

JOHN MILTON,
Solicitor of Defendant Hetrick.

Replication.

(Filed May 4, 1927.)

IN CHANCERY OF NEW JERSEY.

Between PETER BENTLEY, Receiver of Bradley Hotels System, Inc., Complainant, and CLARENCE E. F. HETRICK, *et al.*, Defendants.	On Bill &c. Replication to Answer of Clarence E. F. Hetrick.

The replication of the complainant to the answer of Clarence E. F. Hetrick, defendant.

The complainant joins issue on the answer of the said defendant.

HERBERT CLARK GILSON,
Solicitor of Complainant.

Replication.
(Filed May 4, 1927.)

IN CHANCERY OF NEW JERSEY.

Between PETER BENTLEY, Receiver of Bradley Hotels System, Inc., Complainant, and CLARENCE E. F. HETRICK, *et al.*, Defendants.	On Bill &c. Replication to Answer of Coast Holding Corporation.

The replication of the complainant to the answer of Coast Holding Corporation, defendant.

The complainant joins issue on the answer of the said defendant.

HERBERT CLARK GILSON,
Solicitor of Complainant.

Case.

Peter Bentley. Called by Complainant. Direct.

IN CHANCERY OF NEW JERSEY.

Between PETER BENTLEY, Receiver of Bradley Hotels System, Inc., Complainant, and CLARENCE E. F. HETRICK, *et al.*, Defendants.	On Bill &c.

TRANSCRIPT OF SHORTHAND NOTES OF TESTIMONY taken on final hearing in the above stated cause, at Chancery Chambers, Jersey City, February 7, 1928, before his Honor, James F. Fielder, Vice Chancellor.

APPEARANCES:

HERBERT CLARK GILSON, Esq., for complainant.

Messrs. WALL, HAIGHT, CAREY & HARTPENCE (Mr. Wall) for the defendant Coast Holding Corporation.

JAMES A. HAMILL, Esq., for the defendant Clarence E. F. Hetrick.

COMPLAINANT'S CASE.

PETER BENTLEY, the complainant, sworn as a witness in his own behalf, testifies as follows:

DIRECT EXAMINATION BY MR. GILSON:

Q. Have you a certified copy of the order appointing you receiver of the Bradley Hotels System, Inc.? A. I have.

Mr. Wall: We admit that.

The Court: It is admitted that Mr. Bentley is the receiver of Bradley Hotels System, Inc., appointed by order of the Court of Chancery, dated May 11, 1926.

Q. Have you all the books and records of the Bradley Hotels System, which were turned over to you upon your appointment as receiver? A. I have.

Q. Have you the subscriptions to the stock of that company? A. I have.

Mr. Gilson: I offer in evidence bunch of printed agreements for subscriptions to stock of Bradley Hotels System, Inc. I think they amount to 529 shares of stock. The stock was to be paid for in instalments.

(Marked Exhibit C-1.)

Q. From the books can you tell us how much was paid on the subscriptions to stock? A. $11,201.

Q. How much remains to be paid? A. $49,699.

Q. What is the total amount of claims filed with you as receiver? A. $29,538.67.

Q. What assets did you find belonging to the company? A. The sum of $171.37 on deposit in two banks in the city of Asbury Park.

Q. And choses in action on these subscriptions to stock claims against stockholders? A. Yes.

Q. You have the minute books here, have you? A. I think the minute book of the company is here.

Mr. Gilson: I offer the minute book in evidence.

Peter Bentley. Called by Complainant. Cross.
William A. Smith. Called by Complainant. Direct.

Mr. Wall: I have no objection to the book. Of course, I claim it is irrelevant as far as we are concerned.

(Marked Exhibit C-2.)

Q. Has anything been paid by the Coast Holding Corporation to you? A. No, sir.

CROSS EXAMINATION BY MR. HAMILL:

Q. Have you taken any steps to collect the money on the unpaid subscriptions yet? A. No, sir.

Mr. Gilson: I think Mr. Bentley is mistaken about that. We filed a bill in the Court of Chancery by the receiver against the stockholders. Mr. Lane, appearing for the stockholders, said the bill was premature and that we should take this action against Mayor Hetrick and the Coast Holding Corporation first. That bill is lying dormant until this case is finished. If we succeed in this case, it will not be necessary to go on with that.

The Witness: That is correct.

WILLIAM A. SMITH, sworn as a witness on the part of the complainant, testifies as follows:

DIRECT EXAMINATION BY MR. GILSON:

Q. Judge Smith, you were one of the incorporators of the Bradley Hotels System, Inc.? A. I was. I was the attorney that handled the incorporation.

William A. Smith. Called by Complainant. Direct.

Q. You were also secretary of that corporation from the time of its organization until the fall of 1924? A. I was.

Q. Will you turn to the minutes of the meeting of July 31, 1923? A. You mean the incorporators?

Q. No; in the directors meeting. A. It seems to me in the incorporators' minutes I have about what you want—about the option.

Mr. Wall: May I have objection to anything in this matter which does not bring in the Coast Holding Company?

The Court: You may, but what am I to do about it?

Mr. Wall: Instead of objecting as the thing goes along, I thought maybe your Honor might take a blanket objection on the ground of immateriality and irrelevance.

The Court: All right.

Q. Who were the officers of the corporation at that time? A. The officers were J. Herbert Reid, president; Clarence E. F. Hetrick, vice president; William A. Smith, secretary; William C. Krueger, treasurer; and myself assistant treasurer. Those present at the first meeting of the board of directors were J. Herbert Reid, Clarence E. F. Hetrick, William C. Krueger, Paul Heller, Clinton G. Holden, Walter W. Reid, Jr., Morland B. Soria, Charles A. Gould, Corbett W. McCarthy and Benjamin A. Britwood. There were some few changes in the board of directors during the period this company existed.

Q. That company was incorporated on July 30, 1923, was it? A. About that time; July 27, 1923, it was incorporated in Delaware.

William A. Smith. Called by Complainant. Direct.

Q. Will you read that part of the minutes of July 31, 1923, referring to an option on certain real estate in Asbury Park? A. On page 8 of the minutes of the first meeting of the directors and incorporators I find—

Mr. Hamill: Suppose you let me see that before you put it in?

Mr. Gilson: The book went in evidence. I thought you had no objection to it?

Mr. Hamill: I have no objection to the book going in, but we may have a specific objection to the reading of this part of the minutes.

Q. You may proceed. A. It recites: "Whereas Clarence E. F. Hetrick has offered to sell to this corporation property consisting of a certain option upon three tracts of land located in the city of Asbury Park, New Jersey, given by Samuel H. Gillespie, executor and surviving trustee under the will be James A. Bradley, to said Clarence E. F. Hetrick, under date of July 27, 1923, and duly executed, and has offered to accept in full payment therefor the sum of Five thousand dollars ($5,000.00) and One Hundred thousand (100,000) shares of the common stock of this corporation without nominal or par value, to be issued to him or his nominees, and in full payment on behalf of the signers of the certificate of incorporation for the shares of stock of this corporation subscribed for by them, respectively, as shown by the certificate of incorporation; and

"Whereas, in the judgment of this board, said property consisting of said option is necessary for the business of this corporation and is a good and

sufficient consideration for the shares of stock demanded therefor:

"Now, therefore, be it resolved that the offer of Clarence E. F. Hetrick to sell to the said corporation the property hereinbefore described be and it is hereby accepted and that the president and secretary of this corporation be and they hereby are authorized and directed to issue and deliver in payment for said property, in accordance with said offer, certificates of full paid capital stock of this corporation to the said Clarence E. F. Hetrick or his nominees, for an aggregate of Ninety-nine thousand nine hundred and ninety (99,990) shares and to the signers of the certificate of incorporation, or to their respective assigns, for the Ten (10) shares subscribed for by them as shown by the certificate of incorporation."

By the Court:

Q. Who made that offer? A. Mr. Hetrick made the offer.

By Mr. Gilson:

Q. What action did the board take on that offer? A. The corporation agreed to take it at that figure, and the option was subsequently drawn in more elaborate form and duly executed and delivered and the $5,000 paid and an order made by Mr. Hetrick on the officers of the company to divide the stock among certain stockholders and directors which was allotted to them, but the stock was never actually issued; no certificates were ever issued on it.

William A. Smith. Called by Complainant. Direct.

Q. Do you know what became of the original option? A. Why, the last I know of it Mr. Hetrick had it. I do not find it with my papers and I am quite sure he had it.

Q. Will you turn to the minutes of August 24, 1923, and read what the minutes say about a letter from Mr. Hetrick? A. It recites: "A communication was received from Mr. Clarence E. F. Hetrick directing the manner in which the 100,000 shares of common stock to which he is entitled, pursuant to the direction of the board of directors passed July 31, 1923, shall be issued." Then there is a letter in which he distributes stock among certain persons.

Q. Will you read that, please? A. The list of men?

Q. The whole letter. A. The communication reads as follows:

"August 20, 1923.

Bradley Hotels System, Inc.
Newark, N. J.

Gentlemen:

Please issue the 100,000 shares of the common stock which is due to me for the assignment of the option to you on the Asbury Park property as follows:

Benjamin B. McAlpin	3400	shares
Charles A. B. Pratt	3400	"
Austen Colgate	3400	"
Benjamin A. Britwoods	3400	"
Paul F. Heller	3400	"
C. E. F. Hetrick	3400	"
C. E. F. Hetrick	1700	"

C. G. Holden	3400	"
Wm. C. Krueger	1700	"
J. Herbert Reid	3400	"
Walter W. Reid, Jr.	3400	"
Morland B. Soria	1700	"
William A. Smith	1700	"
Harry A. Watson	1700	"
Charles A. Gould	3400	"
Corbett McCarthy	3400	"
C. E. F. Hetrick	1700	"
C. E. F. Hetrick	3400	"
	51,000	"

The balance of said 100,000 shares I hereby donate to your treasury to be used for such purpose as your board of directors shall designate.

Yours respectfully,

(Signed) Clarence E. F. Hetrick."

Q. Now, will you turn to the minutes of October 31, 1923, please? A. I have it.

Q. Read what the minutes say about the renewal of that option that was obtained from Mr. Hetrick. A. There is a letter here from Mr. Gillespie.

Q. I mean the part of the minutes referring to the letter and quoting the letter. A. "The president called attention to the fact that it was necessary to take action under the option which the company held from the estate of James H. Bradley as $10,000 would be due on November 1, 1923; he said that there were three alternatives—(1) To abandon the option; (2) To make the payment of $10,000 under the option; (3) To pay $5,000.00 to estate of James A. Bradley and obtain an extension

of the option for three months. He advised the board of directors that Mr. Bradley's executor would agree to this extension provided the extended option would provide that interest would be paid upon all moneys unpaid under the option or agreement of sale, said interest running from July 2, 1923, and that this condition was imposed because it was in the original letter which the executor gave to Mr. Hetrick but it was not included in the terms of the option."

Q. Now, I show you a paper alleged to be an extension agreement executed by Mr. Gillespie and Mr. Hetrick dated November 1, 1923. Do you recognize that extension executed in accordance with the minutes?

Mr. Hamill: What reason have you to put that in evidence—to show the terms of the option?

Mr. Gilson: Yes; to show the terms of the option and the terms of the extension.

A. Well, it purports to be, and I assume it is. I do not know it to be anything else. I might say that according to my recollection the original option was not adhered to but the option was carried along by extension from time to time by payment of money. Just how many there were I do not recall now.

Mr. Gilson: I offer this extension agreement dated November 1, 1923, in evidence.

(Marked Exhibit C-3.)

Q. Will you turn to the minutes of meeting of March 24, 1924? A. I have it.

William A. Smith. Called by Complainant. Direct.

Q. Will you read us what the minutes have to say about an authorization to extend the option again? A. "Resolved that the treasurer of the company be authorized and directed to pay the sum of $10,000 upon the option held by this company given to it by Samuel H. Gillespie, executor and surviving trustee under the last will and testament of James A. Bradley and due April 1, 1924."

"On motion duly made, seconded and carried it was resolved that Mayor Hetrick be requested to cable to Mr. Gillespie and ask for an extension of ninety days for the making of future payments under the said option."

Q. Do you know whether that $10,000 was posted? A. As far as I know it was, because there was an extension obtained.

Q. I show you another agreement which purports to be an extension agreement signed by Mr. Gillespie and Mr. Hetrick, dated May 1, 1924, and I ask you if that is the extension obtained in accordance with the authorization of that resolution? A. It is my understanding that this is the extension obtained after the cable.

Mr. Gilson: I offer it in evidence.
(Marked Exhibit C-4.)

Q. I forgot to ask you about the purchase price mentioned in the original option for this property? A. It was $270,000, I think, or $280,000.

Mr. Hamill: It was $270,000.

Q. Will you turn to the minutes of August 28, 1924? A. I have it.

Q. Will you read us what they have to say about further extensions of this option at that time? A.

William A. Smith. Called by Complainant. Direct.

The question of the extension of the existing option from the Bradley Estate was discussed, and on motion duly made, seconded and carried, it was directed that Mr. Hetrick and Mr. Smith be appointed a committee to arrange for an extension of the option for two months upon payment of $5,000.

Q. Do you know whether that payment was made and that extension obtained? A. As far as I know, it was. I signed the checks and forwarded them to Mayor Hetrick.

Mr. Gilson: I call on counsel for Mayor Hetrick to produce letter dated September 3, 1924, enclosing those checks.

Mr. Hamill: Here is the letter.

Mr. Gilson: Will you give me the extension that was obtained at that time?

Mr. Hamill: If I have it, I will give it to you.

Mr. Gilson: I offer this letter in evidence produced by counsel for Mayor Hetrick, dated September 3, 1924, signed W. A. Smith, enclosing checks for $5,000 to obtain this extension referred to in the last minutes.

(Marked Exhibit C-5.)

Mr. Hamill: Mr. Gilson, here is that last extension.

Mr. Gilson: I offer in evidence extension agreement dated September 1, 1924, produced by the defendant, Mr. Hetrick, referring to the last minutes read by the witness.

(Marked Exhibit C-6.)

The Witness: As far as I know, I never received any assignment from Mr. Hetrick of that option.

William A. Smith. Called by Complainant. Direct.

BY THE COURT:

Q. Were these options in the name of the Bradley Hotels or Hetrick? A. All in Hetrick's name and he turned them in.

Mr. Gilson: There is one signed by Mr. Gillespie in his individual capacity.

BY MR. GILSON:

Q. Now, referring to this letter enclosing checks for $5,000, marked Exhibit C-5, can you tell us to whom those checks were made payable and on what banks? A. I have a notation at the foot of the letter that one was on the Morton National Bank, dated Asbury Park, September 2, 1924, to the order of Samuel E. Gillespie for $1,400. The other was a check on the Asbury Park Trust Company, dated September 2, 1924, to the same order for $3,600, making a total of $5,000.

Mr. Gilson: I offer in evidence letter from Mayor Hetrick to Hon. William A. Smith, dated September 4, 1924, acknowledging receipt of these checks.

Mr. Hamill: No objection.

(Marked Exhibit C-7.)

Mr. Gilson: Now I call on Mr. Hamill to produce a letter dated September 16, 1925, from Judge Smith to Mayor Hetrick.

Mr. Hamill: Here it is.

Mr. Gilson: I offer in evidence this letter which counsel for Mayor Hetrick has just produced.

Mr. Hamill: I object. It is a self-serving declaration written about one year after the

option expired. It is a letter in which Judge Smith tells Mr. Hetrick that it was his understanding that he was to take care of the stockholders, and it is written one year after all of the assets of the corporation had passed out of the control and possession of the corporation. The only asset the corporation possessed was its option. That expired November 1, 1924. September 16, 1925, one year afterwards, a year after the main asset, which was the option, had passed out of the control of the corporation, he writes this letter.

The Court: Objection overruled.

(Letter is marked Exhibit C-8 and is read.)

The Court: That letter refers in the beginning to—

Mr. Gilson: It refers to the correspondence between J. Herbert Reid and Mr. Hetrick with respect to this subject that he speaks of.

The Court: Have you that correspondence?

Mr. Gilson: I shall put it in when I put Mr. Reid on the stand.

Q. About the beginning of the obtaining of this last extension of September 1, 1924, did you have any conversation with Mayor Hetrick, or did Mayor Hetrick make any statements at any meeting with respect to abandoning or allowing this option to lapse? A. I would not put it just that way.

Q. What was the conversation about at that time? A. The meeting of August 28, 1924, which is, I believe, the crucial meeting—my recollection of this is rather dim—when the last extension was obtained, and it was just before that meeting or just after that meeting that Mayor Hetrick met me in Asbury Park, and the question was brought up

as to the obtaining of the extension. My recollection is that this was the conversation had about that time. He and I met at his office, an office on the ground floor of one building and he took me to another office upstairs and he telephoned to Mr. Gillespie, or someone representing him, and obtained the assurance of the extension. Now, whether it was prior to our going to this meeting of the 28th, so that we could tell them that we could have the extension, or whether it was carrying out the arrangement to get an extension as provided for at that meeting, I cannot recall, but it was one or the other. Do you want me to go on and tell the sequence of events from that time on?

Q. Tell us what the conversations were on that subject and what Mr. Hetrick said about it? A. Well, Mayor Hetrick said at the time I talked with him that he did not have much difficulty in getting the extension, but he did not want the other people connected with the company to know this, because he was afraid it would slow up their work—he didn't know how much they might leave to him—instead of helping themselves. I understood from his conversation that it was not a difficult thing for him to get extensions. Then at this meeting of the 28th, which was a meeting of the board of directors and which is not reported in full in my minutes, he merely made a general statement. It is my recollection that at the meeting a report was submitted of the estimate of the cost of erecting the hotel. Before that we had employed a concern by the name of Preacher & Company of Atlanta, at the suggestion of the bankers who were going to lend the money, or who were willing to advance the money, and Preacher & Company had made a survey, a preliminary prospectus, and this had

been submitted to the contractors and the bankers who were represented by Mr. McAlpin. Pratt & McAlpin had said that they would put up the money if the hotel could be built for so much per room, and it is my recollection—of course I have to refresh it—a notice of the meeting and an endorsement "Starett's Estimate"— It is my recollection at that meeting they reported it would cost, I think, about $300,000 to complete the hotel and that was in excess of the price per room that the bankers were willing to finance it for. So, at that meeting we were faced with the proposition as to what we should do. Practically all of the members of the board who were there thought the best thing to do was to sell the property, that is, to take up the option in some way and make a disposition of the property. Mayor Hetrick objected very strenuously to this. I might say that in the discussion—it was discussed that it was almost a sure thing we could get much more for the property, that is, that the option was at a very low figure and they were practically to a man, except Mayor Hetrick, anxious then to realize upon the property. Mayor Hetrick objected and said that he was not interested in a real estate speculation down there but he was interested in getting a hotel and developing the property. He said he could have had the real estate speculation without getting us into it, if he wanted that, but he was there to help Asbury Park and help develop the property and get the hotel there. I knew that was his object, as he had told it to me, and I urged the meeting to give him an opportunity to interest other capital which he had asked to do. It is my recollection that that meeting adjourned with the understanding he would try to interest other capital

and that if he could not interest other capital, he would then arrange for a disposition of the property; and it is my recollection that he stated at that meeting that he had people who were ready, able and willing, to use a legal phrase, to take the property at an advance sufficient to make us whole. Just the words he used I do not recall, but that is the substance of it. That is the way I carry it in my mind. In other words, if he could not get capital to go on with the proposition, he could dispose of the property before the expiration of the option. It was on that condition that the extension was authorized.

Q. Can you fix that date? A. It was at the meeting of August 28, 1924.

Q. August 28, 1924? A. That is my recollection of it. I know there was such a meeting and such a conversation and this notation which I have, brings it back to me. I place it at that time. Of course, dates are pretty hard to recollect. Now, following that I wrote Mayor Hetrick, on the third, the letter introduced as Exhibit C-5. I might say that that payment of $5,000 left us with less than $1,000 in the bank, and I wrote Mayor Hetrick on the 3rd that I would be away until the 11th.

Q. Of September? A. Yes, and I would be back at Sea Girt on the 11th and I would leave on the 13th for Montclair, and I could be reached there after. On September 4th he acknowledged my check and my letter, two checks. I started in on my duties as Judge right thereafter and I was rather busy at that until the matter became active again by Mr. J. Herbert Reid, who was the president of the company, writing from Baltimore where he was with his brother, who was another

director, and who was then away sick and being operated upon—writing a letter to Mayor Hetrick. He sent me a copy and he wrote me September 29th, stating that he had written Mayor Hetrick and enclosing a copy of his letter, and then if the Vice Chancellor wants that letter—

Mr. Gilson: Will you let me have that letter from Mr. J. Herbert Reid to Mr. Hetrick, September 29, 1924?

(Letter is produced.)

Mr. Gilson: I offer in evidence letter referred to by Judge Smith, dated September 29, 1924, produced by the defendant Hetrick.

(Marked Exhibit C-9.)

Q. Proceed. A. In that letter—I may read just the part that is of any importance—he first recites that his brother was sick and he had gone there with him. He says: "I am staying with my brother and his wife in Baltimore and for this reason neither he nor I will be able to attend any of the meetings of the Bradley Hotels Company. However, this should not in any way interfere with the affairs of the company.

"My understanding is that the option obtained from Mr. Gillespie expires November first. Because of this fact I feel it imperative that a meeting of the directors be called at once and if nothing definite regarding the financing of the hotels has been accomplished that the matter of disposing of the land be taken up at once and definitely settled at the earlest possible moment, whether this might be brought about by a committee of the board of directors of the Hotels Company or through the agency of real estate operators along

the shore. We all understand that this land can be sold at a substantial profit and it would seem that we would all be chargeable with neglect by the stockholders if we do not take advantage of this opportunity to protect their interest and it would seem that the only way in which we can protect their interest would be through the disposal of the land.

"We regret very much our inability to be with you but assure you that if there are any legal requirements in the way of waivers, proxies, etc., we will forward the same to you immediately upon receipt of advice from you to this affect.

"As Vice President of the Company you are the proper one to call the meeting, for which reason I am writing you as outlined above. I am also taking the liberty of sending copy of this letter to Mr. Morland B. Soria and Hon. William A. Smith who I know will fully co-operate with you."

Now, in response to that letter I received a letter from Mayor Hetrick under date of October 3rd. Do you want that in evidence?

Q. No. A. I got a letter from Mayor Hetrick, dated October 3, in which he said that he received a letter from Mr. Reid and that he was going away for a few days and that on his return he would get in touch with me and with Mr. Reid.

Q. Did he get in touch with you after that? A. Well, we met, but as to the date I do not know. I cannot fix the date, because I have nothing to fix it on, but I know it was some time before the expiration of the option. The meeting was held, as I recall it, in Mr. Reid's office, with Mayor Hetrick, Mr. Reid and myself. Now, whether it was just a meeting called by telephone or whether it was supposed to be a directors' meeting, which we three

only attended, I do not know. Any way we met there, and my recollection is that it was a Saturday morning and that I had come down to meet Mr. Hetrick and Mr. Reid.

Q. What was said and done at that meeting? A. Then the question of the disposal of the land came up. Mayor Hetrick had not obtained any further financial support to build a hotel. My recollection of just what was said—I don't remember as well as Mr. Herbert Reid who was there, but I remember that we left with the understanding that Mayor Hetrick was charged with the responsibility and accepted the responsibility—

Mr. Hamill: I object to that.
The Court: Objection sustained.

Q. In substance. A. In substance what he said was that he had people in New York who were ready to take the property and that he could get them to take the property and he left with that understanding—

Mr. Hamill: I object to that.

Q. What was said? A. He left with the understanding on my side that he was willing to handle the negotiations for the disposal of the property. From that time on I had practically nothing to do with the disposal of the land. I was in Bergen County. I went over there, back and forth, from Montclair, and I did not have the opportunity, and I told him that—I told him he could not get any help from me.

Q. Did he say at that time what the result of the disposal of that property to these people he

had in mind in New York, would be to the stockholders? A. Oh, yes, the same as he had previously said, that it would realize enough money to take care of everything that had gone into it.

Q. Is that what you referred to, this conversation you have just testified to, the things that you referred to in your letter of September 16, 1925, Exhibit C-8, in which you said you had a certain understanding about what was to be done? A. That was it.

Q. What induced you and why did you take no further action with respect to this option on the property after that last conversation with Mr. Hetrick in Mr. Reid's office? A. Well, I did not have any opportunity. I told him that I could not help, that I was busy in court and could not help, and the option would expire on the first. From what Mayor Hetrick had said to me about his ability to get extensions, I left it with him to handle it, knowing that we could not put up any more money unless he did something, so the matter just went along from that time.

Q. I mean more particularly, as an officer of this corporation, what induced you to let the option expire? A. Well, I had nothing else to do. I had placed the matter in his hands. He was the vice president and had been notified that he was to act, Mr. Reid being in Baltimore with his brother who was having this serious operation. It was up to him, as I understood it, to call the meetings, as he was directed to do and to take any necessary action thereon.

Q. I mean did or did not the statement made by Mr. Hetrick that he could and would dispose of that property so that the stockholders and creditors would be taken care of, have anything to do with your taking no further action?

Mr. Hamill: Objected to.

Mr. Wall: Objected to.

Mr. Hamill: He said the reason was because he was busy with his judicial duties. I object also upon the ground that the question is leading.

Q. Did you have any other reason, besides your activities in court? A. Well, I did not take any formal action as an officer because I turned it over to him.

Q. Well, let me ask you this: If it had not been for Mr. Hetrick's statement that he could profitably dispose of this property so that the stockholders and creditors would be taken care of, would you have taken no further interest in the matter?

Mr. Hamill: Objected to.

The Court: Objection sustained.

The Witness: I believe I should testify about the other letters. There is some more correspondence.

Q. You say there is some more correspondence? A. You put in this letter to him under date of September 16th.

Q. Let us have that, please. A. That was by reason of some correspondence that there had been between Mr. Reid and Mayor Hetrick which was sent to me. Then I wrote Mayor Hetrick telling him what my understanding was, and that is the letter of September 16th. So I suggested an appointment with him a week from Saturday. I was down at Sea Girt at that time.

Q. Then did you meet him after that? A. Yes; I received the letter from him of September 19th,

which was adressed to me at Hackensack and in which he said: "I will be at my office Saturday morning, September 22, and I will be delighted to see you."

I might say that the correspondence between Mr. Reid and Mr. Hetrick had come out to the stockholders. The creditors wanted to know what was going on and I think due to the fact that there was an article which had come out in the papers, that the property had been sold, but I think those articles were out some time before.

Q. Sold to the Coast Holding Company? A. Yes. So I saw Mayor Hetrick at the appointed time at Asbury Park on September 26th, and I have his letter with my written notation as to what he said in substance to me at that meeting.

Q. Will you tell us what he said? A. He said that he entered into an agreement for the protection of the stockholders.

By Mr. Hamill:

Q. What date was this? A. September 26, 1925, at Asbury Park. I met him at his office.

Mr. Hamill: I object to this. That was afterwards.

The Court: Objection overruled.

By Mr. Gilson:

Q. You may proceed. A. He said he had entered into an agreement for the protection of the stockholders of the Bradley Hotel System, Incorporated, which was drawn but not signed, and I urged that it be signed and he said he would have it signed and send me the original or a copy. I

stated to him then and I think stated to him on a number of occasions before, that he ought to get me something for the protection of the stockholders. I had known in a general way that he was doing something with the property, but I did not know what it was.

Q. Did you ever get that agreement or a copy of it from Mr. Hetrick? A. He never sent it and never gave it to me.

Q. When did you first see it? A. Yesterday.

Q. Who showed it to you? A. I saw it in the Receiver's office yesterday. That is the first time I have been over these papers—

Mr. Wall: The Receiver has had it for months, has he not?

Mr. Gilson: Yes.

Q. What happened after that conversation with Hetrick? A. Well, I got a letter from Preacher & Company, dated November 1, who wanted money and then I wrote to Mayor Hetrick and asked him to do something. That is about all I have.

Q. As I understand it, Mayor Hetrick was one of the promoters of the Bradley Hotels System

Mr. Hamill: I object.

The Court: Objection sustained.

Q. How did the organization of the Bradley Hotels System come about? A. Mayor Hetrick, as I understand, met Walter W. Reid, Jr., and they between them decided to interest people outside of Asbury Park. Mayor Hetrick had some local people before that on an option, and I think it was the Bradley Hotels Company, and they had not gone through with it.

William A. Smith. Called by Complainant. Cross.

By Mr. Hamill:

Q. Is this hearsay? A. Conversation between Mayor Hetrick and myself and Walter Reid.

Q. This was a conversation you are relating? A. Yes; when we got together. That was how the discussion came about as to what we were going to do. This eventuated in the getting of these people together, in forming the corporation and taking over this option which Mayor Hetrick had. I do not know whether he had it then in legal form or just in a general form, but he had it in some form from the Bradley Estate.

By Mr. Gilson:

Q. Well, Mayor Hetrick was one of the organizers of the company, was he? A. Yes.

Q. It was organized in Delaware with dummy organizers and then transferred over? A. That is it.

Cross Examination by Mr. Hamill:

Q. Judge Smith, this Bradley Hotels Corporation was formed by you, was it, I mean as attorney? A. Yes.

Q. You drew the papers? A. Well, the papers were drawn up—whatever it was.

Q. You were the attorney of the company? A. I was.

Q. That is, you were the attorney in bringing about its formation and afterwards you were the attorney during the time when it had this option? A. Not all the time. The latter part of the time they employed and paid—I was not paid—Pratt & McAlpin, associate counsel, and that was largely

for the work that they were doing in getting the financial interests, in getting Preacher & Company to draw the plans and any assistance they could obtain from the McAlpin Hotel organization.

Q. In other words, Pratt & McAlpin were the attorneys to look after all the matters connected with the construction of the proposed hotel? A. Well, it was not definitely put in that way.

Q. And there were plans drawn for the hotel? A. Yes.

Q. And there were conferences had regarding the hotel? A. Yes.

Q. Many conferences? A. Yes.

Q. And Pratt & McAlpin insisted that they get a fee of $2,500? A. Yes.

Q. For their services in this respect? A. Yes.

Q. And they received that from the company? A. Yes.

Q. Now, everything else outside of the hotel, the affairs of the company were looked after by you? A. No; we had them in a lot of things. There was an amendment of the certificate of incorporation which they went into very thoroughly in order to put it into shape for the financial backers to put their money into it.

Q. So that the title would be all right, if they were going to get the money on the hotel? A. Well, yes.

Q. On the line of the hotel, but you were the attorney for everything outside of what Pratt & McAlpin had to do? A. I suppose so, yes.

Q. And you knew about this option, of course? A. Yes.

Q. This meeting was brought about by Mr. Reid and his brother and a number of Newark men? A. Yes.

William A. Smith. Called by Complainant. Cross.

Q. There was a promotional fund put up to put that company on its feet? A. Yes.

Q. And it was all the friends of Mr. Reid who put up that money? A. Well, I don't know particularly.

Q. Well, you knew it was the Reids who advanced that promotional money? A. I guess it was.

Q. That was something around $8,000? A. The books will show. I don't know. I did not handle that.

Q. Mr. J. Herbert Reid was the president? A. Yes.

Q. Mayor Hetrick was vice president and Mr. Krueger was the treasurer and you were the secretary and assistant treasurer? A. That is true.

Q. And all of you gentlemen were also members of the board of directors? A. That is true.

Q. Now, as a matter of fact, Mayor Hetrick was a director of the company? A. Yes.

Q. He had no more power than any other director in the company? A. Well, I don't know. He exercised more. He was the most active man of the organization.

Q. That is the fact, he was the only man who did anything in that corporation to hold this option and to consummate this project? A. I would not say as broad as that. I would say he was the most active man and hardest working man.

Q. He was the hardest working man in the project? A. Oh, yes.

Q. Yet he was not anything more officially and legally than a director? A. That is a matter of law. I cannot testify as a witness to the law.

BY THE COURT:

Q. Can you put it this way: Do you know of any authority by resolution of the stockholders or by

resolution of the directors to perform different work than what the by-laws provide for the officers of the company to do or what the duties of a director call for? A. Only in the minutes of the meeting of August 28, in which the matter of the extension of the option was referred to Mayor Hetrick and myself.

By Mr. Hamill:

Q. That is all? A. That is all I can recall now, except as you might spell any general agency from the work that he did.

By Mr. Gilson:

Q. He was a member of the executive committee, too? A. Yes; he was.

By Mr. Hamill:

Q. Who were the other members of the executive committee? A. I don't recall.

Q. How many members were on it? A. I think three or five.

Q. Which, may I ask? A. Maybe I can find it for you. The minutes will show.

Q. Now, at this meeting of August 28th, what was done was for the company to decide that you and Mayor Hetrick should go and pay the money and get that option extended? A. Yes.

Q. That was the authority with which both of you were clothed by the meeting of August 28, 1924? A. Well, that is what the minutes say.

Q. And it was Mayor Hetrick who did that? A. Well, in conjunction with—as I say I do not recall whether that telephone talk with the representative of the estate was just a few days before or just im-

mediately afterward—whether it was that we found out we could get the option, or whether it was afterward—it was one or the other.

Q. In all of these things, the work was that you conferred and Mayor Hetrick did it? A. Yes.

Q. You were busy in your law practice or with your judicial activities? A. From around the first of September I was, but before that I was not.

Q. But am I correct in saying that all of the active work of that committee of which you were a member was done by Mayor Hetrick? A. Yes; I suppose so.

Q. That is, you gave him the checks and he took care of it? A. Yes.

Q. He hadn't any more power from the company than you had to attend to that matter? A. Well, that is a matter of—

Q. I am asking you. You know about it? A. I do not know what to say his power was. He was what you might hear called the "whole shooting match".

Q. He was "the whole shooting match" in the sense that he was the willing horse, willing to take the lead? A. He wanted to. He wanted to carry out this project and was more interested than anybody else.

Q. He was more enthusiastic than anybody else? A. No; he was more interested. He had sold practically all of the stock to the individual stockholders. He was very anxious that they should not lose and he was very anxious to see a hotel go up there. He was the person who had the most heart in the project at that time.

Q. All of his work, all of this enthusiasm which he showed in selling stock and in wanting a hotel to go up and to make the project go, inured bene-

ficially to the corporation, did it not? A. I suppose so.

Q. They got the benefit of Hetrick's work? A. Certainly.

Q. And what did Mr. Reid do, if you know? A. Well, it is pretty hard for me to tell you. I know I took very little interest or did very little in reference to the hotel project, that is, the drawing of the plans, the getting of estimates and all that. I had nothing to do with that except that I might attend a few meetings. The Reids were in the thing. Mr. Britwood I think was in that and of course Mayor Hetrick was very active.

Q. So that, Judge, as far as actual work was concerned, your judicial duties kind of let you out of that? A. I did not muss into that very much.

Q. You were secretary of the company? A. Yes.

Q. Did the Reids do anything? A. Well, as I say, they were in that, yes, but how active they were I do not know, because I was not active myself.

Q. Now, Judge, that conference of August 28th was merely for the purpose of continuing the option. There isn't any doubt about that, is there? A. Well, I don't know. The matter that was discussed was very formally decided at that time.

Q. What did the minutes of the meeting authorize you and Mayor Hetrick to do? Read that. A. "The question of the extension of the existing option from the Bradley Estate was discussed; and on motion duly made, seconded and carried, it was directed that Mr. Hetrick and Mr. Smith be appointed a committee to arrange for an extension of the option for two months upon payment of $5,000."

Q. That was the net result of all that was said and done at that meeting? A. Well, that is what I put in the minutes but it is not all that was discussed and decided at that meeting.

Q. That was the business of your meeting. Is there anything there about anything else outside of the option? A. Yes. What I put in the minutes was this, that the discussion was about that. Mayor Hetrick was to go out and try to get some more capital for a hotel, and I put this in the minutes: "Mr. Hetrick reported his negotiations with reference to obtaining a preliminary survey and an estimated cost of the hotel; and on motion duly made, seconded and carried, it was decided to defer the matter for further consideration at a subsequent meeting."

Q. Now, then, the result of that meeting was that Mayor Hetrick, as one of the most active, said that he was going to try to get some money to carry the hotel project through? A. Or he was going to put the sale through.

Q. Put the sale of what through? A. The land.

Q. Your minutes do not say that? A. I know, because we were persuaded at that time to let Mayor Hetrick try and get the backing for a hotel.

Q. That is, Mayor Hetrick persuaded the others to renew the option and not to sell the land then? A. I would not say to renew the option. That was decided on. They wanted to sell the land then. Renew the option and then dispose of the land.

Q. So, the renewal of the option was decided on at that time? A. Yes.

Q. Then what were they going to do with the land? Sell it piecemeal, by lots, were they? A. I don't know that it got down to that—there was a discussion about it—about what they wanted to do—disposal of the land in some form or another —and Mayor Hetrick prevailed.

Q. They talked about the sale of the land as a real estate venture? A. Yes; auctioning it off.

Q. And Mayor Hetrick said at that time it was better these great plots be used for hotel sites? A. That is it.

Q. Because they were best adapted for hotel sites. Then he eventually said he was going to try and see if he could not get money to come in? A. Yes.

Q. The money that he was to try to make come in, was not to be for his personal benefit, was it, but for the benefit of the whole corporation? A. I do not recall that the discussion was about getting money to come in, but to get some bank or bankers to put up the money—I do not mean temporary money but a large amount of money which would warrant putting up the hotel.

Q. That is, to float the hotel project? A. Yes, as it had been originally planned.

Q. Now, Judge, in the forming of this corporation, your minutes say that $5,000 was to go to Mayor Hetrick? A. Yes.

Q. You know he paid that over to Gillespie? A. That was my understanding.

Q. That he paid that over to Gillespie? A. I assume he did. I suppose the checks will show it, or they may not. I do not know. That was my understanding, that it was to go to Mr. Gillespie.

Q. Then this $100,000 worth of stock was handed over to make a payment for the option? A. No; it was not $100,000. It was nominal par value.

Q. He got 100,000 shares under a written agreement? A. That is right.

Q. Under the agreement he redistributed them as soon as he—

Mr. Gilson: I object to that. That is not the fact.

Q. Well, Judge Smith, tell the fact. What did happen? A. I am wondering whether it is material I am an interested party in this. I am wondering whether it is material, as to the disposition of this stock upon which no cash was paid in. There may be an assessment later. I do not like, as a witness, to testify to something in which I may be brought in subsequently by the Receiver.

Mr. Gilson: I object on the further ground that it cannot possibly have anything to do with the issue here. It is not fair to the witness.

The Court: A letter from Mayor Hetrick is in evidence which shows what he wanted the company to do with the 100,000 shares.

Mr. Hamill: Judge Smith has said that Mr. Hetrick received $5,000.

Q. Judge, Mr. Hetrick received 3,400 shares and then besides that he received other shares? A. I did not say he received any shares.

Q. Yes, you did. A. If I recall, he was alluding to the 100,000 shares. I do not think there were any shares for himself.

Q. That was preferred stock? A. That was preferred stock, but under the allotment that he got, Mayor Hetrick in his letter, said to issue so many shares to so many people, but I do not recall that there were any certificates of stock issued in accordance with that letter. I say I do not recall, but there may have been some. Whatever there was, the books will show.

Q. Do you happen to know this, that there was an agreement whereby a certain number of shares would be transferred to Mayor Hetrick and he was

to keep only 3,400 shares for himself, and all the rest should be assigned to whomever the company directed? A. That is what he agreed to do.

Q. Do you know that? A. I think the minutes show that.

Q. Now, at these meetings, the only times at which the option was discussed, were at this meeting of August 28th and then at your meeting on September 26th when you met him in his office? A. No; I would not say that.

Q. The first time the question came up about saving the option, about the option being in danger, was at the meeting of August 28, 1924? A. No; the option was in danger lots of times.

Q. Let us know when you met Mayor Hetrick after August 28, 1924. That was the meeting where you were authorized, the both of you, to save the option and pay $5,000 and you gave him the check and he did it? A. I would be inclined to take his version of that, whether it was before or after that. I do not recollect.

Q. The net result of the talk was that he said he would do all he could to save this project, that he was going to use his best endeavors? A. Yes; I think he talked that way at the meeting.

Q. And that is what he said at any subsequent meetings, too? A. Just as I have said. I would not sum it up in the words that you use.

Q. That he would do his level best to save the project? A. No; he said more than that. He said he had plenty to do.

Q. Did you call any meeting of the board of directors to consider what he said? A. No. He was to call the next meeting. He was to go ahead and dispose—that is, at this last conference in 1924, he was to go ahead and dispose of the property or

put it in shape to dispose of, and he would call any meeting that was necessary. He was the acting president.

Q. Where was the president? A. The president was down in Baltimore with his brother. His brother was having a series of very serious operations.

Q. Do you mean to say the president just passed the buck on to the vice president? A. He urged the vice president to take it over, that he could not act. That is the fact of it.

Q. And what did you do in that? A. Well, I left the matter in their hands. As I say, I had started in on my work on the Bergen Circuit, the first time on the bench, and I was having all I could do and I did not do anything else, as I recall, nothing particular. If you can refresh my recollection,—I may have been at a meeting once or twice, but I do not recall any.

Q. I will try to refresh it in this way: Surely, if he had said anything to you that would have involved the terms of a contract you, as a lawyer, would know that the board of directors should be called together to take action on it? A. If you want my reaction to that, it was this: That he was the man who was most interested in the outcome of the company and I felt perfectly well satisfied to leave it to him, because I knew he would do more than anybody else.

Q. In other words, Judge, you left it to him because he was willing to do all of the work? A. He said he would.

Q. When you say he was the most interested, you do not mean that he had any more interest in the company than any other director legally? A. Well, he was a director, and of course he had that interest, and he was also interested in having a hotel built.

Q. You are talking about his sentimental interest? A. Yes; he had those two interests. He was interested in the development of that property for a hotel. He was also interested, if he could not get a hotel there, to get all the money out of the project and pay these people to whom he had sold the project.

Q. Was he any more interested legally than any of the other directors? A. That is a matter of law.

Q. What would you say to that as a matter of law? I will take your opinion on it.

Mr. Gilson: Objected to.

The Court: Objection sustained.

Q. He had not any special powers as a director other than those the other directors possessed? A. It seemed he had the power.

Q. Not what it seemed. Did he?

Mr. Gilson: Objected to.

Mr. Hamill: Question withdrawn.

Q. Was there any consideration offered to him for doing this?

Mr. Gilson: I object to that. That is a question of law.

The Court: Objection overruled.

A. The only consideration I know of was the giving of $5,000 to take over the option, I mean, to extend the option, and the direction from the president to him to act as president. That is the only consideration that was given him.

Q. And no action was ever taken by the company afterwards, at any time afterwards or in any conference that you and Mr. Hetrick had regarding this option? A. I do not believe that there was any corporate act. I think we had some meetings, but I cannot recall.

Q. What was done? A. We had some meetings, but there was no quorum present.

Q. Have you any record of any meeting after August 28th at which this matter was discussed? A. I have no record of any minutes of any meeting. I have a record of notices being sent out for meetings, but if they were held, the minute book does not show any actual corporate meeting.

CROSS EXAMINATION BY MR. WALL:

Q. When did you first hear of the Coast Holding Company? A. I could not tell you. It was some time between the latter part of 1924 and when Mr. Reid wrote Mr. Hetrick in the fall of 1925.

Q. Can you fix it closer than that? A. I don't think so.

Q. Had you ever heard of the Coast Holding Company before April 1st, 1925? A. I could not tell you that.

Q. I call your attention to the fact that it was formed in May, 1925? A. Then, I suppose I did not hear about it before that.

Mr. Gilson: No; it was formed April 8, 1925.

Q. Well, when did you first hear of it? A. I think when I heard about it was when the publicity came out in the newspapers applied to this property.

William A. Smith. Called by Complainant. Cross.

Q. When this meeting was held on August 28, 1924, and you were appointed along with Mr. Hetrick to look after this option, when did you find that the option had expired? A. Well, the option was up, as I recall it, about November 1st, and it was in Mayor Hetrick's hands either to extend it in some way without money from the company, because it did not have any, or to let it lapse.

Q. When did you first learn that it had not been extended? A. I could not tell you that. I might have had some conversations with Mayor Hetrick over that period, that is, from the latter part of the fall through to the next summer. I do not doubt I did, but I haven't any records. I haven't any correspondence or anything to fix it by.

Q. You have no recollection or data from which you can say when you first learned that the option had expired? A. I don't know. I think I probably heard it from other people in the company. Mr. Reid was down at Allenhurst and of course would probably get the information.

Q. When you heard it, you do not know? A. I do not recall. It was some time during that time.

Q. During what time? A. Some time preceding my meeting with him in September, 1925, because then he said a deal had been made which would protect the stockholders.

Q. You never knew what that deal was? A. No.

Q. Until you saw the contract with the Coast Holding Company? A. That is true. I saw a copy of it.

Q. And after that meeting of August 28, 1924, when Mr. Hetrick was to extend the option, you did nothing further about the extension of the option? A. Nothing afterwards; no.

Q. Where did the money come from that was used for that extension of the option? A. There was money subscribed by some of the directors.

Q. Did you subscribe any? A. I did not subscribe anything. My understanding, I think, was that I would furnish my services and they would give me some stock for my services, and I never received any money at all.

Q. And never contributed any? A. Never contributed any.

Q. Do you know the source of the money that was used for the extension, we will say, of the last option? A. Oh, yes; that came from sales of stock, as I recall it, which had been made.

By the Court:

Q. That was the extension which expired November 1, 1924? A. Yes. That was what I recall of the money that had been collected from these various people around the shore who had subscribed to the preferred stock.

By Mr. Wall:

Q. And there was never anything, of which you had knowledge, that fixed the amount that was to be taken care of at $36,000 or thereabouts? A. I never knew the amount until I saw it in this agreement. Perhaps I might have known how much money had been subscribed from time to time by the treasurer's report or something of that kind, but I had not that information in my mind.

Q. You do not point to any promise of Mayor Hetrick to pay this money? A. Not a direct promise to pay.

Q. Do you point to any indirect promise? A. Well, the fact that he agreed—he said that he had

people that would buy this particular property and he would arrange its sale for a sufficient sum to pay all these people.

Q. But you do not call that a promise? A. Yes; I do.

Q. You do? A. Yes; I do. He was in charge of the option and let the option expire.

Q. When was that that you are speaking of now? A. That was at the last conference in September or October, whatever it was, after Mr. Hetrick had asked—

Q. September or October when—1925? A. 1924, the conference that I had with Mayor Hetrick and Mr. J. Herbert Reid.

Q. Won't you tell us, as accurately as you can, what you consider those words were that Mayor Hetrick said that made it a promise? A. Well, I would say, it is pretty hard for me to give anything verbatim, but at that meeting he was unable to get anybody who was going to put up the money to erect the hotel, and Mr. Reid told him then he had to go ahead and dispose of this property to the people that he had. He said he would, and that was following out the lines of the discussion at the meeting of August 28th when he said that if he could dispose of that property he could get enough to take care of everybody, but he wanted first an opportunity to try and raise money.

Q. That is all there was to the promise? A. Yes.

Q. That is the whole thing? A. That is the summary of it. I cannot give you anything more definite. Mr. Reid, I think, recalls it much better than I do.

Q. That is what you regard as a promise? A. Yes.

Q. To whom was that addressed? A. Mr. Reid and myself.

Q. Was that promise ever addressed to the body of the board of directors as far as you knew? A. Not as far as I know.

Q. That is the only promise that you can recall? A. Well, I would not say the only one.

Q. Well, what do you say it was? A. The previous one at the meeting of the board.

Q. State that promise? A. I have stated it before, that at the meeting of the board, as I recall it, of August 28th, if they would give him an opportunity to raise the money to carry out the project and stop any attempt now to sell it, why he would dispose of the property if he could not get the money; if he could not raise the money he would dispose of the property at a sufficient sum to take care of everybody. He told that to the board at that meeting.

Q. Is not that rather a guarantee than a promise?

Mr. Gilson: I object.

Q. He said he would try to do it; is that correct? A. He said he would do it.

Q. You understood that that was a promise? A. Yes.

By Mr. Hamill:

Q. You say he had charge of the option and he let the option expire. He did not have any more charge than you had of it? A. Well, I think he did.

Q. The last time that the option was in the hands of anyone to save was at the meeting of August

28th when you and he were directed and appointed to put up $5,000 and save it? A. That is the only corporate action.

Q. That is only corporate action, but all the other times when the option was saved it was saved by corporate action? A. I would not say that offhand. I mean the minutes would show whether it was or not.

Q. Whenever it was extended, it was done in a formal way? A. I am not sure, but during some of that period the option went along without any formal extension for some time and then was taken up by a formal option.

Q. You mean the option was allowed to run out? A. It might have been.

Q. Do you mean that? A. Well, I don't know.

Q. You don't know—that is what you mean. A. I say it might have been.

Q. You do not mean to state that as a matter of fact, do you? A. No. I have nothing to go by. The minutes would show.

Q. In the arrangements for the extension of the option, there were written papers, were there not? A. Yes.

Q. It was done formally and legally? A. Well, it was not all formally and legally. There were a lot of times we did not get any assignment from Mr. Hetrick. It would run along for a month or so.

Q. You mean, as a judge and a lawyer, that you would let a man offer to do something on the failure of which the whole company would be ruined, without taking some kind of writing from him?

Mr. Gilson: Objected to.

The Court: Objection sustained.

Mr. Gilson: I reserve the right to recall Judge Smith.

J. Herbert Reid. Called by Complainant. Direct.

J. HERBERT REID, sworn as a witness on the part of the complainant, testifies as follows:

DIRECT EXAMINATION BY MR. GILSON:

Q. You are vice-president of the Bradley Hotels System, Incorporated? A. I was.

Q. From the time of its organization down to the time of the expiration of the last option on that real estate? A. Yes; that is right.

Q. How did the organization of that corporation come about? A. Well, the first I heard of it, my brother Walter, who lives down at Allenhurst and is more or less familiar naturally with that section, told me that Mayor Clarence Hetrick had an option—

Mr. Hamill: Objected to.

Q. Not what he told you. A. Well, he—

BY THE COURT:

Q. It first came about through conversations with your brother? A. With my brother.

Q. As a result of which you saw Mayor Hetrick? A. As a result of which I saw Mayor Hetrick.

BY MR. GILSON:

Q. Go on. A. And it was suggested, or I mean I learned that Mayor Hetrick had an option on a certain tract of beach front property down there at a price that was, in our opinion, and in the opinion of men with whom I talked, almost a gift, and at previous conversations I learned, or it was suggested that we incorporate a company for the pur-

pose of erecting hotels on this property. The option, of course, to my understanding, that Mayor Hetrick had was only a verbal option, but if we could raise $10,000 we could secure a legal option from Mr. Gillespie, the administrator of the Bradley estate. Well, the first thing that induced me to invest was the representation and my belief that if we did not succeed even in putting across a comprehensive scheme that contemplated an investment of something like nine million dollars in hotels, there was sufficient land value there to show a very fine return on the investment. So, with that feeling, with that belief, I went to half a dozen of my friends in Newark and prevailed upon them to put up $1,000 or $2,000 a piece and come into this enterprise with us in an effort to put it across. It was agreed that this amount, this original contribution of about $1,000 or $2,000 a piece, that that money should be returned to them out of the proceeds from the first stock that was sold. I got together this group, various men were elected to the board and we had several meetings when I believe one or two of the directors for various reasons desired to withdraw.

Mr. Wall: I object to this. This is all irrelevant and immaterial.

Q. The result of it was that you got these people interested in it and this option was taken over by the company? A. That is right.

Q. Then, you are familiar with the various extensions of that option up to the latter part of the summer of 1924? A. More or less. I know that they were effected by Mr. Hetrick.

Q. Now, before the expiration of the last extension of the option, which was November 1, 1924, do

you recall whether it was decided by the Bradley Hotels System people to carry through the original project or to step aside?

Mr. Hamill: Objected to as leading.

Q. Prior to November 1st, 1924, when the last extension of the option expired, what was done if anything, to carry through the original project? A. Well, we had come to the realization of the fact that our project was too big and could not be put across and then the only remaining thing to do to protect our stockholders was to take the profit that we anticipated all along if the land was sold, and reimburse our stockholders.

Q. Was that put up to Mayor Hetrick? A. Oh, that was frequently discussed with Mr. Hetrick. Colonel McAlpin, at a meeting at his office in New York—I cannot place the date—though it was very improbable we would be able to go through with the erection of the hotels. Even if we should manage to build them, then there was real concern over the possible successful operation of them, and here we are in a position to take a very handsome proposition on the land. To my knowledge, Mr. McAlpin gave that opinion, that the only thing to do was to dispose of the land. Mr. Hetrick was the one who stood out in opposition to the disposal of the land. I had even heard outside of the meeting—

Mr. Hamill: Objected to.

Q. What was his reason for standing out against that? A. Well, the reason that Mr. Hetrick—I believe—

Mr. Hamill: Objected to.

J. Herbert Reid. Called by Complainant. Direct.

Q. What reason did he give, if any, for his not agreeing to the sale of the land? A. Mr. Hetrick continued to tell us that he still felt the undertaking could be financed and that he felt he could get in touch with the people who would finance it.

Q. Well, did he give you any reason for not wanting the land sold as a real estate deal? A. I always felt—

Mr. Hamill: Objected to.

Q. I mean: Did he say why he did not want that done? A. Why he did not want the land sold?

Q. Yes, for development purposes or anything else except a hotel? A. The only reason he gave us was that he felt he could secure money to finance the hotels. He wanted the hotels.

Q. Can you fix the date of that conversation, the next one with Colonel McAlpin? A. There were so many similar conversations had on the same point that I cannot remember. I mean on the sale of the land, that was so frequently discussed that I cannot place the dates of the various conversations.

Mr. Gilson: I call on counsel for Mayor Hetrick to produce letter of September 8, 1925.

Mr. Hamill: Here it is.

Q. I show you Exhibit C-9, which is a letter written to you by Mayor Hetrick and dated September 29, 1924. Now, will you see if that refreshes your memory so that you can fix the date or dates of these conversations, about Mayor Hetrick wanting to go ahead and try to raise money to finance the project himself. Was it before or after September 29th? A. It was before this date, of course.

Q. Now, you are sure about that? A. Oh, absolutely.

Mr. Gilson: I offer in evidence letter from J. Herbert Reid to Mayor Hetrick, dated September, 1925, produced by counsel for Mayor Hetrick.

Mr. Hamill: I object upon the ground that it is nearly one year after the expiration of the option and that it is a self serving statement.

The Court: Objection overruled.

(Marked Exhibit C-10.)

Q. I call your attention to this part of the letter: "However, my previous letters to you asking for information regarding the return to be made to the Bradley Hotels System out of the proceeds from the sale of the land which was held by our company under option, have all remained unanswered. You must appreciate, Mr. Mayor, that our friends to whom we sold stock in the Bradley Company are referring to me for information. I have already informed some of them, as per our understanding with you, that by stepping aside the Bradley Company was permitting the sale of this land at a price that would guarantee to us the return of all expenses up to the date of the sale, making possible a return to all of our investors dollar for dollar the amount of their investment. This was the very definite understanding had with you in the presence of Judge Smith and others, and I am at a loss to understand why you are not giving me definite information as to when this sale is to be consummated so that we can advise our investors when their money will be returned to them. I have written to you and I understand Judge Smith has written

to you—we have not even had a reply to our letters".

Q. This was almost a year after the expiration of the option. Now, when was it that Mayor Hetrick made that very definite arrangement, as you express it in that letter? A. I can fix the time I think, in this way: I went to Baltimore with my brother—

By the Court:

Q. Wait a moment, Mr. Reid. Think it over in your own mind. Think over the facts that you think will enable you to fix it definitely, and then tell us, without thinking out loud? A. I should say approximately the middle of October.

By Mr. Gilson:

Q. What year? A. 1924. It was between the 1st and 15th of October, I should say.

Q. What was your reason for stepping aside and permitting the sale of the land, as stated in your letter of September 18, 1925?

Mr. Hamill: I object.

Q. What was your reason for letting the option expire from November 1, 1924?

Mr. Hamill: I object.
The Court: Objection sustained.

Q. Why is it you did not do something to obtain a further extension rather than let the option expire November 1st, 1924? A. Because I was kept out of the state by reason of my brother's illness and fur-

ther because Mayor Hetrick was the only one who had had any dealings at all with the representatives of the owners of the property. All previous options had been secured by Mayor Hetrick from the representatives of the property and all such matters had been attended to by him from the very beginning. I had never met Mr. Gillespie, who represented the owners.

Q. Well, referring to your letter of September 8, 1925, Exhibit C-10, did the part you took in stepping aside and permitting a sale of the land by Mayor Hetrick have anything to do with your not taking any further part in the matter?

Mr. Hamill: I object.

The Court: Is not that in effect asking the witness: What do you mean by the statement contained in your letter of such and such date?

Mr. Hamill: If that is what it means, I have no objection.

Mr. Gilson: I will put it that way. I will adopt the language of the Court.

Q. What did you mean by saying, in your letter of September 8, 1925, Exhibit C-10, that you were stepping aside so as to permit the sale of the land by Mayor Hetrick? A. I may not understand you. My answer to that would be: I meant just what I said.

Q. Let me ask you this: Before you went to Baltimore you had decided to step aside and let the property be sold; isn't that so? A. Oh, yes; we reached the conclusion we could not do anything else.

Q. So that the inducement for stepping aside was not the fact that you were in Baltimore? A. No.

Q. Then, what was the inducement for stepping aside? A. Because there was nothing else for us to

do except avail ourselves of the opportunity to dispose of the land.

Q. Did Mayor Hetrick's proposal to take care of the creditors and stockholders have anything to do with your stepping aside?

Mr. Hamill: Objected to.
The Court: Objection sustained.

Q. What other inducement was there for your not taking any more part in it before you went to Baltimore?

Mr. Hamill: I object to the form of the question.
The Court: Objection overruled.

A. The inducement was the reaping of the profit on the land to return to our investors, make a return to our investors.

Q. Where did you expect to get that return? A. It was definitely stated by Mayor Hetrick that he could sell the land, he had parties who were willing to buy it, who would pay a price for the land sufficient to reimburse the Bradley Hotels System, Incorporated, for every dollar of their expenditures to date.

Q. And that was the real reason why, you, as a party, were stepping aside?

Mr. Hamill: Objected to.
The Court: Objection sustained.

CROSS EXAMINATION BY MR. HAMILL:

Q. When you wrote that letter of September 8, 1925, you received a reply from Mayor Hetrick,

didn't you? A. To that one I did. I had written a number prior—

By the Court:

Q. We are not talking about any other letter. We are talking about this one. Did you get a reply to that? A. Yes; I received—

The Court: Have you the reply, Mr. Gilson?

Mr. Gilson: What is the date?

Mr. Hamill: September 9, 1925.

Mr. Gilson: I haven't it. Judge Smith has it in his valise.

(Letter is produced.)

By Mr. Hamill:

Q. (Showing witness) Did you receive this? A. I received this.

Q. This is the one that reads: "To put it mildly," and so forth? A. Yes.

Mr. Hamill: I ask to have it marked for identification.

(Marked D-1 for Identification.)

(Letter is read.)

Q. That was the answer you got? A. Yes.

Q. You told us that the reason you did nothing about saving this option was because you were not familiar with your property and because you thought Mayor Hetrick would take care of it? A. Yes.

Q. But you did nothing at all because of that? A. That is right.

Q. And the first time that you referred to it, after the expiration of the option, was by this letter of September 8th? A. Most certainly not.

Q. Is that a fact? A. No, sir.

Q. Do you mean that you did refer to it after that? A. Previous to that.

Q. When? A. In letters to Mayor Hetrick. I am talking about the year 1925.

Q. Yes. A. After the expiration of the option?

Q. Yes. A. Well, we were awaiting adjustments —did I ever write about it previous to this letter?

Q. Yes. A. Yes; in a number of letters.

Q. In a number of letters? A. In a number of letters. As I explained in this letter to Mr. Hetrick. This is the only one that he replied to. He avoided all the information that I wanted.

Q. Did you ever call your company together to take any corporate action. A. Well, I think not. The minutes will show.

Q. Who procured the promotional fund—you and your brother, was it not? A. I think I did it entirely, as I recall.

Q. That was a loan, that promotional fund? A. Yes; that was a loan.

Q. It was that promotional fund which made possible the formation of the company? A. The securing of the option made it possible.

Q. I mean it was the promotional fund that made it possible for you to get the option? A. I presume that would be true.

Q. You know that the $5,000 paid to Mr. Hetrick was paid over to Mr. Gillespie? A. I presume it was. We secured the option.

BY THE COURT:

Q. You had no reason to doubt it? A. No; absolutely not.

Q. Before the company was formed, your understanding was that Mr. Hetrick had this option and had paid $5,000 for it? A. Yes.

Q. You took it off his hands by reimbursing him? A. It was never explained.

Mr. Gilson: $5,000 from this company went directly from Mr. Hetrick to Mr. Gillespie.

CROSS EXAMINATION BY MR. WALL:

Q. When Judge Smith was testifying you were in the room, were you not? A. Yes, sir.

Q. You heard his testimony to the effect that the body of stockholders or directors were rather against continuing the original hotel idea and wanted to cash in on the land value? A. Yes; I heard that.

Q. And you heard his testimony that Mayor Hetrick begged further time and that was given him? A. Yes.

Q. And he, Judge Smith, helped him get it and stood out against the others; you heard that? A. I heard that.

Q. That agrees with your recollection? A. Yes.

Q. And you also say that it was the illness of your brother in Baltimore that prevented you from being on hand to prevent the expiration of the option? A. Yes.

Q. That is true, is it? A. That is true.

BY MR. GILSON:

Q. You mean, as I understand it, Mr. Reid—

Mr. Wall: Do not tell him what he means.

Mr. Gilson: I want to find out if I have it correctly.

J. Herbert Reid. Called by Complainant. Cross.

The Court: He has already testified. It is in connection with his answer about the illness of his brother in Baltimore that you are going to question him. Do not ask a leading question about it. I think it is covered by his testimony.

Mr. Wall: I have no objection asking the question if it is not a leading question.

Mr. Gilson: I offer in evidence certified copy of the certificate of incorporation of Coast Holding Corporation, dated April 8, 1925, the incorporators being Clarence E. F. Hetrick, Francis O. Noble, Albert B. Maginnis, acknowledged in New York on April 8, 1925, and received in the office of the Monmouth County Clerk for record on April 11, 1925, and filed in the Secretary of State's Office, April 17, 1925.

(Marked Exhibit C-11.)

Mr. Gilson: I now call on defendant Coast Holding Corporation to produce its minute book.

(Book produced)

Mr. Gilson: At the first meeting of the incorporators of the Coast Holding Corporation, April 21, 1925, the minutes show that the following directors were elected: Clarence E. F. Hetrick, Francis O. Noble, Albert B. Maginnes, and that each of them had 100 shares of stock. The minutes also show that the secretary presented a proposal from the Eastern Parkway & Bedford Avenue Corporation, offering to sell to this corporation certain shore property situate in Asbury Park and described as follows: describing three tracts of property, which, I think, are admitted are the three tracts upon which the Bradley Hotels System had the option.

Mr. Wall: Right.

Mr. Hamill: Yes.

Mr. Gilson: For the total amount of $745,000, to be paid for by the execution and delivery by the corporation of three first lien purchase money mortgages, in the following respective amounts: Block 1, $300,000; Block 2, $300,000; Block 3, $145,000.

I also offer the minutes of the meeting of May 15, 1925, a special meeting of the board of directors held that day at which Mr. Isaac Marshall acted as secretary of the meeting and the following were present: Clarence E. F. Hetrick, Mr. Donald V. Muhleman. Mr. Muhleman exhibited to the board an agreement dated May 15, 1925, between the company and Mr. Hetrick individually in regard to certain moneys to be paid under circumstances as set forth in the agreement. The agreement was read to the board, and upon motion duly made, seconded and carried it was resolved that the action of the officers of the corporation in signing the agreement be and the same is hereby ratified, approved and confirmed.

Mr. Pettit was also present at that meeting, and Mr. Pettit was elected vice president.

The minutes of the Board of Directors of September 2, 1925, set forth that Mr. Muhleman then requested Mr. Hetrick to leave the room and the board then considered the compensation to Mr. Hetrick as an officer of the corporation, and upon motion duly made and seconded it was unanimously resolved by the members of the board present that the corporation pay out of any moneys in its possession or

to come into its possession the sum of $10,000 on account of services heretofore rendered by Mr. Hetrick and disbursements incurred by him.

Mr. Marshall was then requested to leave the room and the board then considered the compensation to be paid to him, and upon motion duly made and seconded it was unanimously resolved by the members of the board present that the corporation pay out of any money in its possession or to come into its possession the sum of $10,000 on account of services rendered heretofore by Mr. Marshall and disbursements incurred by him.

Mr. Muhleman was then requested to leave the room and the board then considered the compensation to be paid to him as counsel, and upon motion duly made and seconded it was unanimously resolved by the members of the board present that the corporation pay out of any moneys in its possession or to come into its possession, the sum of $10,000 on account of services rendered heretofore by Mr. Muhleman representing Larkin, Rathbone & Perry, as counsel and disbursements incurred by them.

The whole board then considered compensation to be paid to Mr. Pettit. Upon motion duly made and seconded it was unanimously resolved that the corporation pay out of any moneys in its possession or to come into its possession the sum of $10,000 on account of services rendered by Mr. Pettit and disbursements incurred by him.

I also offer the minutes of April 20, 1926, at which there was a discussion in regard to

salaries for the officers of the corporation and it was unanimously resolved that the officers of the corporation be paid at the rate of $15,000 for the year 1926. There was further discussion in regard to additional payments of counsel fees and it was unanimously resolved that the corporation pay $ on account of their services.

Now, I call on defendant Coast Holding Corporation to produce letter of April 1, from Mr. Gillespie to Mr. Hetrick.

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

Mr. Gilson: I renew my call for letter of April 1 from Mr. Gillespie to Mr. Hetrick.

Mr. Wall: Will you pass that for the moment?

Mr. Gilson: May I have the original agreement?

Mr. Wall: We have copies.

Mr. Gilson: I also ask for the deeds.

ISAAC MARSHALL, called as a witness on the part of the complainant, testifies as follows:

DIRECT EXAMINATION BY MR. GILSON:

Q. In May, 1925, what office did you hold in the Coast Holding Corporation? A. Treasurer.

Q. And at that time you were an officer of the Eastern Parkway & Bedford Avenue Corporation? A. Yes, sir.

Q. What office did you hold in that corporation? A. Treasurer.

Isaac Marshall. Called by Complainant. Cross.

CROSS EXAMINATION BY MR. HAMILL:

Q. The Eastern Parkway & Bedford Avenue Corporation is a New York Corporation? A. A New York corporation; yes, sir.

Mr. Wall: Here is the original agreement. This deed is produced from the possession of Central Union Trust Company, and they have prepared a careful copy of it.

Mr. Hamill: I offer in evidence letter from S. H. Gillespie, executor, to Mayor C. E. F. Hetrick, dated April 1, 1925.

(Marked Exhibit C-12.)

Mr. Gilson: I offer in evidence deed from Samuel H. Gillespie, executor and trustee under the last will and testament of James A. Bradley, deceased, to Eastern Parkway-Bedford Corporation, dated May 8, 1925; recorded May 9, 1925, in book 1297 of Deeds of Monmouth County, on pages 43, etc.; and it is admitted that this deed describes the three tracts covered by the original option to the Bradley Hotels System.

Mr. Wall: I do not know that. Why don't they speak for themselves?

Mr. Gilson: It is admitted in your answer but it is not admitted in the others, that this deed conveys that property.

Mr. Hamill: We admit the description of the property.

The Court: You admit the description of the property?

Mr. Wall: We admit that when he speaks of certain property by metes and bounds or however he speaks of it, that that is the property that the Eastern Parkway-Bedford Ave-

nue Corporation bought from Gillespie. There are three parcels.

Mr. Hamill: We admit in our answer that the property described in paragraph 10 is the property under discussion. That is all we can admit.

(Deed is marked Exhibit C-13.)

Mr. Gilson: Now I offer in evidence deed from Eastern Parkway-Bedford Avenue Corporation to Coast Holding Corporation, dated May 12, 1925; recorded in book 1297 of deeds for Monmouth County, pages 187, etc., May 20, 1925.

The Court: Is it admitted that the property described in this deed is the same property described in the deed from Gillespie to the Eastern Parkway-Bedford Avenue Corporation?

Mr. Wall: Yes, sir.

(Marked Exhibit C-14.)

Mr. Gilson: Now I offer in evidence agreement dated May , 1925, between C. E. F. Hetrick and Coast Holding Corporation, signed by C. E. F. Hetrick and Coast Holding Corporation by C. E. F. Hetrick, president, and attested by I. Marshall, treasurer.

(Marked Exhibit C-15.)

Complainant rests.

DEFENDANTS' CASE.

CLARENCE E. F. HETRICK, one of the defendants, sworn as a witness in his own behalf, testifies as follows:

DIRECT EXAMINATION BY MR. HAMILL:

Q. You reside in Asbury Park? A. Yes.

Q. You are Mayor of Asbury Park? A. Yes.

Q. And have been for a number of years? A. Yes.

Q. That is, you were mayor of Asbury Park at the time when the Bradley Hotels System was formed and before that? A. Yes.

Q. How long have you been Mayor of Asbury Park? A. Fourteeen years.

Q. Will you tell us how you came to be interested in the Bradley Hotels System, Incorporated? A. For a number of years I have been endeavoring from a civic standpoint to preserve the ocean front that Mr. Bradley had held title to, for the purpose, I thought, and as other men in Asbury Park saw it, for the proper development of the property for the benefit of Asbury Park. Certain projects had been planned at various times after Mr. Bradley's death, in which I had been interested and in which I was trying to engage the co-operation of the business men of Asbury Park, but through various jealousies which came up I was not successful entirely in developing these particular plots which I thought was necessary for the proper working of Asbury Park. Out of one of them had come the Berkley-Carteret, and I was hopeful that the other parcels could be developed with buildings of a similar character and similar type. One company

had failed to carry through after moneys had been subscribed. Those moneys were returned to the various stockholders. I was president of that first corporation.

Q. That was the Bradley Land Corporation? A. That was the Bradley Land Corporation.

Q. That project did not go through and the money was returned to the subscribers? A. Yes.

Q. That included the property in question in this case and also another square block and also another half block of property? A. That is true.

Q. Well, after the Bradley Land Corporation had given up any effort or hope to develop the property and the money was all returned to the subscribers, then what happened? A. Mr. Gillespie occupied the position of sole executor of the Bradley Estate, and these were among his properties, and it was necessary for himself, or someone assisting him, to endeavor to handle these properties in a proper way. I mean by that, that the land could have been sold piecemeal, in small plots and the very future of Asbury Park be very seriously affected, as we saw it; whereas if a proper apartment hotel or hotels with housing conditions could be worked out, Asbury Park and that community would be tremendously benefited.

Q. Right there, how did you meet the Reids? A. After the failure of the Bradley Land and the return of the money, by a letter to me, I had the option from Mr. Gillespie to continue with my work for the development of the property. Mr. Winckler, a fellow commissioner of Asbury Park, came to me and said: "Mayor, I have a gentleman who I think is interested in the development of this property of Bradley's, as you have outlined it, and I would like to have you meet him." So I met Mr.

Walter Reid, Jr., and Mr. Reid expressed the opinion that he and his brother could arrange a promotional fund which would promote this proposition along the lines I outlined to Mr. Reid. We looked at the property and then at a subsequent date held a meeting in Newark, and it was the thought of Mr. Reid—

Q. (Interrupting) Who was at that meeting? A. Well, at that meeting, my remembrance is that Mr. Reid held this meeting, if I recall rightly, either in the Newark Athletic Club or in the offices of Judge Smith. I cannot remember exactly who attended the first meeting, but I think there was a Mr. Soria; I think Mr. Corbett McCarthy, Mr. Walter Reid; I think Mr. Herbert Reid, Mr. Britwood. There may have been possibly one or two others. Mr. Reid or the two Reid Brothers had arranged a promotional fund of $8,000 or $10,000, to which certain amounts were subscribed, and it was then decided that a company would be formed, that they would take over this property, endeavor to develope it along the lines which I had in mind and which Mr. Gillespie had been interested in from the standpoint of Asbury Park.

Q. That is, putting up the big hotels? A. Putting up big hotels of the type of apartment hotels. The corporation was afterwards organized, I think, under the laws of Delaware, by Judge Smith, and an organization effected. I was delegated to go to Mr. Gillespie and have an optional contract drawn upon certain terms and conditions. That optional contract, to make it brief, was drawn by Mr. Gillespie. The company passed upon it and gave to me or sent to me $5,000 as the first payment of the optional contract, or whatever it might be called.

Q. Where is that first optional contract? A. I am not sure whether I have it among the papers or whether I have not. The reason I say that is the contract came back and there was some—

Q. Came back to whom? A. From Mr. Gillespie, and there were some changes and I think it was returned to him. Now, whether it came back to me or not I don't know. I have a contract there, but I am not sure that that is the original contract.

Mr. Gilson: May I interrupt? Mr. Lane has just found among his papers the original assignment which describes the option. I never even saw this assignment until this minute. I would like to put this in.

The Court: I was looking for the original option, if you can find it.

Mr. Gilson: It describes the property and refers to the option.

By Mr. Hamill:

Q. The option was obtained from Mr. Gillespie on the payment of $5,000? A. Yes, sir.

Q. From the company, which money you carried to Mr. Gillespie as agent of the company? A. I presume that I carried it to him in the form of checks or whatever was necessary.

Q. Then what stock was issued? A. The stock issuance originally was to have been upon a basis of one-ninth shares, four-ninths to be issued and the balance was to be held in the treasury and allocated to people as designated by the holders of the other four-ninths. Afterwards that plan was changed and the plan then evolved was 100,000 shares of no par value stock, of which 49,000 shares, if my remembrance is correct, was allocated to various members

of the board of directors. I was to receive 3,400 shares. The rest are divided and set aside in my name—1,700 and 3,400—those shares were to be utilized as new men might be elected to the board of directors, but in the case of H. H. Clark, only 1,400 shares were set aside to him.

Q. These 3,400 shares were the ones originally held by you for that purpose? A. Yes—the 1,700 and the 3,400—some received 1,700; some received 3,400. I received 3,400 if I remember rightly. I did not receive the certificates, as Judge Smith has said. They were not issued.

Q. Were any certificates ever issued? A. Not to my knowledge.

Q. Well, then, the company went on doing business. Tell us something about that. A. The board of directors had frequent meetings. It was a big project. We invited various architects to proceed in the preparation of plans, and you will see in the prospectus there the various schemes that were proposed, one by Warren & Whittemore, of New York; one by Jordan Green of Newark. Mr. Jordan Green had been the architect, if I remember rightly, of the Newark Athletic Club. I think he submitted sketches covering the three blocks and was at frequent meetings with us. We endeavored at the same time to sell a certain amount of preferred stock along lines agreed upon and outlined. These meetings were held quite frequently, and from time to time, as the option would come due, it was renewed.

Q. Who sold this preferred stock? A. Various individuals sold preferred stock. I sold a great deal of preferred stock. I think Mr. Herbert Reid sold some. Mr. Britwood sold some. Mr. Holden possibly sold some.

Q. Did the company pay you a commission for selling the stock? A. No commission.

Q. This option, you say, expired and had to be renewed? A. I think that took place, by the previous testimony, five times, if I recall. The final option expired November 1, 1924.

Q. Who paid for the renewals? A. The company paid for those renewals. I carried the money as messenger to Mr. Gillespie.

Q. The company, as a matter of fact, got the options? A. Yes.

By the Court:

Q. The option was in your name? A. The original option was in my name. I understood the option was taken in my name in order that I might sell it to the corporation and the proper issuance of stock take place under it, if I was correctly informed; otherwise the option would have been directly to the Bradley Hotels System.

By Mr. Hamill:

Q. When was the last time the option was renewed? A. The last time it was renewed?

Q. Yes. A. As set forth, I think September 1, 1924.

Q. August 28, was it not? A. Whatever it was.

Q. Was there a meeting before that? A. There were various meetings.

Q. Was there a meeting of the corporation called at that time to consider the question of the option? A. Yes; to consider the question of the option.

Q. Well, what took place at that meeting? A. Various discussions took place as to the renewal of the option, as to the possible abandonment of the

general project, and as to the sale of the property—just as has been outlined.

Q. Outlined by Judge Smith? A. Yes.

Q. Proceed. A. That discussion, of course, at that time, led nowhere except to the renewal of the option. That was the object of the meeting and that was a necessity because the option would expire within a couple of days and something must be done to keep it alive for the proposition, and everything was being done, as far as I myself was concerned, to do that, to keep that property intact, and to keep the life in the proposition. I had never abandoned my original idea of what was necessary as a civic development for the necessities of Asbury Park.

Q. Which, I think, was that the hotel project would still be successful eventually? A. It was my hope that it would be; yes, sir.

By the Court:

Q. Were these other gentlemen who were interested with you in the corporation, interested in the development of Asbury Park, or were they interested in a scheme to make some money? A. Well, I presume they were in the scheme possibly to make money. That is a natural bent.

By Mr. Hamill:

Q. Now, then, as I understand it, they made a payment of $5,000 and deputized Judge Smith and yourself to have the option renewed, and you did have it renewed? A. You can readily understand that these renewals of this option were somewhat embarrassing to the executor of the estate of James A. Bradley, who desired to close that estate, and it

was not so easy for me to go to Mr. Gillespie constantly asking for these renewals. He gave them, but towards the last it became very embarassing and rather hard for me to negotiate these renewals because Mr. Gillespie, representing an estate, had the desire to close rather than to prolong it.

Q. Well, then, did you ever make any promise to Judge Smith that if the company would allow the option to lapse, that you would have it transferred to another company and that you would take care of those who had subscribed money and who had either put in money or subscribed money to the proposition? A. I did not. Judge Smith and Mr. Reid must have misunderstood.

Q. What did you say? A. I would say and always did say, and always acted in accord, that I would endeavor, I would try, I would do everything in my power, to consummate the plans that I had been working on, which I had outlined for the development of this property. That was my endeavor. It was my earnest endeavor and that today is my endeavor.

BY THE COURT:

Q. Do you recall the discussion at the meeting of August 28, 1924, when the option was about to expire on September 1, just before the last renewal, that some of the stockholders or some of the directors were very anxious to have your company exercise the option and take over the property and then resell it and that you were opposed to that? A. I always opposed that.

Q. Was that discussed at that meeting? A. It was discussed at various meetings.

Q. Do you recall at that meeting? A. I recall at that meeting; yes, sir.

C. E. F. Hetrick. Called by Defendants. Direct.

Q. Can you tell us just what the discussion was, particularly what you said about it? A. I contended that if proper work was put into the project, that it could be finally financed. I also contended that we must arrange for what I considered the one great need, that is, the money that was necessary to purchase the property, and I endeavored in various ways to secure from members of the board moneys for that purpose. I approached both Colonel McAlpin and Mr. H. H. Clark. Mr. Clark had purchased $10,000 worth of preferred stock and had paid for it. I approached Mr. Clark and Colonel McAlpin to act upon that need of the corporation and try to secure the money from the bank and accept as collateral the title to the property with proper reversionary clause, if it was necessary, to protect the rest of the directors and stockholders.

Colonel McAlpin stated that his agreements with his firm would not permit him, nor could Mr. Clark act. I then asked Mr. Clark to advance me the money to take over the property and himself accept it as collateral for the future development. He would not agree to that. As a last resort, on October 28, two days before the option expired, I wired Mr. Clark asking him to assist me with $10,000 or to assist the company with $10,000, so that I could once again go to Mr. Gillespie and ask him for an extension of this option, the company having, as Judge Smith stated, less than $1,000 or about $1,000 in its treasury. I could not go again to Mr. Gillespie without money. I approached Mr. Clark. I approached Colonel McAlpin. I approached Mr. Britwood. I even went so far as to go to Mr. Watson, president of and ask him if he or the bank would—I said: "Will you accept the notes of the corporation, endorsed by Clark, Mc-

Alpin and one or two others and give us the money necessary to buy this property, to pay this option and take a deed for it and hold it as collateral?" Mr. Watson's reply was: "I am sure that our board would not consider it".

I could do nothing further. The optional period came on November 1, 1924. I had no money, and the company had no money, therefore the option was permitted to lapse. My experience with property would have taught me the impossibility of my saying definitely to any board of directors or to any gentleman that I would positively guarantee to take care of it and sell it. I had already appealed to the people of Asbury Park, begging for subscriptions to a company; I had seen that company which I created and which I had received subscriptions for four hundred and some odd thousand dollars and the money had to be returned because of internal jealousies; I had gone through that; I had gone through that trouble and I knew or thought I knew that I could not turn to anybody more than I had done to get money to carry along this company, and what worried me was the possibility that the moneys that had been paid into the treasury by innocent stockholders for the purchase of stock—

BY THE COURT:

Q. You wanted them to be protected if possible? A. Absolutely.

Q. (Showing witness) Is this the telegram that you received from Mr. Clark when you asked him for $10,000 to keep the option alive? A. That is the telegram. Here is my telegram to Clark. That was October 28th.

Q. This is a copy of the telegram you sent Mr. Clark? A. Yes.

Q. And this (indicating) in his answer? A. Yes.

Mr. Hamill: I offer these in evidence.

(Copy of telegram from Mr. Hetrick to Mr. Clark is marked Exhibit D-2. Telegram from Mr. Clark to Mr. Hetrick is marked Exhibit D-3).

Q. In this telegram Mr. Clark says: "Let the Colonel put up $10,000 for a change". Whom did he mean by the "Colonel"? A. Well, I should say that he referred to Colonel McAlpin.

Q. Did you have in mind any particular corporation to which that property could be sold at that time? A. I did not.

Q. Did you have in mind on August 28th, at the time of this meeting that has been testified to, any corporation to which that property could be sold? A. I did not.

Q. Do you remember having a conversation afterwards with Judge Smith? A. I remember a meeting with Judge Smith in, I think it was, in Mr. Herbert Reid's office, but I could not remember the time. It might have been long after.

Q. Did you have any meeting in Asbury Park with Judge Smith? A. About that time, on the expiration of the option, just as he stated.

Q. Did you make any proposition then to him that you would agree to sell the property and reimburse those who had put money into the proposition? A. I did not, because my experience in the proposition would not have warranted me in doing it.

Q. How long after November 1 was it that the property was taken over by the Eastern Parkway-Bedford Avenue Corporation? A. Well, some time

in April, 1925, or May, whatever the dates are that have been testified to.

Q. Tell us all that you know about that transfer, so far as your connection with it is concerned? A. From the time of November 1st until that time, I sought many different people with the idea of being able to handle this property and so working it that I could take care of the stockholders who had put in something like $35,000 or $36,000. That was the thing uppermost in my mind to the exclusion of everything else.

Q. Why was that uppermost in your mind? A. Because I was Mayor of the City of Asbury Park. I was president of the Board of Commerce. I had brought that property to the attention of people all through the city of Asbury Park time and time again.

Q. Was there any legal obligation? A. There was no legal obligation at all, but I felt I must endeavor to protect these people if I could.

Q. What do you know of the transfer of the property to the Brooklyn corporation? A. Well, going from New York home one afternoon I met Mr. Marshall on the train.

Q. That was about when? A. I should say in March or April.

Q. 1925? A. 1925. We went into conversation regarding land on Deal Lake, which were also a part of the Bradley Estate. Mr. Marshall told me that—I had formerly held an option on this but I had relinquished that option, and Mr. Marshall told me he was negotiating, as I remember, for this. We then came to the question of these lots in which I had been operating or working with the Bradley Hotels System, and I was reluctantly forced to confess that I was fearful we would not be able to go

through with the project. Mr. Marshall then expressed the opinion that he might be able to raise the money to handle these lands, and out of that developed my going to Mr. Gillespie and talking with him and finally putting them in touch with each other—Mr. Marshall with Mr. Gillespie, and from that they worked out the plan of sale of these lands, to the company in which they took title.

Q. Was the title conveyed directly to the Eastern Parkway-Bedford Avenue Corporation? A. I do not know, only what has been testified to here.

Q. Do you know anything about the transfer of that property? A. No; I do not.

Q. Did you have anything to do with making the transfer? A. Not with the transfer to the Eastern Parkway nor to anybody, back and forth, as the letter indicates that has been filed here.

Q. Did you receive any compensation for that transfer? A. I got no compensation and I never received any commission from the Bradley Estate; I never received any commission from anybody directly or indirecly from this property. In other words, it cost me money.

Q. Were you an officer of the Eastern Parkway-Bedford Avenue Corporation? A. No, sir.

Q. Had you known Mr. Marshall before you met him on the train? A. Oh, yes; I knew Mr. Marshall before.

By the Court:

Q. Were you a stockholder in the Eastern-Parkway-Bedford Avenue Corporation? A. No.

By Mr. Hamill:

Q. Then afterwards the Coast Holding Corporation was formed, as I understand it? A. Yes; I

heard something about it, that I was one of the organizers, which I did not know.

Q. Were you an organizer of that company? A. I was, according to the testimony—

Q. Did you promote that corporation, the Coast Holding Company? A. No; I did not promote it.

Q. Who did, do you know? A. I presume Mr. Marshall and Mr. Pettit or whoever was connected with it. I should say that possibly I was a part of the promotion, because I am one of the first stockholders as outlined in the testimony, although I had forgotten that even.

Q. Did you promote it in the sense that you caused it to be organized? A. No.

BY THE COURT:

Q. Why was it organized? A. Well, Judge, I cannot answer in any other way than has been testified to here. I think Mr. Wall, in his opening statement, said that it had been organized for the purpose of taking over these particular lands in the state of New Jersey.

Q. It was a Delaware corporation, was it? A. I think it was a New York corporation.

Q. The Coast Holding Company? A. The Coast Holding was New York or New Jersey.

Mr. Wall: New Jersey.

Q. Do you recall any talk or any consideration given to the advisability of a New Jersey or new corporation taking over the title to this land instead of leaving the land with the Eastern Parkway-Bedford Avenue Corporation? A. Only the probability that—

C. E. F. Hetrick. Called by Defendants. Direct.

Q. No probabilities—what do you recall about it? A. Judge, I cannot recall.

Q. You were an officer? A. Yes; I was one of the organizers.

Q. You were an officer after that, too? A. I became president, but the only idea was—the underlying idea which was always in my mind was the development of these lands, the plan I have outlined, I have never departed from that plan.

Q. But the Eastern Parkway-Bedford Avenue Corporation was not a hotel building company, was it? A. I don't know what it is.

Q. You negotiated the sale to the Eastern Parkway-Bedford Avenue Corporation; at least you acted as intermediary between it and Mr. Gillespie? A. No; I was the intermediary between Mr. Marshall and Mr. Gillespie.

Q. They were buying for the Eastern Parkway-Bedford Avenue Corporation? A. They were buying for the Eastern Parkway.

Q. You knew that? A. I did not know the name of the corporation.

Q. You were interested at that time solely in putting up hotels? A. Yes.

Q. Didn't you try to find out if the Eastern Parkway-Bedford Avenue Corporation was buying the land to put up hotels? A. No; I did not try to.

Q. How did you know they would not cut this property up into building lots? A. I was interested in getting the money to take care of these men; I was interested in getting enough money out of it myself to take care of these stockholders of the old Bradley Hotels System.

Q. Was there any agreement on Mr. Marshall's part? A. The agreement that has been testified to, that is, with the Coast Holding Company; yes.

C. E. F. Hetrick. Called by Defendants. Direct.

Q. Did you have any agreement with the Eastern Parkway-Bedford Avenue Corporation or Mr. Marshall that you were to get enough out of it to take care of stockholders of the Bradley Hotels System? A. No, sir; I did not know the Eastern Parkway.

Q. The difficulty I have in mind is this: Here was a corporation about which you apparently knew nothing at all; you allowed it to acquire title to this property in Asbury Park, and nothing was done to insure that you were to have the stockholders of the Bradley Hotels System taken care of, or that this property was not to be used for speculative purposes, cut up into building lots? A. No; I could not control the operation of that if other men would put up the money. I could impress my views.

Q. You were not interested in selling the property or seeing anybody purchase that property for any purpose except the purpose which you had in mind when you had been struggling with the option? A. When I discussed with Mr. Marshall the proposition with him, I discussed it with him in a personal sense that I wanted to protect these stockholders, and any agreement that I would have had, if the Coast Holding Company has not been formed, would have been with Mr. Marshall.

Q. Was it understood—did you understand that the Coast Holding Company was to be incorporated right away and title turned over from the Eastern Parkway-Bedford Avenue Corporation to the Coast Holding Company? A. I did not know anything about the closing of that deal; I did not know anythink about the preparation of the deed and I did not know that this transaction would be managed by Larkin, Rathbone & Perry.

C. E. F. Hetrick. Called by Defendants. Direct.

BY MR. HAMILL:

Q. Then, afterwards, the Coast Holding Corporation was formed. How did they come to be formed, so far as you know? A. It was formed to take over this particular property in New Jersey and handle it.

Q. And you were made president of it? A. I was made president of that corporation.

Q. Then, after you were made president of that, what did you do with reference to this project; what did you say to the company with reference to this money owing to the subscribers of the Bradley Hotels System? A. I never stopped saying something until I got that agreement.

Q. That is, you got them to make this agreement? A. That was the uppermost question with them.

Q. What reason did you give to them that they should make that agreement? A. That I had a moral—in my sense—a moral obligation to look after these people who had put up $30,000 or $35,000.

Q. Did you say anything else to them? Do you know what induced them to enter into it? A. Only on the question that it would—these properties are of interest to the city of Asbury Park and to its citizens. Naturally it would be advantageous to the handling of the property if there could be no cloud on it from the standpoint of losses to the stockholders who had subscribed from one share at $100, up to $10,000. It was really to have everybody satisfied. It was good business. Even if there wasn't any moral obligation, it was good business for Mr. Marshall and Mr. Pettit to agree with me that out of the first profit accruing after the mortgages and expenses were met, if there were any such profits, to take care of these innocent stockholders.

C. E. F. Hetrick. Called by Defendants. Direct.

Q. Now, in the Bradley Hotels System, Incorporated, did you have any more power than any other director? A. I did not know that I had any. I would say no.

Q. You were not especially clothed with any more power? A. No.

By Mr. Wall:

Q. Did Mr. Marshall say anything to you about getting any letter from Mr. Gillespie to show that there were no entanglements and options or anything else? A. He insisted upon such a letter. That letter was made a part—

Q. I show you a letter signed by Mr. Gillespie dated April 1st, 1925. Is that the letter? A. I would say yes.

Q. You know his signature? A. Yes; that is Mr. Gillespie's signature.

Mr. Wall: I will read this letter:

"Estate of James A. Bradley.
April 1, 1925.

Mr. C. E. F. Hetrick:

My dear Mayor:

Referring to letter of this date in which I agree to sell three parcels of land described as follows: (describing the parcels) for $345,000, beg to advise you that the $30,000 which was paid at various times on account of the option for this same property to the Bradley Lands Corporation, I consider as forfeited under the terms of the agreement and will retain same.

S. S. Gillespie."

C. E. F. Hetrick. Called by Defendants. Direct.

Q. I call your attention to the fact that this letter says: "Bradley Lands Corporation." Did the Bradley Lands Corporation ever pay out $30,000 for any option? A. No; they were out of business long before that.

By the Court:

Q. The question was: Had they paid any money on account of the option? A. No; they were out of business long before this.

By Mr. Wall:

Q. The Vice Chancellor does not want to know whether they went out of business. He wants to know whether they paid anything for the option? A. No.

Q. Do you say that the Bradley Lands Corporation referred to was intended to refer to the Bradley Hotels System or whatever the name is? A. Yes; absolutely.

Q. And you had had dealings with Gillespie when you were getting options for the old Bradley Lands, had you? A. Yes.

Q. You got this letter? A. Yes.

Mr. Wall: I offer this letter in evidence.
(Marked Exhibit D-4.)

Q. Did you make any agreement with Judge Smith that you were either to carry through your original idea of using this property for the hotel scheme, or failing that, you would sell the property before the expiration of the option? A. I did not. If the Judge got such an opinion, he misunderstood me.

C. E. F. Hetrick. Called by Defendants. Cross.

Q. Did you make any agreement with Mr. Reid that he and the other directors or persons interested in the corporation should stand aside and let the option go? A. No, sir.

Q. In order that you could, by your activity in association with other men, see that the debts of the corporation were paid? A. No, sir.

Q. That by arrangement with new purchasers you could take care of obligations of the company? A. My answer is no, sir. I had endeavored, as the testimony shows, to raise money to extend the option for the company.

Q. Did the illness of Mr. Reid's brother and the absence of Mr. Reid, the president, have anything to do, so far as you knew, with the loss of the option by expiration? A. No, sir.

Q. Why, when you were applying to Clark for aid, didn't you apply to Reid and Smith? A. Mr. Reid was in the hospital seriously ill.

Q. Why didn't you apply to Judge Smith? A. Why should I? He was as much interested as I was. He should have been.

Q. What was it you needed—encouragement or money? A. I needed money.

Q. And Clark had shown the largest willingness of anyone up to that date to invest in the company? A. $10,000.

Q. Nobody had as much stock as he? A. No, sir.

CROSS EXAMINATION BY MR. LANE:

Q. Did you invest any money in the company, in the Hotels Company? A. No, sir.

Q. You desired that this property should be developed under a certain plan, did you not? A. Yes, sir.

Q. And you never departed from that view? A. No, sir.

Q. And you have it yet? A. No, sir; not entirely—

Mr. Wall: May I ask Mr. Lane whom he represents?

Mr. Lane: I represent the Receiver. Mr. Gilson has asked me to conduct this cross examination.

Q. I direct your attention to letter of September 29, 1924, Exhibit C-9, from Mr. Reid to yourself, and I direct your attention to this paragraph: "My understanding is that the option obtained from Mr. Gillespie expires November 1. Because of this fact I feel it imperative that a meeting of the directors be called at once, and if nothing definite regarding the financing of the hotels has been accomplished, that the matter of disposing of the land be taken up at once and definitely settled at the earliest possible moment, whether this might be brought about through the board of directors of the Hotels Company or through the agency of real estate operators along the shore.

We all understand that this land can be sold at a substantial profit and it would seem that we would all be chargeable with neglect by the stockholders if we did not take advantage of this opportunity to protect their interest and it would seem that the only way in which we can protect their interest would be through the disposal of the land."

I also direct your attention to your letter of September 28, to Mr. Clark in which you say:

"The appraisal value is four times the cost, and it seems a pity to have to lose the property and to lose the money already paid."

You told him that the appraisal value of that property, the value of that property, was four times the cost? A. I did.

Q. At that time? A. Yes, sir.

Q. And after the receipt of that letter from Mr. Reid, was there a meeting between you and Mr. Reid and Mr. Smith? A. I recollect that there was such a meeting, but I do not recollect the date.

Q. At any rate there was a meeting in which the discussion was as to the sale of this property for purposes other than to keep it together, and that proposition you opposed because it was not in accordance with your plan; isn't that so? A. No; that is not so.

Q. Was there a discussion between you and Mr. Reid and Mr. Smith with respect to the disposition of the property? A. There was a discussion in the board of directors.

Q. There was a meeting of the board of directors held? A. Yes.

Q. At which Mr. Reed and Mr. Smith were present? A. Yes.

Q. And you opposed the sale of the property? A. Yes.

Q. Because it was against your views? A. So did Judge Smith.

Q. Judge Smith opposed it with you? A. Yes.

Q. Judge Smith did not reside in Asbury Park, did he? A. No.

Q. He had no interest in Asbury Park, did he? A. He should have.

Q. Well, now, he had no sentimental interest in the city of Asbury Park? A. He was up and down.

Q. He was in it for money, was he not? A. The Judge will have to speak for himself.

Q. You don't think he was? What do you think he was in it for? A. He was in it for profit. Naturally everybody would.

Q. Certainly, and you opposed any program which looked towards realization on this option which did not agree with the development of the property in line with your desires, didn't you? That is true, isn't it? A. Yes; I was the only director that could opposed it.

Q. Although you believed at that time that the property for other purposes was worth four times the contract price; is that right? A. Yes.

Q. You realized, didn't you, that you had a duty to perform with respect to the creditors and stockholders of this company? A. I am the only one that did realize it.

Q. I asked you whether you realized that you had a duty to perform with respect to the creditors and stockholders of this company? A. I did; yes.

Q. You did? A. Yes.

Q. You thought your duty towards the creditors and stockholders of this company was being performed when you took a stand which prevented the sale of that property for more than enough to pay everything that had been invested in it, because it did not agree with your views of how the property should be developed; is that right? A. I was only one of thirteen directors.

Q. Is that right? A. Yes; that is right.

Q. And you thought that that agreed with your duty to your stockholders and your creditors; is that right? A. Absolutely. May I say why?

Q. Your counsel will give you all the opportunity to do that. Now, how long a discussion was there at this meeting of the board of directors in which what should be done in order to save the creditors

and stockholders was taken up; how long did it take? A. I do not recall.

Q. It was a considerable length of time, considerable discussion? A. To which meeting do you refer?

Q. I am referring to the meeting at which you took the position that the property should not be sold for development purposes? A. These meetings of the board of directors, they sometimes lasted a couple of hours.

Q. I am talking about the one which I placed about the time of the letter of September 29th? A. In Mr. Reid's office?

Q. Yes, if there was one there. A. There was one there—Mr. Reid, Mr. Smith and myself. That was a very brief meeting.

Q. At that time was there any discussion as to the sale of the property for development purposes? A. Not that I recall.

Q. You did ask that you be given an opportunity to attempt to arrange to proceed along the original lines, didn't you? A. I did, many times.

Q. I am talking about September or October, 1924. A. That date has not been settled by anybody yet.

Q. Well, the fall of 1924. A. All right then.

Q. You did? A. I did at various times.

Q. When did you advise Mr. Reid or Mr. Smith or any of the other directors or stockholders of the company that you had failed in your efforts to dispose of the property or to arrange for the development of the property along the lines that you desired it to be developed? A. I was not under contract with the company and I did not—

Q. (Interrupting) When did you advise them? A. I did not advise them at all.

Q. So that you thought that having requested an opportunity before the sale of this property for purposes other than your idea of how it should be developed, and having secured time to do that thing, that no duty rested upon you to advise the stockholders or to notify anybody that you had failed; is that right? A. Of course it is not right.

Q. Then, what is right? You say you were given the time to do that and you say you did not notify them. I think you said that you thought it was not your duty? A. They had a little obligation themselves there, hadn't they?

Q. Didn't you think that you, the man who had made the request, were under some obligation to notify them? A. No, sir; I do not think I had any obligation to notify them.

Q. You do not think that you had? A. No; I do not think so.

Q. So that you allowed the time for exercising the option to go by without even notifying anybody that you had failed in doing the thing that you requested time to do; is that right?

Mr. Hamill: Objected to.
The Court: Objection sustained.

Q. You requested time to find out whether you could develop or secure the development along the lines that you thought it should be developed, didn't you? A. Yes; I have said that.

Q. That time was granted you, was it not? That is right, is it not? A. Not intentionally; it was not; they had nothing to offer in return for it, nothing to suggest.

Q. Does not Mr. Reid suggest, in his letter of September 29, that the property should be sold for

development purposes? A. Why, Mr. Reid suggested it from Baltimore and he says to me: "You do it."

Q. Does he not state to you that the thing should be done? A. Yes.

Q. That suggestion was brought to your attention, that is right, is it not? A. This suggestion was brought by letter to my attention by Mr. Reid.

Q. You thought the property was worth four times the contract price for development purposes? A. And Mr. Reid did too, and every director did, too.

Q. And nothing was done with reference to selling or disposing of it? A. Mr. Reid should have—

Q. Nothing was done in reference to it by anybody? A. By nobody.

Q. And it was not done—at least one of the reasons why it was not done was because you requested time to develop it in another way; isn't that right? A. Not at all.

Q. Then, I do not understand your testimony. A. Not in my judgment. It was not done because nobody wanted to do any work.

Q. You did request time? A. Yes.

Q. Didn't you? A. Yes, sir.

Q. And yet that had nothing to do with either you or any of the other directors taking any steps to realize the value of this property, four times as much as it cost? A. You say "any of the other directors".

Q. Yes. I mean you as one of the officers of the company, with knowledge upon your part that the president of the company, Mr. J. Herbert Reid, was not performing his duties—that is right, is it not? A. What is my power with reference to the president, if I am a director?

C. E. F. Hetrick. Called by Defendants. Cross.

Q. After that time had expired for the exercise of this option, when was it that you first, or did you ever communicate with any members of the directors of this company? A. Judge Smith just stated that he did not call any meeting of the company.

Q. Mayor Hetrick, I am not asking you what Judge Smith has stated. I am asking you did you ever communicate with any members of the board of directors of this company? A. I really don't know whether I communicated with them, talked to them individually or in any way; I cannot answer that.

Q. When did you tell them, or any of them, of this deal which subsequently took place by which the property got into the possession of the Eastern Parkway-Bedford Avenue Corporation and the Coast Holding Company? A. I think that my discussions came somewhere in September, 1925.

Q. Although the deal had taken place in May, 1925? A. Yes.

Q. And in that deal in May, 1925, you had done something looking toward the protection of the stockholders of this company? A. I really thought that I had performed a very laudable thing.

By the Court:

Q. Was there any newspaper publicity about the time of the purchase by the Eastern Parkway-Bedford Avenue Corporation and the Coast Holding Company? A. Yes.

By Mr. Lane:

Q. When the deal went through in May, 1925, as I understand it, you did something for the protection of the stockholders? A. I thought I had done a lot.

Q. You did not notify the stockholders, or any of them, as to what you had done? A. I had written various ones and told various ones.

Q. Did you notify Mr. Reid or Mr. Smith? A. I think I have in conversation with Judge Smith told him what had been done and he suggested that it should be properly signed.

Q. That what should be properly signed? A. This agreement. I think Judge Smith testified that it had not been properly signed.

Q. When was that conversation? A. Some time in the fall of 1925—September or October, somewhere in there.

Q. I am talking about prior to the receipt by you of this letter, at which you took umbrage? A. I think it was about that time.

Q. It was about the time of the receipt of that letter, was it not? A. I think so, because Judge Smith then communicated with me similarly.

Q. Prior to the receipt of that letter of September 8, 1926, from Mr. Reid to you, you had not told Mr. Reid or Mr. Smith anything about this arrangement that you had made for the protection of the stockholders of this company, had you? A. I do not think I told Mr. Reid. I think I told Judge Smith, but I am not quite clear in that.

Q. You received this letter of September 8, 1925, and you replied to it by letter of September 9, 1925? A. Yes.

Q. And I want you to look at your reply, please, and tell me why, on this date, if you had not made the agreement stated in the letter of September 8 from Mr. Reid to you, you took umbrage at the tone of Mr. Reid's letter, but did not question the facts? A. I took umbrage because I had gone through very, very severe suspense with reference to this whole proposition. The first Bradley Lands

Corporation had upset me tremendously when they failed to materialize in a proper way and the citizens of my town had failed to go through with the project as outlined, and so when I got into this and once more saw failure, it had me worried and I had worked so hard on the thing that when Mr. Reid wrote me this letter, it seemed to be rather putting the load on a little heavy, and I wrote, possibly a little stronger than I should have written, to Mr. Reid, but it seemed to me the load had been put upon my shoulders a little harder and a little stronger than was necessary, when Mr. Reid knew how I had striven, how I had worked, how I had done everything in my power to pull this proposition; and that letter of Herbert Reid's hurt, because Herbert Reid should have known and did know, just as Judge Smith and others knew, that I had given all my time and I had given all my knowledge in the fullest sense to the performance of this proposition and to the protection of every person who was directly or indirectly interested.

By the Court:

Q. That is an answer to part of Mr. Lane's question. A. Yes.

Q. The question is a double barrelled one. He said: Why, if you took offense at Mr. Reid's statement and the statement was not true, did you show your offense and did not tell him the statement was not true? A. Well, possibly that was an oversight.

By Mr. Lane:

Q. You think that the fact that you— A. (Interrupting) That I neglected to answer that charge was an oversight.

Q. So you think the fact that you felt this load was being put upon you, and that it was a matter of ingratitude and that you were so incensed that you wrote the type of letter that you did,—you think that it was an oversight that accounts for your not saying to Herbert Reid: "Reid, you are not telling the truth; I never made any such agreement. What are you talking about?" A. I really thought I conveyed that thought in this letter.

Q. Read that letter and tell me whether you can point to anything in that letter that remotely resembles that—any clause or word or phrase in it that remotely resembles that—any clause or word or phrase? A. (Reading) "Of all the officers and directors, including yourself as president, I was the only one connected with the Bradley Hotels System who worked and worried and endeavored to protect the interests of the persons who had invested money in the stock of that company."

That is pretty near an answer.

Q. Anything else? A. (Reading) "More than once by my own efforts I protected the stockholders interest and arranged for option renewals; and finally, after the option contract had been expired for months, I managed to interest people in the purchasing of the land and in the giving of an agreement that out of the first profits received from the land the cash paid into the treasury of the defunct Bradley Hotels System by purchasers of stock would be returned to such investing stockholders.

"It is gratifying for me to learn that after months and years you have finally been aroused to a conscious sense as to your duty as president and director of the Bradley Hotels System and that you are now giving some thought to the protection of the

innocent stockholders who purchased stock and made certain cash payments on account of or in full payment for the same. It would be entirely proper therefore for you to review the matter in the Court of Chancery, as you suggest."

I tried to answer him.

Q. You think that that is an answer to his statement: "As per our understanding with you, that by stepping aside the Bradley Company was permitting the sale of this land at a price that would guarantee to us the return of all expenses at the date of the sale, making possible a return to all our investors dollar for dollar the amount of their investment. It was a very definite understanding had with you in the presence of Judge Smith and others"? A. He was writing September 8, 1925—

Q. I show you a letter of September 16, 1925, Exhibit C-8, from Judge Smith to you and ask you whether you received that letter? A. I think I got that letter.

Q. Did you reply to that letter in any way? A. Not that I know of, although I saw him and talked with him in Asbury Park.

Q. Judge Smith in that letter refers to this Agreement which Mr. Reid in his letter, says existed between you, does he not? A. No, he did not refer to that other than has been filed here.

Q. Now, did you have any conversation with Judge Smith following the receipt of that letter by you? A. My remembrance is that I did. The Judge at that conference complimented me on what I had done on behalf of the stockholders.

Q. Do you remember that you told Judge Smith at that conference that it was understood, when you made the deal under which the property was subsequently sold, that the purchasers were going to repay the persons who had bought stock the

amount that they had paid? A. The amount of cash put up by stockholders; yes.

Q. You told Judge Smith that at that time? A. Yes, sir.

Q. Do you remember telling him at the same time that there had been an agreement prepared to that effect, but that the agreement had never been executed? A. But the agreement had been executed.

Q. I did not ask you that. I say: Do you remember telling Judge Smith, in September, 1925, that the agreement had not been executed? A. I do not remember that.

Q. Do you remember telling him that the agreement was going to go through, and do you remember Judge Smith telling you that it was advisable to have the agreement put in legal shape so that you and the rest of them would be in a position to give interested persons information as to the arrangement; do you remember that? A. I do not recall that.

Q. When was it that Judge Smith told you that the agreement ought to be put in legal form? A. I cannot recollect, unless it was at that time. Possibly it was at that time.

Q. Then had the agreement been put in legal form? A. Well, it is now. I do not recall the date when it was put in legal form.

Q. When was it put in legal form—the date of the agreement or at some time later? A. I do not know.

Q. The date of the agreement is May, 1925. A. The agreement with the Coast Holding Company?

Q. Yes. A. That is subsequent, is it not?

Q. As a matter of fact, the agreement was not executed until some time after September, 1925, was it? A. I cannot recollect.

Q. It was not a part of the original deal at all, was it? A. Just as I have stated. It reads—

Q. It was not a part of the original deal or any part of that deal, was it? A. I wish to give you any information that I have on this subject, but I cannot recall now the date of this agreement or when it was signed or anything.

BY THE COURT:

Q. Would you like to see the agreement? A. Yes; and whatever is the date on that, I will stand for it.

BY MR. LANE:

Q. I am not asking you to refresh your recollection from anything. I am asking you whether you remember the circumstances of the making of this deal. Was it made at the time of the original transaction or was it made later? A. It was made at the time of the original transaction. It was agreed to by Mr. Marshall and Mr. Pettit and myself. Whether it was then executed in form by the Coast Holding Company I cannot remember.

BY THE COURT:

Q. At the time or about the time when the Eastern Parkway Corporation agreed to take over the title, or after that—which one? A. I mean after that.

BY MR. LANE:

Q. Then it was after the Coast Holding Company had agreed to take the title? A. Yes.

Q. You represented the Eastern Parkway in negotiating— A. No; I did not. I represented Mr. Marshall.

Q. You represented the purchaser of the property? A. I represented Mr. Marshall, and who he took title in I cannot tell you.

Q. So far as you knew, Marshall was the purchaser of the property? A. Yes.

Q. And the agreement with Gillespie—the letter under which Mr. Gillespie fixed the terms of purchase was addressed to you personally? A. Yes, sir; because I was the one that had talked to him.

Q. Now, did you have a talk at the time you had these negotiations with reference to the purchase of this property from Gillespie—did you have a talk with him with respect to protecting the stockholders of the Bradley Hotels? A. Yes, sir.

Q. What was that talk? A. The talk was that I wished to do everything in the world, as I thought he did, to protect he stockholders, the persons who had paid cash into the so-called Bradley Hotels System.

Q. So that when you originally talked with Gillespie, at the instance of Marshall, following this incidental meeting with him, you talked about the protection of the stockholders of the Bradley Hotels? A. I did.

Q. And you talked with Marshall the same way, didn't you? A. Yes.

Q. In the very beginning? A. Yes.

Q. So that you told Marshall that the stockholders of the Bradley Hotels were to be protected in the beginning? A. I wanted to protect them—to try to protect them.

Q. And Marshall said he would? A. He agreed to go along with me to the best of his ability.

Q. In the very beginning? A. Certainly, whenever we discussed it—not the option draft proposition, but afterwards.

Q. But before you consummated your deal with Gillespie, or before your consummated the deal—before you got the terms of purchase from Gillespie for Marshall? A. Yes, because I was interested in it.

Q. You told Marshall, didn't you, all about the purchase of this property by the Bradley Hotels System, whatever the name of it, the amount of money that had been put into it? A. I am not sure that I told Mr. Marshall all the details of the Bradley Hotels System. I did tell him I did not think they would be able to carry out their plan. It looked very dubious. This was months afterwards. In fact, I knew they could not.

Q. I was wondering. A. I knew they could not.

Q. But they still had time to do it? A. They had no time to do it. This was months afterwards.

Q. What induced you to say to Marshall that you thought it looked dubious as to their being able to carry out their contract? A. It was my hope still to be able to get money to buy—to take care of this property, through the disposal of that property and get $30,000 to pay the stockholders. That was what I was interested in.

Q. You are talking about one thing and I am talking about another. A moment ago you were talking about one thing and I was talking about another. I was talking about what you told Marshall. You say that you told Marshall it looked very dubious that the Hotels Company could carry out their plans. When did you tell him that? A. Why, in March, and it was five months after the option had expired.

Q. So that you told him it was very, very dubious whether the Bradley Hotels Company could go through with their plan five months after the Bradley Systems had in fact defaulted? Do you mean that? A. Yes; I do. For one reason, I was still trying to impress Mr. Marshall that I wanted to be in a position to protect the stockholders of that company. That was all I was interested in. That was the uppermost question in my mind.

Q. You discussed with Mr. Marshall, didn't you, the fact that the Bradley Hotels System had that property under option? A. No; I was very careful of that. He knew that they had had it, but he did not know that it had been lapsed, or I might have lost Mr. Marshall.

Q. So that when you were dealing with Marshall you dealt with him as if the contract of the Bradley Hotels System had not yet lapsed? A. I did not mention it. I mentioned the fact that I was still interested in that property.

Q. So that you dealt with him with knowledge that he thought the contract of the Bradley Hotels Company was still is in existence; is that right? A. No; I won't say that. I don't know what he thought; I know what I thought.

Q. Then, I do not understand your statement that he knew that they had had an option but he did not know that it had been lapsed? A. He knew that they had a contract on it—everybody in the country knew it—by publication, by articles in the press, by propinquity.

Q. But he did not know it had lapsed? A. He did not know that it had lapsed, but I did know that it had lapsed.

Q. And you did not tell him that it had lapsed? A. Not at that present time; no, sir.

C. E. F. Hetrick. Called by Defendants. Cross.

Q. So that you made that a condition to get this agreement out of him that he would take care of the stockholders of the Bradley Hotels System? A. You may put it that way.

Q. I do not want to put it any way. A. Well, say "yes."

Q. Was there anything at that time reduced to writing? A. No, sir.

Q. You consulted with nobody of the Bradley Hotels System about it? A. Because that was out of business.

Q. You did not, did you? A. No, sir.

Q. When was it that Mr. Marshall finally discovered that the Bradley Hotels System's option had lapsed? A. Mr. Marshall will have to answer that.

Q. When was the first time that you knew that he had discovered that the Bradley Hotels option had lapsed? A. I don't think I ever knew that he had discovered it.

By the Court:

Q. Well, now— A. I do not think so. He probably discovered it in—

Q. You got a letter from Mr. Gillespie to yourself? A. Yes.

Q. You read it to Mr. Marshall. Mr. Marshall requested you to get it, didn't he? He insisted that you get it, didn't he? A. Well, that is the time.

By Mr. Lane:

Q. Are you sure you read the letter of April 1, 1925, Exhibit D-4, to Mr. Marshall? A. Well, I imagine that I did, because it was filed in the papers with the Coast Holding Company.

Q. Now, was there any other time that you talked to Judge Smith with respect to this agreement made between you and the Coast Holding Company, except prior to the conference which came about as a result of Judge Smith's letter of September 16, 1925, to you? A. I do not recall.

Q. Now, you testified, not in response to a question, but of your own volunteering, that Judge Smith had at some time or other told you that the agreement should be put in legal form. I want to know when that time was? A. I cannot remember unless it was that particular period of which we spoke.

Q. So that when Judge Smith told you that that agreement should be put in legal form, there must have been some discussion of its not being in legal form, at that time? A. He cited the question in his testimony here today. He cited that he called that to my attention. If that is true—and I have no reason to doubt the Judge's word—I must have taken it back and asked that that be done, because he said: "That is a very valuable paper you have here to protect the stockholders of the Bradley Hotels System."

Q. Do you remember that at the time you had your talk with Judge Smith you did not have any paper at all? A. Well, I think I had. I am not sure, so I will pass that question.

Q. Is it not your recollection that at the time you had that conversation with Judge Smith, that that was the first time you told Judge Smith anything about the agreement? A. It was probably the first time I had seen him

Q. It was probably the first time you told him? A. Yes; and probably the first time I saw him.

Q. Carrying your mind back to the fall of 1925, don't you think circumstances surrounding this

thing—don't you think that after you had this conversation with Judge Smith, you then went over to Mr. Marshall and had this agreement executed? A. No; I do not.

Q. Have you any recollection? A. My recollection is that I had it at that time. I won't be sure.

Q. Have you any recollection of the details or circumstances or surroundings of the execution of this agreement, when you signed it, or who was present, or anything concerning it—any feature of it—anything at all in your mind? A. I do not know whether I signed it in Mr. Marshall's office or in Larkin, Rathbone & Perry's office or my office, I cannot recollect. I was only too glad to get it and to get it filed away. That was my particular interest.

Q. Well, you are sure that there were not two agreements between you and the Coast Holding Company with respect to this matter? A. Not that I recollect.

Q. Do you recollect one way or the other? A. I say not that I recollect.

Q. Do you say you do not know whether there were two or not? A. I cannot recollect but this one.

Q. Do you know whether there was an agreement between you and Marshall before, which was in writing? A. I do not.

Q. For which this agreement with the Coast Holding Company was substituted? A. I don't know. I was only interested in getting a proper agreement to protect these stockholders.

Q. Is your recollection a blank as to whether there was such an agreement? A. I do not recollect any other agreement.

BY THE COURT:

Q. Was there any agreement between you and Mr. Marshall on the subject? A. No—none outside of this one that I know.

BY MR. LANE:

Q. Will you say that there was none such? A. I will say there was none, to my knowledge.

Q. The amount of money which was paid by the Eastern Parkway Corporation was some $300,000, was it? A. Whatever the consideration—I cannot tell you.

Q. Was it in fact three hundred and some odd thousand dollars, and the consideration which was paid by the Coast Holding Company was in excess of $700,000? Do you know what happened—who got the difference? A. What happened—who got the difference?

Q. Yes. A. As far as I am concerned it was the Eastern Parkway itself got the difference, whatever it was.

Q. Do you know who the persons were who got it? A. No, I do not. I am not a member of that company.

Q. You have no knowledge as to who constituted the Eastern Parkway Company? A. I had no idea. I have none today.

Q. You have no idea as to the conditions or what brought about the fixing of the price between the Eastern Parkway Company and the Coast Holding Company? A. Only that we could not buy the property from them for less than $745,000.

Q. You do not know why it is that you could not buy it for less than $745,000? A. Because they would not sell it to us for less than that.

Q. Who negotiated on their side? A. That is between their representatives and the Coast Holding Company.

Q. Who were they? A. Mr. Marshall and Mr. Pettit represented, I presume, the Eastern Parkway Corporation.

Q. Who represented the other side? A. They were the Coast Holding Company.

Q. Who? A. They are part of the Coast Holding; today they are a part of the Coast Holding—

BY THE COURT:

Q. When the Eastern Parkway Corporation agreed to transfer this title the Cost Holding Company, who handled the negotiations which resulted in the transfer? A. I don't know unless it was Mr. Muhleman.

Q. Did you have anything to do with it? A. I was president of the corporation.

Q. Did you have anything to do with the negotiations? A. Not with the negotiations.

Q. That is what we are trying to find out. Who handled the negotiations? Who dealt for the Coast Holding Company? Who represented the Eastern Parkway Corporation? A. I seem to be very dumb, but I am afraid I cannot give you that information. I cannot say whether that was bought in at the time I was a member of the original corporation. I found that out today. I did not even know I was a member. Mr. Maginnis was another, maybe he can tell you.

Q. You are clear in your mind that you had nothing to do with anything on behalf of the Coast Holding Company that led up to the transfer of the title to that company? A. I am clear as to that.

C. E. F. Hetrick. Called by Defendants. Cross.

BY MR. LANE:

Q. Do you know who did? A. Mr. Muhleman represented the Coast Holding Company and Mr. Muhleman is the secretary today—

Q. Is he a lawyer? A. He is a lawyer representing the Coast Holding Company.

Q. He represented both companies? A. He negotiated between them.

Q. He represented both companies? A. Yes.

Q. Now, I would like to know if he was the representative of the Coast Holding Corporation and the representative of the Eastern Parkway Corporation, whether or not it was the right hand dealing with the left? A. Well, I don't know how it would be the right hand dealing with the left. There is a corporation known as the Coast Holding Company, of which I was a member. There is a corporation known as the Eastern Parkway-Bedford Avenue Corporation of which I was not a member. Now, the Coast Holding Corporation bought this land from the Eastern Parkway Corporation.

BY THE COURT:

Q. That is very obvious. What we are trying to get at, if you can help us is to find out who represented the Coast Holding Company and who represented the Eastern Parkway Corporation in the negotiations that led up to the transfer of the title; who agreed on the $700,000 consideration? A. I was one of them that would agree upon it; I naturally would.

Q. Did you in fact agree on it? A. I would naturally agree upon it.

Q. Will you say whether you did actually? A. I did, yes, as a director and as a president.

Q. You knew that the Eastern Parkway Corporation had bought those lands for some three hundred thousand less than they sold them for, only a month or so before? A. That might be.

Q. Well, did you? A. Well, I know that I did.

By Mr. Lane:

Q. Four days before, was it not? A. I don't know the exact date.

Q. The fact is— A. (Interrupting) Certainly I knew that.

Q. What led you to pay $700,000 or more or agree on behalf of your corporation to pay $700,000 or more?

Mr. Wall: I object. What possible materiality has that?

The Court: I imagine the reason is to tie the Coast Holding Corporation up to the charge in the bill of complaint about information and knowledge. Objection overruled.

A. Because I would have done anything if I had a chance to get hold of this property to get enough out of it to take care of the stockholders of the old Bradley Hotels Company. That is the whole thing in a nut shell. That was the underlying thought.

Q. So that the reason why you had agreed to let the Coast Holding Corporation pay $745,000 for what the Eastern Parkway Corporation had bought for only $300,000 a few days before, was that you might protect the stockholders of the late Bradley Hotels System; is that right? A. That is right.

(At this point adjournment is taken to May 7, 1928, at 9:55 A. M.)

C. E. F. Hetrick. Called by Defendants. Cross.

IN CHANCERY OF NEW JERSEY.

Between
PETER BENTLEY, Receiver of
BRADLEY HOTELS SYSTEM, INC.,
Complainant,
and
CLARENCE E. F. HETRICK, *et al.*,
Defendants.
} On Bill, &c.

Transcript of shorthand notes of testimony taken pursuant to adjournment on final hearing in the above stated cause, at Chancery Chambers, Jersey City, May 7, 1928, before His Honor, James F. Fielder, Vice Chancellor.

Appearances as heretofore.

CLARENCE E. F. HETRICK, one of the defendants, already sworn in his own behalf, resumes the stand.

CROSS EXAMINATION (continued) BY MR. LANE:

Q. Do you remember telling Judge Smith that you had an agreement prepared, but not executed, whereby the purchasers of the property were going to pay off the stockholders' subscriptions of the Bradley Company out of the first profits realized in the real estate? A. The cash that had been paid in upon those subscriptions.

Q. Do you remember that you told Judge Smith that you had such an agreement but not executed? A. I so testified, I think.

Q. Do you remember it now? A. I do.

Q. You did tell him that? A. I will answer the question that I said I had such an agreement. Whether I told him that it was executed or not, I do not recall, but I told him that I had such an agreement and my remembrance is that I said I was not sure whether it was signed and he suggested that it should be signed.

Q. You testified on examination before the Receiver, did you not? A. Yes, sir.

Q. Do you remember testifying there as follows:

"Question. Is it not a fact that when negotiations were had to take this property over, Mr. Gillespie did not want to let the property go to somebody else unless he was assured the original investors of the Bradley Hotels System were paid. Don't you remember that? Answer. I know all about it.

"Question. What about it? Answer. I know all about it. I brought the question up to Mr. Gillespie.

"Question. What did he say? Answer. And he said that they should be taken care of in every way, shape or form".

Now, do you remember that testimony? A. Yes, sir.

Q. It was true? A. Yes, sir.

Q. What was it that Gillespie said with reference to the protection of the stockholders of the Bradley Company? A. I brought up the question that I wanted to protect the money that had been put in by stockholders, to Mr. Gillespie, and it was upon that, with that assurance, that feeling, that he was willing to sell or consider the sale of the property through me. He did not want to sell all of the property even then.

C. E. F. Hetrick. Called by Defendants. Cross.

Q. So that it was a consideration moving to him, that in his consenting to the sale of this property, that the stockholders of the Bradley Hotel Company should be taken care of?

Mr. Hamill: Objected to.

The Court: Objection sustained.

Q. How many times did you speak to Mr. Gillespie prior to the sale of this property through you about the protection of the stockholders of the Bradley Hotels Company, or whatever the name was? A. My remembrance is that I only spoke to him once.

Q. I show you a newspaper report of May 14, Asbury Park Evening Press, which purports to contain an interview with you. Will you read it, if you are not familiar with it, and tell me whether you did give that interview to the press and made the statement contained in that newspaper? A. Yes, sir.

Q. And those statements were correct? A. Yes, sir.

Mr. Lane: I offer the paper in evidence.

Mr. Hamill: No objection.

(Marked Exhibit C-16).

Mr. Hamill: What is the date of that interview?

Mr. Lane: May 14, 1926.

Q. Did you receive any moneys from the Coast Holding Company? A. At that time or when?

Q. At any time.

Mr. Hamill: I object.

The Court: Why at any time; why is that material?

Mr. Lane: Because the agreement provides that out of the first profits, moneys should be paid to the stockholders of the Bradley Hotels System.

The Court: Objection sustained.

Q. In the fall of 1926 did you receive the sum of $10,000 from the Coast Holding Company?

Mr. Hamill: I object. It might be part of the running expenses of the company.

Mr. Wall: I object. He is not resting on this agreement, as I understand it. He is resting on something else. This is entirely irrelevant. If he is going to rest on the agreement, that is one thing. If he is going to ask as to moneys of the company disconnected with the agreement, then it is entirely immaterial.

The Court: Objection overruled.

A. In the fall of 1926? I cannot tell the date, but the minutes of the Coast Holding Company will show what I received and for what purpose.

Q. Did you in fact receive the moneys which was resolved in the resolution as being payable to you? A. Possibly some of them; possibly not all of them; I have not checked them up.

Q. Have you no recollection now as to how much money you did receive? A. No; I have not.

Q. Have you no recollection as to how much money you did receive? A. No; I have not.

Q. But you do know you received some? A. The records of the Coast Holding Company will show that.

C. E. F. Hetrick. Called by Defendants. Cross.

Q. You yourself, outside of the records, know you received some money? A. Yes; I received some money.

Q. What was the purpose for which they were received? A. For the purpose of the resolution, which was for salary.

Q. For salary? A. Yes.

Q. Did the Coast Holding Company ever hold any other property except this particular piece of property? A. No; not to my knowledge.

By Mr. Hamill:

Q. After the letter to you from Mr. Herbert Reid from Baltimore, which letter is dated on or about September 29, 1924, and before the expiration of the option on November 1st, did you have a meeting with Mr. Reid? A. A conference with Mr. Reid and Judge Smith.

Q. Did he say anything at that meeting about having written that letter? A. I cannot recall that.

Q. Did he say anything about having instructed you to call a meeting of the board of directors? A. No.

Q. Was anything said then about calling a meeting of the board of directors? A. Not to my recollection.

Q. About how long, so far as you can remember, was it before the expiration of the option? A. About a month.

Q. About a month? A. That is my remembrance.

Q. Within what time, according to your by-laws, could a meeting of the Board of Directors have been called? A. I do not know the provision of the by-laws.

D. C. Muhleman. Called by Defendants. Direct.

By Mr. Lane:

Q. Mayor, the resolution of the special meeting of the board of directors of the Coast Holding Company, held December 2, 1925, at which you appear to have been present, recites that the corporation pay out of any money in its possession or to come into its possession, the sum of $10,000 on account of services heretofore rendered by Mr. Hetrick and disbursements incurred by him. Was that sum paid to you? A. It was at least paid in part. I cannot tell just how fully. My recollection does not carry.

Q. Do you know whether the $10,000 which was similarly resolved to be paid to Mr. Marshall on account of services rendered and disbursements incurred by him, was in fact paid? A. I don't know.

Q. You are president of the company? A. Yes.

Q. You don't know whether the payment was made? A. Not the amount; no, sir; I don't know what was paid.

Q. Who is Mr. Pettit? A. Mr. Henry Pettit.

Q. Was he one of the officers of the company? A. Vice president, I believe.

Q. I suppose you don't know whether the $10,000 which was similarly resolved to be paid to him was in fact paid? A. I do not. I should say the treasurer could testify to that.

Donald C. Muhleman, sworn as a witness on the part of the defendants, testifies as follows:

Direct Examination by Mr. Wall:

Q. You live where? A. I live in Glen Ridge.

Q. You are a member of the New York Bar? A. Yes, sir.

Q. And of the firm of Larkin, Rathbone & Perry? A. Yes, sir.

Q. Were you concerned in the formation of the Coast Holding Company? A. Yes, sir.

Q. And of the Eastern Parkway-Bedford Avenue Corporation? A. Yes, sir.

Q. Will you tell us your relation to those two companies? A. I organized the Eastern Parkway-Bedford Avenue Corporation around about 1921 or 1922, for the purpose of acquiring a forty-two year lease on a block of property at Eastern Parkway and Bedford Avenue, Brooklyn. Pettit and Marshall—Henry Pettit and Isaac Marshall—had been doing business with the Central Union Trust Company of New York which we represented as attorneys. At the time of the formation of this company the Trust Company advanced moneys to the Eastern Parkway-Bedford Avenue Corporation for the purpose of putting up three large buildings on the site.

Q. How much did they advance? A. They advanced over $400,000.

Q. In cash? A. Cash. I passed it myself. This cash was used for the purpose of paying for material and labor on the building. In 1926—up to 1925— the company, through rentals or net rentals had reduced its obligation to the Central Union Trust Company to the amount of $375,000. At that time the Trust Company thought that the liquidation was a little slow and called that to the attention of Pettit and Marshall. I personally did that, under instructions, and Marshall informed me that he was somewhat familiar with values in Asbury Park and that he thought, if the Trust Company would advance additional money to acquire some property which he thought he could acquire there,

we would be able to liquidate the whole obligation. I communicated that to the bank, and he did too. It was finally decided to lend the Eastern Parkway-Bedford Avenue Corporation an additional $300,000, approximately, Marshall having stated that he could get the property for that much added amount. He told me that the property was in the name of a man named Gillespie who was the executor or trustee of the Bradley Estate and who, as I understood, at one time owned all or part of Asbury Park. I went over to Asbury Park to look at the property which Marshall and Pettit stated they desired to buy and reported favorably in regard to it to the bank.

We started writing a contract between Gillespie and Eastern Parkway-Bedford Avenue Corporation, but Gillespie refused to sign unless we paid $345,000 plus taxes, and, I think, some assessments that were on it. That caused a little hitch, but it was finally overcome and the bank advanced the actual cash. The bank agreed to advance $345,000 in addition to the $375,000 which Pettit and Marshall already owed to the bank, and also an additional amount, approximately $25,000 to pay interest and taxes, making the total advance of approximately $400,000 and approximately $345,000, making a total of $745,000.

I took the title to the property in the name of the Eastern Parkway-Bedford Avenue Corporation, which then became obligated to the Central Union Trust Company in the sum of $745,000 approximately. The stock of the Eastern Parkway-Bedford Avenue Corporation was owned by Pettit and Marshall and the Trust Company, but the interest of Pettit and Marshall in their stock was endorsed in blank and put up as collateral for their indi-

vidual obligation as endorsers of the Eastern Parkway-Bedford Avenue Corporation to the full amount of $745,000, or in the beginning, $400,000.

Q. So that the Trust Company had all of the stock in its possession? A. All of the stock.

Q. What it owned itself and what it held as collateral from Pettit and Marshall? A. Yes. Pettit and Marshall had signed each a note for the $400,000, and they also endorsed other notes involving the $345,000 advanced. I am a director of the Eastern Parkway-Bedford Avenue Corporation. It can sign no checks which will be honored—

Mr. Gilson: I object upon the ground that this is not binding on the complainant.

The Court: Objection overruled.

Q. Proceed. A. It can sign no checks which will be honored at the bank where it keeps its only deposit, unless countersigned by me. It can sign no notes which are good unless countersigned by me. It can enter into no contracts unless countersigned by me. It has no obligations of any nature or description, in fact, except current operating obligations of the apartment and stores over in Brooklyn and also except to the Central Union Trust Company.

I believe that shortly before—shortly before we closed title to the Asbury Park title, or shortly before we signed the contract, I met the Mayor. I had never met him before, although I understood he was very well acquainted with Mr. Larkin, one of my partners.

Mr. Hetrick came into the office of Pettit and Marshall and I understood from the conversation which was had at that time, that Marshall was the man who was acquiring the property; he was the

man who was doing the negotiating for the Asbury Park property.

After the Eastern Parkway-Bedford Avenue Corporation acquired title to the property I saw the Mayor and Pettit and Marshall quite often. It was stated to me that they desired the Mayor to be in the organization which would effect the sale of the Asbury property, so that the Trust Company could obtain the full amount of its loan of $745,000 as soon as possible. I told these gentlemen that as far as the transaction was concerned, I was not interested in the Mayor; that the $745,000 would have to come out of the Jersey property, in the event that they desired to have the Mayor interested with them.

Shortly after that they came back, Pettit and Marshall, and in the presence of the Mayor, stated in my office that they had determined to give to the Mayor sufficient money to pay all moneys which had been paid to a corporation which Mr. Hetrick had previously been identified with and which had at one time had an option on the Asbury Park property which the Eastern Parkway-Bedford Avenue Corporation had acquired. I told them if they desired to give him anything, it was up to them, as I was not interested in their personal wishes. They came back a few days afterward and stated that they had agreed that out of any profits which they would make they would give the Mayor one-third and that they wanted him to have a third interest in the equity of this corporation.

I determined then that in order to meet their wishes we would have to organize a new corporation, and take title to the property and cover the Trust Company by mortgages for the full amount —$745,000.

I then organized the Coast Holding Company or McGinniss organized it—it was organized in my office anyway, and McGinnis and Noble were put in as directors and the Mayor was put in as a resident director and at the time he was also made president because he insisted that Pettit or Marshall were to be president or he wanted to be president—one or the other. Then they stated to me that they wanted an obligation of the company to pay back $36,000 to people who had put it into a corporation which the Mayor said had had an option which had expired, as he told me, and that they wanted the corporation to agree to make this payment after the $745,000 and all disbursements and expenses and interest were taken out. I laughed at them and I told them that I did not think that was good policy, but they insisted. So I drew a contract which I thought would meet their wishes and then told the Mayor to give me a list of these stockholders who had put money into the corporation. He gave me such a list later on and after much persuasion and numerous calls and requests, I finally handed over the agreement approximately four or five months after it was drawn up. I had let it lie on the table on the back of my desk. I did not see it signed—I assume I have one in the office—I have not looked—a signed copy.

The Mayor did not put any money into the Coast Holding Corporation. He had no interest in the Eastern Parkway-Bedford Avenue Corporation. The Mayor and Pettit and Marshall, after the organization of the new corporation, were required to endorse and deposit their stock in the bank, deposit it with the Central Union Trust Company as additional collateral security for the payment of the $750,000 and interest.

D. C. Muhleman. Called by Defendants. Cross.

The Coast Holding Company is operated under a condition similar to the Eastern Parkway-Bedford Avenue Corporation, and the bank will not honor checks unless countersigned by me. Notes are not valid unless countersigned by me, and contracts or obligations incurred are not, according to the by-laws, valid unless countersigned by me. As far as I know, the Coast Holding Company has no obligations. After the Coast Holding Company pays the $745,000 and interest and cost of operation and so forth, the company will then belong to Pettit and Marshall and the Mayor.

Q. Apart from a third interest in the shares of the Eastern Parkway-Bedford Avenue Corporation, the Brooklyn corporation, has the Central Trust Company any interest whatsoever, except getting its actual money back with interest at six per cent? A. You mean the Coast Holding?

Q. Yes. A. Oh, no; it has no interest, no interest at all outside of the obligation.

Q. Outside of its stock ownership of one-third in the Brooklyn Corporation, has it any interest whatsoever except as a bank? A. That is all.

Q. Did you have any appraisals made of the property in Asbury Park before it was acquired from Gillespie? A. Yes; we had appraisals made of that property by two or three or maybe more real estate people in Asbury Park or vicinity of Asbury Park. It showed an equity which would not only take care of the $345,000 but at least part of the Eastern Parkway-Bedford Avenue part of it.

Cross Examination by Mr. Gilson:

Q. As I understand it, Pettit and Marshall were virtually the owners of these two corporations, the Eastern Parkway-Bedford Avenue Corporation and

the Coast Holding Company? A. Pettit and Marshall had a two-thirds interest in the Eastern Parkway-Bedford Avenue Corporation. They also had, with another stockholder, a two-thirds interest in the Coast Holding Corporation—with still another stockholder.

Q. A third of the stock of the Eastern Parkway-Bedford Avenue Corporation, as I understand it, is held by the bank? A. Yes, sir.

Q. And do they hold that stock as absolute holders or as collateral or how? A. Well, I believe that they have it in the name of one of their dummies down there, but my understanding is that the bank will give it up to them at some time.

Q. The bank is your client? A. Yes.

Q. And Pettit and Marshall are your clients? A. Yes.

Q. Did you transact the entire business in connection with the advances and loans from the Central Union Trust Company to Pettit and Marshall? A. Yes.

Q. As a matter of fact, you must know, Mr. Muhleman, that that stock is merely held as security for the loans that Pettit and Marshall have from the bank; that is true, is it not? A. I would say no—at the present time, no.

Q. What do you mean by "at the present time"? A. Because the stock was actually taken by the Trust Company.

Q. In the name of its dummy. Did the Trust Company pay anything for that stock? A. As much as Pettit and Marshall did. Practically nothing. Money advanced.

Q. The stock was transferred to this dummy because the bank had loaned money to Pettit and Marshall and the Eastern Parkway-Bedford Ave-

nue Corporation; isn't that so? A. No; I think at the time—

Q. Never mind. They are going to transfer the stock back when the loan is paid, are they not? A. I don't know what—

Q. Is it a fact that they will? A. I cannot tell you what will happen in the future.

Q. Is not that the arrangement? A. No.

Q. Then, is the bank the absolute owner of that stock? A. Today?

Q. Yes. A. Yes.

Q. When did you first come in contact with Mr. Gillespie? A. I doubt very much if I have ever seen him in my life.

Q. You did not come in direct contact with him? A. No; I do not think I ever did.

Q. Did Pettit and Marshall tell you, before the title was closed, anything about Mr. Gillespie insisting that the investors in the Bradley Hotels System be taken care of before he would convey the property? A. No, sir; I never heard of the Bradley Hotels System.

Q. When did you first hear of that company? A. I believe when I got your complaint.

Q. Didn't you hear about it before this contract was drawn? A. No; I never heard of it.

Q. Didn't Pettit and Marshall tell you the name of the company that Hetrick was concerned in? A. Not at all.

Q. Didn't you inquire? A. Not at all. What did I care about Hetrick?

Q. How long after the formation of the Coast Holding Company was it that Pettit and Marshall told you that Hetrick wanted an agreement to take care of some people? A. I said it was before.

Q. How long before the formation of the company? A. I don't know. I cannot tell you. It is two or three years ago.

Q. You are sure it was before the formation of the Coast Holding Company? A. Oh, yes.

Q. And according to the deed the property was conveyed to the Eastern Parkway-Bedford Avenue Corporation on May 8, 1925, and that company transferred it to the Coast Holding Corporation on May 12, 1925. Do you remember the date of that agreement? A. No.

Mr. Gilson: I offer in evidence agreement bearing date the blank day of April. I wish to show that as early as April, before title was taken by anybody, they were talking about such an agreement.

Mr. Hamill: I object.

The Court: Objection sustained.

Q. I show you Exhibit C-15, which is a copy of this agreement between Mayor Hetrick and Pettit and Marshall and the Coast Holding Corporation, in regard to this payment of $36,000, which you testified to, produced by Mr. Wall; that is right, is it?

Mr. Wall: That is wrong. The copy you have is Mr. Hamill's copy. Here is my copy.

A. (No answer.)

Q. Do you recognize that? A. Oh, yes; I remember it.

Q. I show you another paper purporting to be an agreement between the same parties, dated the blank day of April and ask you if you recognize

that? A. I will have to read it and see if it is my wording.

Q. All right. A. (After reading) Yes; I remember that.

Mr. Gilson: I offer it in evidence on the ground that it contains different terms from Exhibit C-15.

The Court: For what purpose do you offer it?

Mr. Gilson: To show that there were negotiations. There were changes and I want to find out why it was changed.

Mr. Wall: I object to it.

Q. In this original agreement which you drew it was provided that $30,000 instead of $36,223 was to be paid. Do you know why the change was made? A. The way I recall it, my first understanding was that there was approximately $30,000—that was the expression I heard—put into that company, some company, for the purpose of trying to acquire an option on this property. The amount was changed afterwards, a little later I think, to $36,000.

Q. That was the only change that you remember? A. No; I did not read the second agreement. I have not seen it in three years.

Q. I thought you read it. A. The first agreement you handed me, Exhibit C-15, I did not read; I just glanced over. I know I drew it because it is my form.

Q. I notice in this form of agreement dated the blank day of April there is this difference—

Mr. Wall: I object.

The Court: Mr. Gilson withdrew his former offer. He is now asking a question. The agreement of April is unsigned, but it was identified by the witness. I understand the witness to say that that was drawn by him.

BY THE COURT:

Q. That is so, is it not? A. I drew both of them.

BY MR. GILSON:

Q. I notice this paragraph at the top of the agreement of the blank day of April, provides that this agreement is made for the benefit of the contributors to the fund of $30,000, although unnamed here, and payment of the respective sums which may be due to said respective contributors shall accrue under the contract, although the persons are not named and such persons are definitely determined and known to the parties hereto? A. Yes.

Q. Now, that is just the opposite from the agreement that was finally executed, Exhibit C-15, is it not? A. I remember this now. The first one that was drawn the mayor and Pettit and Marshall had hazy ideas of figures—about $30,000. They did not tell me the names of the people at all. That agreement was never executed. Then afterwards they told me that the mayor had made up a list and that he would give me that list. That is why I kept it on my desk for four or five months. I did not get the list. They told me he had a list. The agreement would not go through until he showed me a list. He showed me a list. I do not know where it is now. I remember a few names on it.

Q. The question is: Why was the change made so that that agreement finally was not to inure to

the benefit of these contributors, although the first form expressly provided it was to inure to them? A. Both agreements are the same. One designates particular persons and the other does not, but they are both the same agreements.

Mr. Wall: I object. It was never executed. What difference does it make?

Q. Why was the change from the agreement of the blank day of April which provided that it was to inure to the benefit of the contributors, whereas in the agreement that was finally executed, Exhibit C-15, it provided expressly that it was not to inure to the benefit of the contributors? A. I do not catch your question. I think you are mixed up there.

Q. In the first form of agreement it is expressly provided that this $30,000 was to inure to the benefit of the contributors, is it not? A. Yes.

Q. In the form that was finally signed, Exhibit C-15, there is this provision: "This agreement shall not in fact inure to the benefit of any person or persons other than the party of the first part (that is Hetrick), and no other person or persons shall, at any time, have any claim or right to the whole or any part of the said sum of $36,243." My question is: Why was that change made? A. I evidently determined that I did not want any strike suits, if I could help it, by people who thought they might be interested, and therefore tried to eliminate Lawrence against Fox, if possible.

Mr. Gilson: I offer this form of agreement identified by Mr. Muhleman, dated the blank day of April, in evidence.

The Court: For what purpose?

Mr. Gilson: Well, I think it ought to be part of the record.

The Court: Why do you offer it?

Mr. Gilson: I suppose it is all in evidence now. May I have it marked for identification?

The Court: Yes.

(Marked C-16 for identification.)

Q. These payments to you and to Hetrick and to Marshall provided for in the resolution of December 2, 1925—I think you heard that read this morning, did you not? A. Is that the date? I. heard the resolution. Is that the date?

Q. You remember that meeting? A. Yes.

Q. You remember the meeting when these amounts were provided for? A. Yes.

Q. Did you all receive these amounts?

Mr. Wall: I object to that as immaterial.

The Court: Objection overruled.

A. I believe that the way I recall it, Pettit, Marshall and the Mayor received about eighty per cent. of that, and our firm, I believe, received about $6500. I do not think we received any more than that to date.

Q. You are testifying from your recollection? A. Two and half years recollection.

Q. You have not refreshed it? A. Not at all.

Q. These payments were made out of the proceeds of sale of this property, or some plots of this property, in Asbury Park?

Mr. Wall: I object to that as immaterial.

The Court: Objection overruled.

A. That is right.

Q. That is the only property that the Coast Holding Company ever owned? A. I believe that we did acquire a couple of outside mortgages. Whether they were taken for the Eastern Parkway-Bedford Avenue Corporation or the Coast Holding Company I do not know. Marshall can recall that better than I can. I know something came over. Whether I took it in the name of that corporation or the other company, I do not remember.

Q. As part of the consideration of part of the property in Asbury Park? A. No, no; an outside, separate transaction.

Q. With what moneys did they buy these mortgages? A. Cash in bank, maybe cash proceeds that they might have had from the sale of this property, or sales they made—no—now I recall—it was all made from a loan of $27,000 I believe, but I would rather, if Mr. Marshall could tell me—

Q. I have no objection. A. (After receiving information from Mr. Marshall) It went into the Coast Holding Company. The Eastern Parkway paid for it and put it into the Coast Holding Company.

Q. Let me see if I have this transaction of $745,000 correct. Do I understand that the bank advanced $340,000 at the time of the acquiring of this Asbury Park property of $400,000? A. The bank advanced approximately $400,000 in all.

By the Court:

Q. For the Asbury Park property? A. They advanced $345,000, which we paid. At the time the transaction was closed, when title was taken, we advanced the further sum of approximately $25,000, I believe it is, to let the company pay off some

taxes and assessments which were then liens against it; in other words Gillespie's $300,000 price was raised to approximately $370,000.

Q. And then the difference between that and $745,000, was an old indebtedness of the Eastern Parkway-Bedford Avenue Corporation? A. It was the obligation of the old indebtedness and the new property was obligated, that is, before they would advance money for the property, the full amount, they called for additional collateral.

Q. The Coast Holding Corporation assumed the whole indebtedness? A. Oh, yes; the company assumed the whole indebtedness, certainly.

Q. The Coast Holding Company was on the bond, was it not? A. Oh, yes.

Q. And the bank was loaning $745,000 on this Asbury Park property, plus the property in Brooklyn; is that right? A. That is right.

The Court: As I understand, the bank had a mortgage or some security represented by the Eastern Parkway-Bedford Avenue Corporation's holdings and took the Coast Holding Company's property as additional security for that indebtedness of Eastern Parkway-Bedford Avenue Corporation?

Mr. Gilson: I do not understand it that way. It goes further than that. The Coast Holding Company gave back a mortgage for $745,000.

The Court: Was not the effect of giving that mortgage simply additional collateral for the security already held by the bank on the Eastern Parkway-Bedford Avenue transaction?

Mr. Gilson: Partly, but it was obligating them for more than they ever received.

The Witness: It was giving something for nothing.

Q. What something for nothing? A. The title to the property.

Q. And getting back a mortgage for $745,000? A. It is quite simple, if you want to know. If you want the facts, I can give them to you.

Q. That is what we want. A. The fact happens to be this. I think I can explain it clearly to you. When the Central Union Trust Company advanced this $345,000, the additional $345,000 or $370,000 approximately, it had an interest in Eastern Parkway-Bedford Avenue Corporation and still has it. The property that they bought in Asbury Park they transferred to the Coast Holding Company. I represented the Trust Company and I was trying to represent their interest, but the mayor stepped in as a third party. He could not possibly acquire, he never had, any interest in the Eastern Parkway-Bedford Avenue Corporation, never knew anything about it as far as I know, until the property was taken. Therefore, that makes a division in a different way than the division which had existed in the Eastern Parkway-Bedford Avenue Corporation, so that I made the Coast Holding Company liable for everything. As far as the mayor was concerned, I could have put a million dollar mortgage on that. It was the absolute property of the Eastern Parkway-Bedford Avenue Corporation. So that mortgage makes no difference whatsoever.

By the Court:

Q. Title to the Asbury Park property was first taken by the Eastern Parkway-Bedford Avenue Corporation? A. It purchased it; yes, sir.

Q. And title was taken in the name of that company? A. Yes.

D. C. Muhleman. Called by Defendants. Cross.

Q. That company did not give the mortgage to the Central Union Trust Company, did it? A. No, sir.

Q. The $745,000 mortgage? A. No; it did not.

Q. Ten days or more elapsed between the date of the deed to the Eastern Parkway-Bedford Avenue Corporation for the Asbury Park property and the deed from the Eastern Parkway-Bedford Avenue Corporation to the Coast Holding Company? A. That is right, approximately some time.

Mr. Gilson: Four days.

Q. The Eastern Parkway-Bedford Avenue Corporation got title from Gillespie, the executor? A. Yes.

Q. Gillespie, executor, had to get some money when he conveyed to the Eastern Parkway-Bedford Avenue Corporation? A. Yes.

Q. That money was paid by the Central Union Trust Company? A. Right.

Q. For the Eastern Parkway-Bedford Avenue Corporation? A. Yes.

Q. What security did the Trust Company have for that money advanced? A. It owned the stock of the Eastern Parkway-Bedford Avenue Corporation. It had all of the stock in its possession. It was merely advanced to let Eastern Parkway-Bedford Avenue Corporation put a mortgage on the three parcels, so that we would have a first lien, in any event, and the stock for collateral.

Q. In other words, the Central Union Trust Company had to put up $300,000 to enable the Eastern Parkway-Bedford Avenue Corporation to pay Mr. Gillespie? A. That is right.

Q. Then title was taken in the Eastern Parkway-Bedford Avenue Corporation? A. Yes.

D. C. Muhleman. Called by Defendants. Cross.

Q. The Central Union Trust Company having at that time put up this $300,000, what security did it have? A. It took no other security at that particular time, because we had absolute title by the corporation which we held in our hands. It was my intention, before we decided to give this interest, to put mortgages on that so that nothing could ever come ahead of it.

Q. You did have absolute control of the Eastern Parkway-Bedford Avenue Corporation? A. Yes, sir.

Q. You had one-third of the stock in your own name and the other two-thirds you had as collateral? A. Which we could have owned at any time we wanted.

Q. You could not have got it until you sold the collateral. In the meantime Marshall and Pettit, as directors of the Eastern Parkway-Bedford Avenue Corporation, had a right to vote? A. Yes.

Q. Notwithstanding the stock was up as collateral? A. Yes; but it would have taken me about one day to get that stock, if I desired.

Q. I suppose the whole answer is that you did not take any security from the Eastern Parkway because it was— A. (Interrupting) We took a note from the Eastern Parkway. The Eastern Parkway owned the property, but the mayor came in as a third party—

By Mr Gilson:

Q. You knew he was to come in as a third party. A. Who?

Q. The mayor. A. I knew this much. I knew that the mayor was going to obtain an interest in Pettit and Marshall's share of the other, the Coast

Holding Company, if that was organized then—that is, in the interest which Pettit and Marshall would have in the Jersey property only. It was not segregated. The Jersey property gave him that interest, and he has it now, subject to default and being wiped out.

Q. How much of this property has the Coast Holding Company sold? A. I believe they have sold two blocks and they have one large block left.

Q. How much has this mortgage been reduced? A. You mean the $745,000 mortgage? I do not think it has been reduced very much—$16,000; we have some purchase money mortgage collateral which ought to mature very shortly, some of it.

Q. Approximately how much do they amount to? A. I should say $500,000—about that.

Q. How much has the Coast Holding Company received in cash from sales? A. I should say they have received—I doubt if they have received over $100,000. They have paid taxes and interest and so forth.

BY THE COURT:

Q. Out of these sales you paid the Coast Holding Company their charges and received $500,000 purchase money mortgages back and the Central Union Trust Company released the property sold from the lien of their mortgage? A. Yes; the Trust Company took an assignment of the purchase money mortgages and they hold them all now.

BY MR. GILSON:

Q. You knew that during the negotiations between the mayor or Marshall and Mr. Gillespie, that the price was raised several times and finally closed

for $345,000? A. No. My memory is the first I heard of it was an advance from $300,000 free and clear. It was that price when I went down to Asbury Park. I think it was the day this contract was signed, or the day before, that Marshall told me that Gillespie would not sell the property unless he got $345,000 and we assume taxes and assessments.

Q. Don't you remember Mr. Marshall telling us the day I was in your office that they were negotiating with Mr. Gillespie and every time they would see him he would go up in his price? A. No; I do not recall that. I do not recall but one raise myself. The price when they came to us was $300,000. I remember that it jumped to $345,000.

Q. You went down to Asbury Park and when you came back you reported it was a good purchase at $300,000? A. I did not report that. I am not a real estate man.

Q. I thought you said that you went down and looked at it and advised them to buy? A. I went down and looked at it and reported what I saw. I saw three blocks on the ocean and on the lake, and to me as an outsider, it looked pretty good. I did not know anything more. I am not a real estate man.

By the Court:

Q. They knew that there were three blocks on the ocean and on the lake? A. I don't know. They might have known. I don't know.

By Mr. Gilson:

Q. You went down to advise them? A. I went down there specifically to see the property and the

location of it and what it was near, the general surroundings.

Q. And you knew it was worth $300,000? A. I concluded to come back and tell them what I saw.

By Mr. Wall:

Q. This $500,000 worth of purchase money mortgages, do they fall due in the near future? A. Why, yes. There is one of them that I think was due on April 5.

Q. Approximately all within a couple of years, do they fall due? A. All within a couple of years from now.

Q. What is your estimate as to when this money would be paid under this agreement, Exhibit C-15, in the ordinary course, according to its terms? A. Oh, I should think it would be about two years when they ought to start paying off. The large block—they have been talking of a hotel now for a long time. They talked about it in the beginning.

Q. What is your judgment as to the ultimate certainty of this being paid or not? A. I believe that the stockholders who put their money in will get their money. I so told Harley Clarke, one of our clients, who happens to be down on the list.

Q. You have investigated it from the standpoint of holders of interest in the Bradley Hotels System? A. Yes; the name of people down there. You have a client, Mr. Wall, I have one, too, and Mr. Larkin has one.

ISAAC MARSHALL, sworn as a witness on the part of the defendants, testifies as follows:

DIRECT EXAMINATION BY MR. WALL:

Q. Where do you live? A. 515 Eighth Avenue, Asbury Park.

Q. You had these negotiations with the executor of the Bradley Estate which led up to the purchase of this property that is here in question? A. Yes, sir.

Q. You were acting for whom? A. I was trying, if the Eastern Parkway purchased that property, that I could see a chance of paying the bank the indebtedness.

Q. What is your business? A. Real estate. Prior to that I was in the importing business.

Q. Have you had any associations as an importer with the Central Union Trust Company and borrowed money from them? A. Yes, I had; for eighteen years.

Q. What first called your attention to this property that was subsequently bought from Gillespie, executor of the Bradley Estate? A. Prior to this property I bought some other property from Mr. Gillespie.

BY THE COURT:

Q. The question is: What first called your attention to this property? A. What first called my attention?

BY MR. WALL:

Q. When did you first start after this property; who spoke to you about it? A. Only the real estate

men in Asbury Park offered me this property for sale.

Q. When was that? A. That was in the spring of 1925.

Q. Who were these real estate men? A. Well, various ones; Milan Ross was one.

Q. Then, what was the next that happened? A. The next that happened I met Mayor Hetrick on the train coming from New York and I told Mayor Hetrick I am going to buy that property.

Q. You opened the subject? A. Yes.

Q. Go on. A. He said: "What price?" I said: "$300,000 they are asking." He said: "I can get it, if I want, for $280,000." I said: "Go ahead and I will buy through you," and he went to get it and it cost us $370,000.

Q. When he went to buy it at $280,000, what was the next thing? He came back and reported to you that he could not get it? A. $300,000, subject to assessments on Ocean Avenue, plus three years' interest, and we agreed to buy for $300,000. I saw Mr. Gillespie, and he said: "It is worth $450,000, I will not sell it for $300,000."

I met the mayor again. I said: "Mayor, how about delivering for $300,000?" He came over and went in the bank and told me what he can get it for —$345,000 plus $20,000 assessments, plus interest for various years. I talked it over with the bank.

Q. That is, with the Trust Company, the Central Union Trust Company? A. Yes; and I told the bank, in my opinion, by my hard work that I am going to do in the next five years, in order to pay the indebtedness to the Central Union Trust Company, that is, with other transactions, I can see my way, if I go to Asbury Park and work hard, to pay the bank every cent we owe, without any profits for

ourselves. Right then and there they agreed to give us the money, the Eastern Parkway-Bedford Avenue Corporation, and we bought the property.

Q. By "we" whom do you mean? A. The Eastern Parkway-Bedford Avenue Corporation.

Q. Go back and tell us whether you saw Gillespie again? A. Yes.

Q. After Hetrick told you that you could get it for $345,000? A. Yes; I went to his house in Morristown, New Jersey.

Q. What did you say to him? A. I still kept on talking $280,000, the way the mayor told me.

Q. You were rather persistent about it? A. Yes, sir.

Q. Did you say anything to Gillespie about whether there were any entangling alliances or any options or anything of that kind? A. I heard in the street that they were going to have $15,000,000 worth of hotels on the ocean front, and they were trying to get finances, and I told them they would never get it, to stop selling stock to people; they would never build $15,000,000 worth of hotels.

Q. I show you Exhibit C-12, dated April 1, 1925. What do you know about that? A. When I saw Mayor Hetrick I asked the mayor: "Did you have a contract on the property?" I did not know he had an option—I heard they had a contract to buy. I said: "Did you have such a contract?" He said: "No, we did not have any contract, but we had an option." I says: "I told you before if I will be interested in that deal, before I am going to make the bank give us that money, you got to show me there will be no trouble ahead." I said: "If you show it to me, I think perhaps that you can make a little money after."

Q. Was this brought in to you, this letter of April 1, Exhibit C-12? A. Yes.

Q. By Hetrick? A. Yes.

Q. That was the first written agreement on the part of the executor for what he would sell? A. Yes.

Q. I show you Exhibit D-4, bearing the same date, addressed also to the mayor and signed by Gillespie and ask you if you received that at the same time you received the other writing from him? A. Mayor Hetrick got ahead of me that time—

BY THE COURT:

Q. The question is: "Did you receive that at the same time that you received the other paper? A. Yes.

BY MR. WALL:

Q. Is this the letter you refer to? A. Yes.

Q. You wanted something from Gillespie about the options? A. I beg your pardon?

Q. Did you say to Hetrick that you wanted something from Gillespie to show that everything was clear? A. Yes.

Q. Is this the paper? A. This is the price.

Q. This one that I handed you last, Exhibit D-4? A. This is the price, $345,000.

Q. No. It says here: "Referring to letter of this date in which I agree to sell three parcels of land described as follows," and describing them, "for $345,000, beg to advise you that the $30,000 which was paid at various times on account of options for this same property to Bradley Land Company, I consider as forfeited under the terms of the agreement and will retain the same." A. Yes, sir.

Q. Thereafter the contract was drawn for the purchase of the property by the Eastern Parkway-Bedford Avenue Corporation? A. Yes.

Q. And that was followed by the deed? A. Yes, sir.

Q. When did the question first come up as to making some provision of some kind to pay back some money that Mayor Hetrick wanted paid back to certain persons? A. When the Eastern Parkway Corporation acquired the property, I turned it over—

By the Court:

Q. When did the question first come up, after taking the deed or before taking the deed to the Eastern Parkway-Bedford Avenue Corporation? A. After the Eastern Parkway-Bedford Avenue Corporation purchased the property.

By Mr. Wall:

Q. How is it it came up then; when did you first hear of it? A. When did I hear what?

By the Court:

Q. When did you first hear of the return of this money to the contributors to the old company? A. I made up my mind to have Mayor Hetrick, as an officer of Asbury Park, with us; I thought it would be better to have Mayor Hetrick interested in the company.

By Mr. Wall:

Q. You thought it would be a valuable thing to the corporation in the sale of this property? A. So I told Mayor Hetrick—I said to Mayor Hetrick:

"Mayor, I would like to have you in this property at the price of $745,000." He said: "Well, what do you want me in for? I have no money." I said: "We put in no money over the $745,000. We will take what is above the $745,000. We will put shoulder to shoulder and work and pay the bank and whatever is profit we will divide."

Mayor Hetrick said: "I told you that I have been in a company that has sold stock to nurses and servants and even sold stock to everybody on the street, and I feel morally bound, and if I can only make $30,000, I am satisfied to go into the Coast Holding Company, provided I don't have to put in any money." We talked it over one day and I went there myself and Mr. Pettit and we talked the second day. He said: "I think it is $36,200." I said: "Give me a list. Be sure what it is. I do not want to deal with stockholders. I do not want to go on in your business. I have no interest in that. I have $745,000 in the company, and any money above that, the first money about $745,000, after paying expenses, commissions to brokers, interest, which was a very big item, about $70,000, interest and taxes, after we pay that, the first money above, we will pay you personally, you, $36,200, whatever it is." I wanted a list—it shows $36,000—make it sure—I did not get that from Hetrick; I got that off the bank; I went over to—

Q. (Interrupting) $36,200? A. $36,223, and I agreed that after paying the expenses, and I told him we will have to have some money to keep on in business, otherwise we cannot live, we will have expenses, entertaining to get people out, and that was agreed to. That was right after the Eastern Parkway-Bedford Avenue Corporation purchased the property. A day or two after I went over to my at-

torneys and told them the proposition, and they said: "As far as the bank is concerned, we do not want any obligation or proposition to Mayor Hetrick; we do not want to be parties to that."

I convinced Mayor Hetrick to go in, after a couple of days, to go into the Coast Holding Company. I showed him that I had a lot of relatives, sisters and brothers and others that I can sell some property to, and I did sell enough to pay interest and taxes, to take care of the interest and taxes, and after we got ahead and I seen a little money, I asked we should be allowed living expenses, hotel bills, paying out, entertaining people; so we had a meeting and we allowed ourselves $10,000, of which we drew half; we will have to wait until next year for the other half.

Q. What is your estimate as to just when this $36,000 will be paid? A. In two years $36,200 has got to be paid to Mayor Hetrick and Mayor Hetrick has got to pay to the innocent stockholders who put up $5 and $10 and $50 and some of them $10,000.

Q. That is your opinion? A. That is my opinion when I asked Mayor Hetrick—

BY THE COURT:

Q. What is your opinion now? A. It is going to be paid as soon as we have the money; and it is going to be paid.

BY MR. WALL:

Q. The only way that you stand to make any money is through the sale of your equity? A. Yes.

Q. And that is the only way Mr. Pettit stands to make any money? A. The only way. We have

worked for two years and a half and we are still working. It still needs a million dollars to work it out, which we have provided for.

Q. How much property have you left? A. We have a square block.

Q. You value that at what, roughly speaking? A. Well, I don't know. I do not know—

Q. What did you get for the other block? A. Well, we realized—I do not want to commit myself on that.

Q. It is too delicate a question? A. Too delicate a question. It depends on what you want it for. If you want it for one-family houses it is worth less. If you want it for ten-story buildings, it is worth more.

Q. Is there any project for any particular use of this property? How are you going to use it? A. I am going to try to use this property, or try to interest people to build fourteen-story buildings so I can get more money for the land.

Q. Is there any hotel scheme under consideration? A. Yes; there is a proposition which I am trying to put through through the biggest men in the country, physicians, to interest them in mineral baths, the kind like they have in Germany and various places.

CROSS EXAMINATION BY MR. GILSON:

Q. As I understand you, you just happened to meet Mayor Hetrick on the train this first time you talked to him? A. Yes.

Q. And you told him that you wanted to get that property? A. I beg your pardon. I said I am going to buy the property. I made that statement.

Q. How did you know Mayor Hetrick was interested in that property? A. I knew that the mayor

was going around and trying to sell stock and I knew that company had bought that property once, and I knew it was expired, too. I watch these things.

Q. You knew the option had expired? A. Yes.

Q. And you knew that that company was out? A. Yes.

Q. Hetrick told you on the train that morning— A. He did not tell me anything. I did not say that.

Q. He told you that the option had not lapsed, didn't he? A. I do not remember whether he told me that or not, but he told me he can buy that property for $280,000.

Q. You knew the old company was out? A. Yes.

Q. You do not remember whether he told you that the old company still had an option or not? A. I did not talk any option at the time. Whether he did or not I don't remember. Maybe he did say it. If he did, I knew it was expired.

Q. How did you know? A. Because it was offered to me by brokers. I bought property before from Gillespie. Everybody had it for sale.

Q. How long before you met Mayor Hetrick had this particular property been offered to you? A. Maybe a month or so.

Q. As I understand it, you never heard anything about this money that Hetrick wanted to return to the stockholders of the Bradley Company until after the Eastern Parkway-Bedford Avenue Corporation took title to the property; is that right? A. I never heard of that before; no, I never heard it until I wanted him to come in, but he wanted to pay the stockholders.

Q. Didn't you tell Mr. Muhleman, in April, which was a month before the Eastern Parkway-Bedford Avenue Corporation took title to this property, that

you wanted an agreement drawn for that purpose? A. It was all at the same time. In April we bought the property. We bought that property in April.

By the Court:

Q. You got a contract in April? A. Yes; we drew it up.

By Mr. Gilson:

Q. When you saw Mr. Gillespie and talked to him about buying the property, he told you that he did not want to sell to anybody unless the original investors in the Bradley Hotels System were taken care of first? A. I never heard such a story as that.

Q. Did not Mr. Gillespie tell you that? A. He never told me anything of the kind.

Q. I understand that you had some trouble to persuade or convince Mayor Hetrick to go into the Coast Holding Company? A. No trouble. I was trying my best to convince him to go into the Coast Holding Company.

Q. Was not that the understanding from the very beginning, that he was going in? A. Not from the very beginning; no, sir.

Q. Was it not the understanding with Mr. Hetrick that if you acquired the property, you wanted to make some arrangement about taking care of these investors? A. No, sir.

Q. Let me ask you, Mr. Marshall, whether this took place, in substance, this conversation that you had with Mayor Hetrick on the train, that you asked him: "What have you done about the hotel lands?" And Mayor Hetrick said: "Well, Marshall, I do not think anything; I think we are out of the picture. We have defaulted on our payments. The

last payment was due on November 1st, and we have done nothing, and we cannot do anything, as I see it. I have tried every place to get money." And that then you said: "Well, I might get interested and some friends of mine." Was that the substance of the conversation? A. I cannot recall all that was said. We talked so much in two hours riding. I cannot recall. Maybe it was said, maybe it was not. All I was interested in was to get it for $280,000. Maybe we talked these things. I cannot remember.

Q. You are not very clear about just what took place and what was said with Mayor Hetrick at that time, are you? A. I beg your pardon?

Q. You are not very clear as to what was said and what took place during that conversation with Mayor Hetrick, are you? A. All I was interested in was really the price, $280,000. All that was said between us I was not interested in. I was interested in the price.

Q. You said you wanted to make sure there would not be any trouble later? A. That was after.

Q. So that you must have known that there was some question about the rights of the original stockholders? A. That was later negotiations when Mayor Hetrick told me he can get a better price because he has a better chance with Gillespie than any other broker or myself, because he might get him to sell for that price.

Q. You felt perfectly free to go ahead, that nobody else had any interest because the old option had expired? A. Absolutely. It was too late. I am thirty-eight years in business and I never went in anything like it. It is the first time in my life. When you came to see me in Mr. Muhleman's, you wanted—

Q. When I came to see you? What do you mean by that? A. I beg your pardon?

Q. You just said that I came to see you in Mr. Muhleman's? A. When I got there—

Q. Don't you know that I went over there after Mr. Muhleman had told me he would let me see the books of the Coast Holding Company and that you gratuitously happened to come in? A. Right.

Q. I did not go to see you. A. I beg your pardon. That is right.

Q. When you came in I did not see the books, did I, after Mr. Muhleman had told me I could? A. Mr. Muhleman gave you—

Q. Didn't you hear Mr. Muhleman tell me that I could not see the books because the secretary was sick and nobody in the office knew where the books were? A. What time?

BY THE COURT:

Q. The time that you were at Mr. Muhleman's office. A. Will you please repeat the question?

BY MR. GILSON:

Q. (Question repeated) Didn't you hear Mr. Muhleman tell me that I could not see the books because the secretary was sick and nobody else in the office knew where the books were? A. I don't remember that.

Mr. Wall: I offer in evidence the contract between the Eastern Parkway-Bedford Avenue Corporation and Gillespie, executor, unless it has already been put in—the contract for the purchase of the lots. This is a copy.

Mr. Gilson: I object to the copy.

The Court: Objection sustained.

Mr. Wall: I ask leave to produce the original.

Mr. Gilson: If you will tell me that it is a correct copy, I will withdrawn my objection.

Mr. Wall: I cannot say that.

DEFENDANTS REST.

Mr. Lane: I would like to recall Mayor Hetrick.

The Court: You may.

CLARENCE E. F. HETRICK, one of the defendants, already sworn as a witness on the part of the defendants, recalled.

FURTHER CROSS EXAMINATION BY MR. LANE:

Q. In the examination before the Receiver do you remember being asked these questions and making these answers:

"Question. When did you open negotiations with them or introduce them to Mr. Gillespie? Answer. Purely an accident.

"Question. About when? Answer. I happened to be going down some time in March or April ,1925, somewhere about that time, four or five months after this thing. I was out, in my judgment, out of the party, I thought we were all out, and what worried me was how to take care of this situation. I could not get my feet on the ground. It meant $30,000, and I was worrying about those lots. So just by accident I met Mr. Isaac Marshall on a train go-

ing down to Asbury Park and we fell into a discussion about lands of the Bradley Estate on Deal Lake. He said that he was trying to purchase them, and then asked the question: 'What have you done about the hotel lands?'—referring to these three blocks. 'Well,' I said, 'Marshall, I do not think anything; I think we are out of the picture. We have defaulted on our payments. The last payment was due on November the 1st and we have done nothing, and we cannot do anything, as I see it. I have tried every place to get money.' 'Well,' he said, 'I might get interested and some friends of mine.' So I talked it over with him and I went to Gillespie within the next day or two, and out of that grew the so-called purchase or sale."

Q. Do you remember those questions and answers? A. Yes.

Q. Were they correct? A. I think so.

Q. Will you please explain, then, how it is you testified on cross examination at the last hearing that Mr. Marshall did not know that you had defaulted upon your contract and that you were careful to see that he did not?

Mr. Wall: I object. He is asking—

The Court: In view of the fact that in the testimony read by Mr. Lane just now, the witness seems to have said to Mr. Marshall or made a statement on the subject to Mr. Marshall, at variance with his testimony at the last hearing, the question is a proper one.

Q. So that there may be no misunderstanding, you testified in your cross examination, page 116, as follows:

Clarence E. F. Hetrick. Recalled. Cross.

"Question. You discussed with Mr. Marshall, didn't you, the fact that the Bradley Hotels System had that property under option? Answer. No; I was very careful of that. He knew that they had it, but he did not know that it had been lapsed, or I might have lost Mr. Marshall."

Further on page 117:

"Question. But he did not know that it had lapsed? Answer. But he did not know that it had lapsed, but I did know that it had lapsed."

Q. Now, I ask you how you explain that testimony, in view of your previous testimony before the Receiver that you had told Marshall that you had defaulted, and that you had tried to do everything and could not do anything? A. I can only explain it in this way, that there might be some confliction there between my testimony at one time and another. I was very greatly exercised particularly about the stockholders. That was who I was interested in—the money that had been put in. I was a great deal more interested at that moment in that. Of course, that does not possibly appeal to you gentlemen, but nevertheless the interest that I had in this whole proposition was, first, to build hotels for the benefit of Asbury Park; and, second, after that had failed after putting in lots of hard work, to take care of the men who had put in money for the purpose of the enterprise, and that was what was confusing to me. That is what my actual interest is today. I wanted them to be protected. I was after Marshall and Pettit until I got that little agreement and when I got it I thought it was a Godsend. I was the only one that was trying to do anything; there was no other person interested except myself; I

was trying to save these people. That was all I was interested in at the time. If I said something to Mr. Marshall at that time, I don't know. I have given it as near as I can recall it in both instances.

Q. You paid no attention to the creditors, did you? A. I knew of no creditors at that time.

Q. Didn't you know of the claim of— A. (Interrupting) Not at that time. I did not know. I knew we had a temporary agreement with a man by the name of Preacher. That was the only possible claim I had heard of. I had nothing to do with this claim. I was interested in the men to whom I had sold stock and to whom I helped to sell stock.

Q. Didn't you know, Mayor, that when the claim of Mr. Preacher was asserted and suit brought, that the matter was handled by you through Durand, Ivens & Carton? A. Not Mr. Preacher. Mr. William Smith brought a suit against myself and against Bradley Hotels System for services, and I was excused, or whatever you call it—they discontinued the suit against me and continued it against the Bradley Hotels System.

Q. You authorized Durand, Ivens & Carton to consent to a judgment against the Hotels Company? A. I do not know the application of that, but the company—

Q. (Interrupting) You did authorize Durand, Ivens & Carton to consent to a judgment against the Hotel Company? A. I was only a person. I had no interest representing the Hotel Company.

Q. The papers were sent to you? A. I could not represent the Hotel Company.

Q. The papers were sent to you, were they not, and did you not retain the firm of Durand, Ivens & Carton, and did you not retain them as attorneys for the defendant, on behalf of the Hotel Company?

Clarence E. F. Hetrick. Recalled. Cross.

Mr. Wall: Objected to.

The Court: Objection sustained.

Mr. Gilson: I would like to recall Judge Smith in rebuttal, to identify a copy of a letter which he wrote to Mr. Reid.

Mr. Wall: If that is the only purpose, if Mr. Gilson will state what he wishes to prove by it, perhaps we can consent to it.

(Paper is produced and handed to Mr. Hamill.)

Mr. Hamill: It is dated July 12, 1926, and refers to a letter from Mr. Reid written December 31, to Judge Smith telling him he would like to have a conference regarding this matter.

The Court: How is it material?

Mr. Wall: We are satisfied to have it in on counsel's statement that it was sent by Judge Smith.

Mr. Hamill: I do not think it has any relevancy.

The Court: It purports to be a copy of a letter written by Judge Smith to Reid. Objection sustained, not on the ground that it is a copy, but because I do not think it is material or relevant.

Mr. Gilson: I ask the indulgence of the Court to recall Judge Smith.

The Court: I do not think it is material what Judge Smith writes to Reid that Hetrick said to him and I do not think it is proper evidence.

Mr. Gilson: Will counsel admit that if Judge Smith were recalled as a witness he would testify that Hetrick told him that he had said to Reid in the Fall of 1925 that no agreement had been signed?

Mr. Wall: I will.

Mr. Lane: We may as well deal with both of these things at one time. I have a letter dated September 19, 1925, from Mayor Hetrick to Judge Smith, and at the bottom of that letter is a notation making an appointment: "I will be in my office Saturday morning, September 26th. Will be delighted to see you." There is on the bottom of that letter in Judge Smith's handwriting a memorandum which I assume was made at the time and it says: "Saw Hetrick by appointment. Said agreement for protection of stockholders drawn but not signed. I urged it be signed. He said he would have it signed and send me original copy."

Mr. Wall: Mr. Muhleman testified it was not signed.

Mr. Lane: Now, Judge Smith, if produced, would testify that that memorandum was made at that time and refresh his recollection from it.

The Court: Objection sustained.

CASE CLOSED.

Exhibit C-1.
Exhibit C-2.

Exhibit C-1.

Printed subscriptions to stock of
Bradley Hotels System, Inc.

Subscriptions for 529 shares of preferred stock payable 30% on signing of subscription and 10% monthly thereafter. $11,201 in installments having been paid on account of subscriptions, and $25,022 having been paid in full, aggregating $36,223 on the subscriptions.

Exhibit C-2.

Minutes of Bradley Hotels System, Inc.

July 27, 1923. Incorporated. Officers: J. Herbert Reid, president; Clarence E. F. Hetrick, vice president; William A. Smith, secretary; William C. Krueger, treasurer; William A. Smith, assistant treasurer.

Present at first meeting of board of directors were J. Herbert Reid, Clarence E. F. Hetrick, William C. Krueger, Paul Heller, Clinton G. Holden, Walter W. Reid, Jr., Morland B. Soria, Charles A. Gould, Corbitt W. McCarthy and Benjamin A. Britwood.

July 30, 1923. "Whereas Clarence E. F. Hetrick has offered to sell to this corporation property consisting of a certain option upon three tracts of land located in the city of Asbury Park, New Jersey, given by Samuel H. Gillespie, executor and surviving trustee under the will of James A. Godley, to said Clarence E. F. Hetrick, under date of July 27, 1923, and duly executed, and has offered to accept in full payment therefor the sum of Five thousand

dollars ($5,000.00) and One Hundred thousand (100,000) shares of the common stock of this corporation without nominal or par value, to be issued to him or his nominees, and in full payment on behalf of the signers of the certificate of incorporation for the shares of stock of this corporation subscribed for by them, respectively, as shown by the certificate of incorporation; and

"Whereas, in the judgment of this board, said property consisting of said option is necessary for the business of this corporation and is a good and sufficient consideration for the shares of stock demanded therefor:

"Now, therefore, be it resolved that the offer of Clarence E. F. Hetrick to sell to the said corporation the property hereinbefore described be and it is hereby accepted and that the president and secretary of this corporation be and they hereby are authorized and directed to issue and deliver in payment for said property, in accordance with said offer, certificates of full paid capital stock of this corporation to the said Clarence E. F. Hetrick or his nominees, for an aggregate of Ninety-nine thousand nine hundred and ninety (99,990) shares and to the signers of the certificate of incorporation, or to their respective assigns, for the Ten (10) shares subscribed for by them as shown by the certificate of incorporation."

August 24, 1923. "A communication was received from Clarence E. F. Hetrick directing the manner in which the 100,000 shares of common stock to which he is entitled, pursuant to the direction of the board of directors passed July 31, 1923, shall be issued."

Exhibit C-2.

"August 20, 1923

Bradley Hotels System, Inc.,
Newark, N. J.

Gentlemen:

Please issue the 100,000 shares of the common stock which is due to me for the assignment of the option to you on the Asbury Park property as follows:

Benjamin B. McAlpin	3400	shares
Charles A. B. Pratt	3400	"
Austen Colgate	3400	"
Benjamin A. Britwoods	3400	"
Paul F. Heller	3400	"
C. E. F. Hetrick	3400	"
C. E. F. Hetrick	1700	"
C. G. Holden	3400	"
Wm. C. Krueger	1700	"
J. Herbert Reid	3400	"
Walter W. Reid, Jr.	3400	"
Morland B. Soria	1700	"
William A. Smith	1700	"
Harry A. Watson	1700	"
Charles A. Gould	3400	"
Corbett McCarthy	3400	"
C. E. F. Hetrick	1700	"
C. E. F. Hetrick	3400	"
	51,000.	

The balance of said 100,000 shares I hereby donate to your treasury to be used for such purpose as your board of directors shall designate.

Yours respectfully,

(Signed) CLARENCE E. F. HETRICK."

Exhibit O-2.

October 31, 1923. "The president called attention to the fact that it was necessary to take action under the option which the company held from the estate of James H. Bradley as $10,000 would be due on November 1, 1923; he said that there were three alternatives—(1) To abandon the option; (2) To make the payment of $10,000 under the option; (3) to pay $5,000.00 to estate of James A. Bradley and obtain an extension of the option for three months. He advised the board of directors that Mr. Bradley's executor would agree to this extension provided the extended option would provide that interest would be paid upon all moneys unpaid under the option or agreement of sale, said interest running from July 2, 1923, and that this condition was imposed because it was in the original letter which the executor gave to Mr. Hetrick but it was not included in the terms of the option."

March 24, 1924. "Resolved that the treasurer of the company be authorized and directed to pay the sum of $10,000. upon the option held by this company given to it by Samuel H. Gillespie, executor and surviving trustee under the last will and testament of James A. Bradley and due April 1, 1924."

"On motion duly made, seconded and carried it was resolved that Mayor Hetrick be requested to cable to Mr. Gillespie and ask for an extension of ninety days for the making of future payments under the said option."

August 28, 1924. "The question of the extension of the existing option from the Bradley Estate was discussed, and on motion duly made, seconded and carried, it was directed that Mr. Hetrick and Mr. Smith be appointed a committee to arrange for an extension of the option for two months upon payment of $5,000."

Exhibit C-3.

THIS AGREEMENT, made this first day of November A. D. 1923 between SAMUEL H. GILLESPIE, of the Town of Morristown, County of Morris and State of New Jersey, as the sole acting Executor and surviving trustee under the last Will and Testament and codicils thereto of JAMES A. BRADLEY, late of the City of Asbury Park, County of Monmouth and State of New Jersey, deceased, party of the first part, AND CLARENCE E. F. HETRICK of the City of Asbury Park, County of Monmouth and State of New Jersey, party of the second part, WITNESSETH, in consideration of the sum of FIVE THOUSAND DOLLARS ($5000.) lawful money of the United States of America, the receipt whereof is hereby acknowledged, and the covenants herein contained, That,

1. This agreement is supplemental to and amendatory of a certain Agreement made between the parties hereto bearing date July 27, 1923, wherein the party of the first part granted unto the party of the second part, an option for the purchase of three tracts of land situate in the City of Asbury Park, County of Monmouth and State of New Jersey.

2. That the said option granted unto the said party of the second part as aforesaid shall be extended for the term of three months from November 1, 1923, and that all payments to be made under the aforesaid agreement shall become due and payable three months after the days of payment provided in said agreement, to wit:

Exhibit C-3.

February 1, 1924	$10,000.00
March 1, 1924	10,000.00
April 1, 1924	10,000.00
May 1, 1924	10,000.00
June 1, 1924	10,000.00
July 1, 1924	10,000.00
August 1, 1924	20,000.00
September 1, 1924	20,000.00
October 1, 1924	20,000.00
November 1, 1924	50,000.00
December 1, 1924	50,000.00
January 1, 1925	50,000.00
	$270,000.00

3. AND it is further agreed in consideration of this extension that the party of the second part will pay unto the party of the first part interest upon all unpaid portions of the purchase price in said contract agreed to be paid, at the rate of six per centum per annum, and to be computed from the first day of July A. D. 1923.

4. IT is further agreed that the FIVE THOUSAND DOLLARS ($5000.) paid as consideration for this extension shall be deducted from the final payment to be made under the aforesaid contract if the aforesaid option is exercised, otherwise the said sum of FIVE THOUSAND DOLLARS ($5000.) paid hereunder and the sum of FIVE THOUSAND DOLLARS ($5000.) paid as consideration for the original option above mentioned shall become the property of the party of the first part hereto, free and discharged of all claim of the party of the second part.

5. IT is hereby agreed that the original contract of which this is supplement, and an amendment,

Exhibit C-3.

shall in all other respects continue in full force and effect, and the same is hereby ratified and confirmed.

In WITNESS WHEREOF, the said party of the first part has hereunto and to one duplicate original hereof set his hand and seal the day and year first above written.

SAMUEL H. GILLESPIE. (L. S.)
CLARENCE E. F. HETRICK. (L. S.)

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF

WM. S. WELLS as to
SHG. and C. E. F. H.

Exhibit C-4.

THIS AGREEMENT, made this First day of May A.D. nineteen hundred and twenty-four between SAMUEL H. GILLESPIE, of the Town of Morristown, County of Morris, and State of New Jersey, as the sole acting executor and surviving trustee under the last will and testament and codicils thereto of JAMES A. BRADLEY, late of the City of Asbury Park, County of Monmouth and State of New Jersey, deceased, party of the first part, AND CLARENCE E. F. HETRICK, of the City of Asbury Park, County of Monmouth and State of New Jersey party of the second part, WITNESSETH, in consideration of the sum of one dollar lawful money of the United States of America, the receipt whereof is hereby acknowledged and also in consideration of the covenants herein contained, that:

1. THIS AGREEMENT is supplemental to and amendatory of a certain agreement made between the parties hereto bearing date July 27, 1923 wherein the party of the first part granted unto the party of the second part an option for the purchase of three tracts of land situate in the City of Asbury Park, County of Monmouth and State of New Jersey, and is supplemental also to two other supplementary agreements dated November 1, 1923 and November 16, 1923, respectively.

2. That said option granted unto the said party of the second part as aforesaid, and as extended by said supplementary agreements is hereby extended for the further period of two months, from the First day of May A.D. nineteen hundred twenty-four.

Exhibit C-4.

3. The balance of the installments of the purchase price of Two Hundred Seventy Thousand Dollars ($270.000.), (Ten Thousand Dollars $10,000.00 of said purchase price due on April 1, 1924 having been paid) to be paid under the aforesaid agreement bearing date July 27, 1923 and the agreements supplemental thereto, shall become due and payable in the following manner:

July 1, 1924	$10,000.00
August 1, 1924	10,000.00
September 1, 1924	10,000.00
October 1. 1924	10,000.00
November 1, 1924	10,000.00
December 1, 1924	20,000.00
January 1, 1925	20,000.00
February 1, 1925	20,000.00
March 1, 1925	50,000.00
April 1, 1925	50,000.00
May 1, 1925	50,000.00
	$260,000.00

4. The party of the second part will pay the party of the first part interest upon each of said installments of said purchase price of Two Hundred Seventy Thousand Dollars ($270,000.00) at the rate of six per centum per annum to be computed from July 1, 1923 to the date of payment of each of said installments.

5. It is hereby agreed that the original contract of which this is supplemental and an amendment, and the aforesaid extension and supplementary contracts shall in all other respects continue in full force and effect and the same are hereby ratified and confirmed.

Exhibit C-4.

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

SAMUEL H. GILLESPIE. (L. S.)
CLARENCE E. F. HETRICK. (L. S.)

Signed, Sealed and
Delivered in the presence of

IRENE A. KOPH
as to Clarence E. F. Hetrick

May 1st, 1924.

For and in consideration of one dollar and other good and valuable considerations I hereby assign and transfer the foregoing option to Bradley Hotels System, Inc.

× CLARENCE E. F. HETRICK. (L. S.)

Exhibit C-5.

BRADLEY HOTELS SYSTEM
Incorporated

September 3, 1924.

Hon. C. E. F. Hetrick,
Asbury Park, N. J.

Dear Sir:

Inclosed herewith are two checks, both drawn to the order of Samuel H. Gillespie, one on the Asbury Park Trust Company and the other on The Merchants National Bank of Asbury Park. These checks were left at my office for signature and I have signed them.

It is my understanding that for this payment of $5,000.00 the present option will be extended until November 1, 1924.

I shall be back at my place at Sea Girt (220 New York Boulevard) on September 11 and shall leave early in the morning on September 13; after that I shall be in Montclair and you can reach me there or through my office at Newark.

Yours very truly,

WM. A. SMITH.

S/F
Inclosures—2.

Exhibit C-6.

THIS AGREEMENT, made this First day of September A. D. 1924, between SAMUEL H. GILLESPIE, of the Town of Morristown, County of Morris and State of New Jersey, as the sole acting Executor and surviving Trustee under the last Will and Testament and codicils thereto of James A. Bradley, late of the City of Asbury Park, County of Monmouth and State of New Jersey, deceased, party of the first part, AND CLARENCE E. F. HETRICK, of the City of Asbury Park, County of Monmouth and State of New Jersey, party of the second part, WITNESSETH, in consideration of the sum of ONE DOLLAR, lawful money of the UNITED STATES of America, the receipt whereof is hereby acknowledged, and the covenants herein contained, That,

1. THIS agreement is supplemental to and amendatory of a certain agreement made between the parties hereto bearing date July 27, 1923, wherein the party of the first part granted unto the party of the second part, an option for the purchase of three tracts of land situate in the City of Asbury Park, County of Monmouth and State of New Jersey, and is supplemental also to four other supplementary agreements, dated November 1, 1923, November 16, 1923, May 1, 1924 and July 1, 1924 respectively.

2. THAT said option granted unto the said party of the second part aforesaid, and as extended by said supplementary agreements, is hereby extended for the further period of two months from the first day of September, A. D. 1924.

3. ALL the installments of the purchase price of two hundred and seventy thousand dollars

($270,000.) to be paid under the aforesaid agreement bearing date July 27, 1923 shall become due and payable two months after the days of payment provided in said supplementary agreements bearing date July 1, 1924 so that the same shall become due and payable in the following manner:

November 1, 1924	$10,000.00
December 1, 1924	10,000.00
January 1, 1925	10,000.00
February 1, 1925	10,000.00
March 1, 1925	10,000.00
April 1, 1925	10,000.00
May 1, 1925	20,000.00
June 1, 1925	20,000.00
July 1, 1925	20,000.00
August 1, 1925	50,000.00
September 1, 1925	50,000.00
October 1, 1925	50,000.00
	$270,000.00

CREDIT for payments heretofore made shall be given in case of exercise of said option, upon the last installment of said purchase price.

4. THE party of the second part will pay the party of the first part interest upon each of said installments of said purchase price of two hundred and seventy thousand dollars ($270,000.00) at the rate of six per centum per annum, to be computed from July 1, 1923 to the date of payment of each of said installments.

5. IT is hereby agreed that the original contract of which this is a supplement, and an amendment, and the aforesaid Extension and Supplementary Contracts shall in all other respects continue in

Exhibit C-6.
Exhibit C-7.

full force and effect, and the same are hereby ratified and confirmed.

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

SAMUEL H. GILLESPIE (L. S.)
CLARENCE E. F. HETRICK (L. S.)

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

as to Clarence E. F. Hetrick.

Exhibit C-7.

BOARD OF COMMISSIONERS
Asbury Park, N. J.

September 4th, 1924.

My dear Judge:—

I beg to acknowledge receipt of checks of the Bradley Hotels System for five thousand ($5,000.) dollars for two (2) months renewal of optional contract for lands in Asbury Park now controlled by Samuel H. Gillispie, Executor.

I have sent the checks to Mr. Gillespie with the request that he execute a renewal contract.

Cordially yours,

C. E. F. HETRICK, Mayor.

To Hon. William S. Smith,
c/o Coult & Smith,
#763 Broad Street,
Newark, N. J.

CEFH/K

Exhibit C-8.

September 16, 1925.

Hon. C. E. F. Hetrick,
Mayor, Asbury Park,
Asbury Park, N. J.

My dear Mayor:

J. Herbert Reid has sent me correspondence which he has had with you with reference to Bradley Hotel System, Inc. In his letter to you he probably puts it a little harsh, but the understanding that I had was that the arrangement which you were making for the sale of the property which the Bradley Hotel System, Inc. had under option was going to take care of the creditors and stockholders of the Company. Not having heard anything from you about this and being importuned by many of the interested parties, Mr. Reid and myself both thought we should have some definite knowledge as to what arrangement you had made as you realize the matter was entirely in your hands, as you state in your letter.

You will recall that I have written you about this matter and have not heard from you. I think probably the best thing for us to do is for you and myself to have a conference in regard to the matter when we both will be able to speak our minds. I expect to be down at Sea Girt over this week-end and next week-end. I hardly think I will get a chance this week-end to see you but if you can make some definite appointment for a week from Saturday, and advise me here, I will be glad to keep it.

I am sitting at Hackensack now and will be there for several weeks longer. I can be reached here by 'phone, 4653 Hackensack, or at my house in the evening.

Sincerely yours,

WM. A. SMITH.

Exhibit C-9.

ST. AGNES' HOSPITAL.
Baltimore, Md.

September 29, 1924.

Hon. Clarence E. Hetrick,
Asbury Park,
New Jersey.

Dear Mr. Mayor:

No doubt you have heard that my brother, Walter, was operated upon Monday, September 22, at St. Agnes Hospital, Baltimore, Maryland. I am glad to inform you that he is coming along splendidly, but it will be necessary for him to have another operation within a few days, the date for which has not been definitely set. I am staying with my brother and his wife in Baltimore and for this reason neither he nor I will be able to attend any of the meetings of the Bradley Hotels Company. However, this should not in any way interfere with the affairs of the Company.

My understanding is that the option obtained from Mr. Gillespie expires November first. Because of this fact I feel it imperative that a meeting of the Directors be called at once and if nothing definite regarding the financing of the hotels has been accomplished that the matter of disposing of the land be taken up at once and definitely settled at the earliest possible moment, whether this might be brought about by a committee of the Board of Directors of the Hotels Company or thru the agency of real estate operators along the shore. We all understand that this land can be sold at a substantial profit and it would seem that we would all be chargeable with neglect by the stockholders if we

Exhibit C-9.

do not take advantage of this opportunity to protect their interest and it would seem that the only way in which we can protect their interest would be thru the disposal of the land.

We regret very much our inability to be with you but assure you that if there are any legal requirements in the way of waivers, proxies, etc., we will forward the same to you immediately upon receipt of advice from you to this effect.

As Vice President of the Company you are the proper one to call the meeting, for which reason I am writing you as outlined above.

I am also taking the liberty of sending copy of this letter to Mr. Morland B. Soria and Hon. William A. Smith, whom I know will fully co-operate with you.

Very truly yours,

(Signed) J. HERBERT REID.

Exhibit C-10.

REID'S BUREAU OF INSURANCE INFORMATION.

J. Herbert Reid.

Newark, N. J., Sept. 8, 1925

Hon. C. E. F. Hetrick,
Mayor Asbury Park,
Asbury Park, N. J.

Dear Mr. Mayor:

Upon receipt of your communication of August 25th, enclosing bill of A. G. Rogers for moving and storage, I wrote to you, but, find upon my return to the city that through some inadvertence the letter was not referred to me for signature before I left town and subsequently was held up. However, my previous letters to you asking for information regarding the return to be made to the Bradley Hotels System out of the proceeds from the sale of the land that was held by our company under option have all remained unanswered.

You must appreciate Mr. Mayor that our friends to whom we sold stock in the Bradley Company are referring to me for information. I have already informed some of them, as per our understanding with you, that by stepping aside the Bradley Company was permitting the sale of this land at a price that would guarantee to us the return of all expenses up to the date of the sale, making possible a return to all of our investors dollar for dollar the amount of their investment. This was the very definite understanding had with you in the presence of Judge Smith and others, and, I am at a loss to understand why you are not giving me definite information as to when this sale is to be consummated so that we can advise our investors when their

Exhibit C-10.
Exhibit C-11.

money will be returned to them. I have written to you and I understand Judge Smith has written to you—we have not even had a reply to our letters. I have tried to see you, but, unfortunately could not reach you. The situation is becoming extremely embarrassing and something must be done at once.

It should not be necessary for the company to go to the expense of filing a petition in Chancery to review the facts involved in the sale of this land, but, unless we can have this matter straightened out by you at an early date it will be necessary for the directors of the Bradley Company, in pursuance of their trust, to take such action as in their judgment might be necessary.

If I cannot have a reply from you this week, I shall on next Monday seek a conference with Judge Smith for advice as to my further procedure.

Yours very truly,

(Signed) J. Herbert Reid.

Exhibit C-11.

Certificate of Incorporation of Coast Holding Corporation, a corporation of New Jersey.	Dated, April 8, 1925. Ack'd. April 8, 1925. Rec'd in Monmouth County Clerk's Office, April 11, 1925. Filed with Secretary of State of New Jersey, April 17, 1925.

Signed by Clarence E. F. Hetrick, Francis O. Noble and Albert B. Maginnes.

Authorized capital stock 1200 shares of common stock without nominal or par value.

Amount of capital stock issued as follows:

Clarence E. F. Hetrick.....40 shares.
Francis O. Noble.....30 shares.
Albert B. Maginnes .....30 shares.

Exhibit C-12.

ESTATE OF JAMES A. BRADLEY
811 Summerfield Ave.
Asbury Park, N. J.

April 1, 1925

Mayor C. E. F. Hetrick,
Asbury Park, N. J.

My dear Mayor Hetrick:

This will confirm the agreement made with you today to sell the three parcels of property described as follows:

Block north of the Monterey
Block between 8th Ave. & Deal Lake Drive
¾ block west of Kingsley Avenue

for $345,000. plus Ocean Avenue assessment, terms of payment to be $25,000. down on the signing of the contract and the balance, $320,000., by June first, 1925.

Yours very truly,

S. H. GILLESPIE,
Executor.

Exhibit—(Offered in Evidence, p. 80.)

Minutes of Coast Holding Corporation.

April 21, 1925. First meeting of stockholders. Directors elected: Clarence E. F. Hetrick, Francis O. Noble, Albert B. Maginnes, each holding 100 shares of stock.

The secretary presented a proposal from the Eastern Parkway & Bedford Avenue Corporation offering to sell to this corporation describing the three tracts of property in Asbury Park, N. J. (being the premises in question) for $745,000 to be paid for by the execution and delivery of three first lien purchase money mortgages, in the following respective amounts: Block 1, $300,000; Block 2, $300,000; Block 3, $145,000.

May 15, 1925, Special meeting of board of directors. Present: Isaac Marshall, Clarence E. F. Hetrick, Henry Pettit and Donald C. Muhleman. Mr. Marshall acted as secretary.

September 2, 1925. Mr. Muhleman requested Mr. Hetrick to leave the room and the board then considered the compensation to Mr. Hetrick as an officer of the corporation, and upon motion duly made and seconded it was unanimously resolved by the members of the board present that the corporation pay out of any moneys in its possession or to come into its possession the sum of $10,000 on account of services heretofore rendered by Mr. Hetrick and disbursements incurred by him.

Mr. Marshall was then requested to leave the room and the board then considered the compensation to be paid to him and upon motion duly made and seconded it was unanimously resolved by the

Exhibit—(Offered in Evidence, p. 80.)

members of the board present that the corporation pay out of any money in its possession or to come into its possession the sum of $10,000 on account of services rendered heretofore by Mr. Marshall and disbursements incurred by him.

Mr. Muhleman was then requested to leave the room and the board then considered the compensation to be paid to him as counsel, and upon motion duly made and seconded it was unanimously resolved by the members of the board present that the corporation pay out of any moneys in its possession or to come into its possession, the sum of $10,000 on account of services heretofore by Mr. Muhleman representing Larkin, Rathborne & Perry as counsel and disbursements incurred by them.

The whole board then considered compensation to be paid to Mr. Pettit. Upon motion duly made and seconded it was unanimously resolved that the corporation pay out of any moneys in its possession or to come into its possession the sum of $10,000 on account of services rendered by Mr. Pettit and disbursements incurred by him.

April 20, 1926. There was a discussion in regard to salaries for the officers of the corporation and it was unanimously resolved that the officers of the corporation be paid at the rate of $15,000 for the year 1926. There was further discussion in regard to additional payments of counsel fees and it was unanimously resolved that the corporation pay $ on account of their services.

Exhibit C-13.

Exhibit C-13.

Deed Eastern Parkway &c. Corporation to Coast Holding Corporation.

EASTERN PARKWAY & BEDFORD AVENUE CORPORATION, a New York corporation, TO COAST HOLDING CORPORATION, a New Jersey corporation.	Deed May 12, 1925. Ack. Cons. Rec. May 20, 1925.

Conveys premises in question.

Signed: Henry Pettit, president; Donald C. Muhleman, secretary.

Exhibit C-14.

Deed Samuel Gillespie, sole surviving trustee &c. to Eastern Parkway & Bedford Ave. Corporation.

SAMUEL H. GILLESPIE, sole surviving trustee under last will and testament of Bradley, deceased, TO EASTERN PARKWAY & BEDFORD AVENUE CORPORATION, a New York corporation.	Deed May 8, 1925. Ack. May 8, 1925. Rec. May 9, 1925. Cons.

Conveys premises in question:

Signed: Samuel H. Gillespie, executor and trustee under last will and testament of James A. Bradley, deceased.

Exhibit C-15.

AGREEMENT made this day of May, one thousand, nine hundred and twenty-five, at New York City, by and between C. E. F. Hetrick, residing in Asbury Park, New Jersey, first party and Coast Holding Corporation, a New Jersey Corporation having its principal office at No. 701 Mattison Avenue, Asbury Park, New Jersey, second party;

The second party has purchased from Eastern Parkway Bedford Avenue Corporation, the Grantee from the Estate of James A. Bradley, the following described property situate in Asbury Park, State of New Jersey:

Block 1, bounded by Ocean Avenue on the east, Kingsley Street on the west, Seventh Avenue on the south and Eighth Avenue on the north.

Block 2, bounded on the east by Ocean Avenue, on the west by Kingsley Street, on the south by Eighth Avenue, on the north by Deal Lake Drive.

Block 3, bounded on the east by Kingsley Street, on the west by Webb Street, on the south by Eighth Avenue and on the north by Deal Lake Drive.

The first party states that he desires to make payment of the sum of Thirty-six Thousand, Two Hundred and Twenty-three Dollars ($36,223) which the first party desires to receive from the second party under the following circumstances:

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

That for valuable consideration, the parties hereto agree as follows:

Exhibit C-15.

1. The second party agrees to pay to the first party an amount which shall not exceed Thirty-six Thousand Two Hundred and Twenty-three Dollars ($36,223) which the first party desires to use for the purpose of reimbursing certain persons known to him who were associated with him in transactions concerning the property subsequently acquired by the second party. This amount will be paid by the second party to the first party out of any proceeds made by the second party after the payment of Seven Hundred and Forty Five Thousand Dollars ($745,000.), the amount of the mortgages now liens on the property, has been made, plus interest and all expenses and charges payable by the second party.

IT IS ~~PREVIOUSLY~~ Expressly UNDERSTOOD AND AGREED that the liability of the second party for the payment of any money shall not accrue until it has paid the present mortgages on the property amounting to Seven Hundred and Forty-five Thousand Dollars ($745,000.), plus interest and any charges and expenses payable by the second party, and that the amount shall in no event exceed the said sum of Thirty Six Thousand, Two Hundred and Twenty-three Dollars ($36,223.); and that no interest shall be payable or allowed on the said sum.

This agreement shall in no event, enure to the benefit of any person or persons other than the first party and no other person or persons shall at any time have any claim or right to the whole or any part of the said sum of Thirty-six Thousand, Two Hundred and Twenty-three Dollars ($36,223.).

IN WITNESS WHEREOF, the first party has hereunto set his hand and seal and the second party has hereunto set his hand and seal and the second party has caused its corporate seal to be hereunto affixed

Exhibit C-15.

and these presents to be executed by its duly authorized officer the day and year first above written.

In Presence of:

C. E. F. HETRICK (L. S.)

COAST HOLDING CORPORATION,
By C. E. F. Hetrick,
President.

Attest:
ISAAC MARSHALL,
Asst. Secretary.

Exhibit C-16.

"Says All Stock Holders Will be Paid in Full."

"Hetrick Declares Agreement With Coast Holding Company, Purchasers of Beach Front Plots, Fully Protects Investors Despite Receivership.

"Every purchaser of stock in the Bradley Hotels System, Inc., which on Wednesday was placed in the hands of a receiver will be returned the amount invested was the promise today of Mayor Clarence E. F. Hetrick, vice president of the Hotels System.

"Mayor Hetrick declared that he personally protected all stockholders in the company by securing an agreement with the Coast Holding Company, which later purchased the property, which is bounded by Seventh, Eighth and Ocean Avenues, Kingsley and Webb streets and Deal Lake Drive, whereby the purchasers of stock in the Bradley Hotels System, Inc., would be returned the money invested in the Bradley Hotels System, Inc. by the Coast Holding Company.

"The mayor's statement reads 'I personally protected all the persons who bought stock or subscribed to stock in the Bradley Hotels System, Inc., by securing an agreement with the Coast Holding Company which later purchased the property in question, whereby the purchasers of stock in the Bradley Hotels System, Inc., would be returned the money invested in the Bradley Hotels System, Inc., from the profits of the resale of the property.

"Under the terms of that agreement between the Coast Holding Company and myself the Coast Holding Company will pay to those who bought stock in the Bradley Hotels System, Inc., the amount paid on account of the purchase of stock.

" 'While I was only vice president of the Bradley Hotels System, Inc., thru the assistance of Samuel

Gillespie, executor of the Bradley estate, I was able to secure the agreement, with Coast Holding Company, which finally bought the property in question.

" 'The three blocks north of the Monterey Hotel were purchased by the Coast Holding Company from the Bradley estate many months ago after the option of the Bradley Hotels System, Inc., expired.'

"This statement, Mayor Hetrick declared, was made in The Press several months ago when the Coast Holding Company purchased the property along Deal Lake and the ocean-front.

"It is apparent that the Bradley Hotels System, Inc., has not been functioning for about a year and a half. None of the officers questioned could recall the date of the last meeting.

"The Bradley Hotels System, Inc., had only an option for the purchase of the property in question and was unable to take title. It was several months later when the Coast Holding Company bought the property from the Bradley Estate. Mayor Hetrick is president of the Coast Holding Company, Isaac Marshall, secretary and H. H. Pettit, treasurer.

"The Bradley Hotels System, Inc., was thrown into the receiver's hands Wednesday when Vice Chancelor Berry appointed Peter Bentley, Jersey City lawyer, receiver. The application was made by Walter T. Smith of Summit, architect who was called in to pass on the building plans. Smith holds a judgment of $5,035.06 and costs against the company".

Exhibit D-1.

BOARD OF COMMISSIONERS
Asbury Park, N. J.

September 9th, 1925.

Dear Sir:

To put it mildly the tone of your letter of September eighth in reference to the affairs of the Bradley Hotels System is more than offensive.

Of all the officers and directors, including yourself as president, I was the only one connected with the Bradley Hotels System who worked and worried and endeavored to protect the interests of persons who had invested money in the stock of that company.

More than once by my own efforts I protected stockholder's interests and arranged for option renewals.

And finally, after the option contract had been expired for months, I managed to interest people in the purchasing of the land and in the giving of an agreement that out of the first profits received from the land the cash paid into the treasury of the defunct Bradley Hotels System by purchasers of stock would be returned to such investing stockholders.

It is gratifying to me to learn that after months and years you have finally been aroused to a conscious sense as to your duty as president and director of the Bradley Hotels System, and that you are now giving some thought to the protection of the innocent stockholders who purchased stock and made certain cash payments on account of or in full payment for same.

Exhibit D-1.
Exhibit D-2.

It would be entirely proper therefore for you to revue the matter in the Court of Chancery as you suggest.

Very truly yours,

CLARENCE E. F. HETRICK.

To Mr. J. Herbert Reid,
#14 Park Place,
Newark, N. J.

CEFH/K

Exhibit D-2.

WESTERN UNION TELEGRAM.

10/28/24.

H. L. CLARKE, PRES.,
UTILITIES POWER & LIGHT CO.,
327 SOUTH LA SALLE STREET,
CHICAGO, ILL.

BRADLEY HOTELS OPTION ON LANDS EXPIRES SATURDAY NOVEMBER FIRST. OPTION REQUIRES PAYMENT OF TEN THOUSAND ON ABOVE DATE AND EXECUTION OF FORMAL CONTRACT. TWENTY FIVE THOUSAND HAS ALREADY BEEN PAID AND THIS AMOUNT IS APPLICABLE TO TOTAL COST OF LAND. APPRAISAL VALUE IS FOUR TIMES COST AND IT SEEMS A PITY TO LOSE PROPERTY AS WELL AS MONIES ALREADY PAID. CAN YOU SUGGEST SOME METHOD OF FINANCING FURTHER PAYMENTS?

C. E. F. HETRICK
ASBURY PARK, N. J.

Exhibit D-3.

WESTERN UNION
TELEGRAM.

RECEIVED AT 725 MATTISON AVENUE, ASBURY PARK, N. J.

3 ON C 57 BLUE

CHICAGO ILL 1007A OCT 28 1924

HON. C. E. F. HETRICK
ASBURY PARK N. J.

MY ONLY SUGGESTION IS AN EXTENSION OF TIME STOP I CANNOT DEVOTE ANY TIME TO PROPOSITION NOW AND DO NOT FEEL THAT I SHOULD FINANCE ANY FURTHER PAYMENTS UNLESS OTHERS ARE WILLING TO COME ACROSS STOP LET THE COLONEL PUT UP TEN THOUSAND FOR A CHANGE STOP WILL SEE YOU WITHIN A FEW DAYS REGARDING OTHER MATTERS

H L CLARKE

1204P

EX. D-3.

Exhibit D-4.
Exhibit D-4.

ESTATE OF JAMES A. BRADLEY
Asbury Park, N. J.

Samuel H. Gillespie
Executor

J. Everett Newman
Estate Agent.

April 1, 1925

Mayor C. E. F. Hetrick,
Asbury Park, N. J.

My dear Mayor:

Referring to letter of this date in which I agree to sell three parcels of land described as follows:

Block north of the Monterey
Block between 8th Ave. & Deal Lake Drive
¾ block west of Kingsley Avenue

for $345,000. beg to advise you that the $30,000. which was paid at various times on account of the option for this same property to the Bradley Lands Corporation I consider as forfeited under the terms of the agreement and will retain same.

Yours very truly,

S. H. GILLESPIE,
Executor.

Conclusions.

(Filed July 9, 1927.)

(NOT TO BE PUBLISHED IN ANY REPORT.)

IN CHANCERY OF NEW JERSEY.

July 6, 1928.
63–387.

Between
PETER BENTLEY, Receiver of Bradley Hotels System, Inc.,
Complainant,

and

CLARENCE E. F. HETRICK, *et al.*,
Defendants.

On Bill &c.
Conclusions.

Mr. HERBERT CLARK GILSON and Mr. MERRITT LANE for Complainant.

Mr. JAMES A. HAMILL for defendant Hetrick.

Mr. ALBERT C. WALL for defendant Coast Holding Company.

FIELDER, V. C.:

At a meeting between Walter Reid, J. Herbert Reid and Clarence E. F. Hetrick, a project was discussed for the erection of several hotels at Asbury Park. Hetrick had a verbal option for the purchase, from the estate of James A. Bradley, of three city blocks of land on which it was proposed to erect the hotels and the project contemplated the investment of upward of nine million dollars. As a result of the meeting, the Bradley Hotels System, Inc. (hereinafter called Bradley Company), was in-

corporated July 27, 1923. Hetrick obtained a written option, dated July 27, 1923, for the purchase of said three city blocks from the executor of the Bradley Estate for $270,000 and at a meeting of stockholders of the company held July 31, 1923, a resolution was adopted to take said option over, paying Hetrick therefor $5000 which he had paid the Bradley Estate and 100,000 shares of the common stock of the company, without par value. Thereupon Hetrick directed that 51,000 of said shares be issued to him, to the two Reids and to various other persons who had been induced to join the enterprise and that 49,000 shares be donated to the company's treasury. A board of fifteen directors was elected, including the two Reids and Hetrick. J. Herbert Reid was elected president, Hetrick vice-president and William A. Smith secretary and assistant treasurer, all of whom continued to hold their respective offices to May 11, 1926, when complainant was appointed receiver of the company by this court. The original option seems to have been lost or mislaid but it either was to expire November 1, 1923, or a payment thereon was due on that day because the minutes of a directors' meeting held October 31, 1923, show that the president called attention that an extension of the option for three months could be obtained upon payment of $5,000 and a resolution was adopted authorizing such payment and a written extension to February 1, 1924, was granted. When that extension expired nothing seems to have been done until, at a directors' meeting held March 24, 1924, a resolution was adopted requesting Hetrick to cable the executor of the Bradley Estate for a ninety day extension, but no written extension was given until May 1, 1924, when the option was extended to July

1, 1924. No written extension from July 1, 1924 was offered in evidence, and the minutes mention no such extension, but the minutes of a directors' meeting held August 28, 1924, contain the following: "The question of the extension of the existing option from the Bradley Estate was discussed and on motion duly made, seconded and carried it was directed that Mr. Hetrick and Mr. Smith be appointed a committee to arrange for an extension of the option for two months on payment of $5,000" and a written extension for two months from September 1, 1924, was obtained by Hetrick. No further action with respect to the option was taken by the directors after August 28, 1924; in fact, no meeting of the board was held for any purpose after that date and the option lapsed November 1, 1924. Following negotiations started in March, 1925, the Bradley Estate conveyed the three blocks of land to Eastern Parkway Bedford Avenue Company (hereinafter called Eastern Company) by deed dated May 8, 1925, recorded May 9, 1925 and said grantee by deed dated May 12, 1925, recorded May 20, 1925 conveyed the same property to Coast Holding Company.

The bill of complaint alleges that Hetrick represented to the officers and directors of Bradley Company that it was impracticable for that corporation to proceed with the development of the land covered by the option and promised, if they would allow him and a corporation to be organized by him to take over the property covered by the option, he and the said corporation would pay the creditors and stockholders of Bradley Company the full amount of their claims; that relying upon his promise said officers and directors allowed the option to expire and Hetrick organized Coast Holding

Company and took title to the lands in the name of that corporation, with its knowledge of his representations and promises and the complainant sues to recover from Hetrick and Coast Holding Company the total amount paid by the stockholders for their stock in Bradley Company, the amount of creditors' claims filed with the receiver and $30,000 paid by Bradley Company for the option and the renewals thereof, the whole being a total of $95,756.67.

There is no proof that Hetrick requested his fellow officers and directors to permit him or a corporation to take over the option or the property, or that, in such event, he or it would pay the creditors and stockholders of Bradley Company; or that he allowed, or induced his fellow directors to permit, the option to lapse so that he or a corporation might purchase the property. The case which the complainant endeavored to make out is that before, at and after the directors' meeting of August 28, 1924, all officers and directors of Bradley Company, except Hetrick, wished to dispose of the option or the property covered thereby and that Hetrick urged that the original project namely the raising of money to buy the land and to build hotels, be carried out; that at the meeting of August 28, 1924, all directors, save Hetrick, favored a sale of the land and upon Hetrick's request that further time be given him to interest capital and upon his promise that if he was unsuccessful, he would dispose of the option, or the land, for a sum sufficient to pay all claims, the directors passed the motion to pay $5,000 for an extension of the option and relied on Hetrick, without further action on their part, to dispose of it, in case he was unable to raise capital to buy the land and build hotels; that he failed

to raise the money or to sell the option and subsequently became a stockholder and officer of Coast Holding Company, which thereafter purchased the property with knowledge of Hetrick's promise.

First, as to the case against Coast Holding Company, in March, 1925, Isaac Marshall, a resident of Asbury Park, became interested in acquiring the property in question, and at a chance meeting with Hetrick, told the latter of his interest and mentioned the price at which he thought it could be purchased. Hetrick stated that he thought he could get it for Marshall for a lower figure and endeavored to do so but failed. Thereafter Marshall, dealing directly with the executor of the Bradley Estate and acting for himself and one Pettit, obtained a contract of sale at $345,000 plus about $20,000 for unpaid taxes and assessments and some interest charges. Marshall had heard of the option which Hetrick had held for the Bradley Company and before he entered into a contract with the Bradley Estate, he procured a letter from the executor to the effect that Hetrick's option had lapsed. Marshall requested Hetrick to join him in the new enterprise, to which Hetrick assented, provided Marshall would give him an agreement whereby the stockholders of Bradley Company would be repaid their stock subscriptions. Marshall then went to the Central Trust Company of New York to borrow money with which to finance his purchase. He and Pettit were in control of Eastern Company, a corporation of the State of New York, organized in 1921 or 1922, which corporation was then indebted to said Trust Company for $375,000 upon which indebtedness it was "slow" in making payments. The Trust Company agreed to loan Marshall and Pettit the further sum of $370,000 which was the total

sum required to be paid by Marshall under his contract with the Bradley Estate and an attorney for the Trust Company took charge of the proceedings. Under his instructions, the Eastern Company took title to the property May 8, 1925 and gave its note for $745,000 to the Trust Company, endorsed by its stockholders and secured by all of its corporate stock as collateral, which note represented its total indebtedness to the Trust Company. Before the Eastern Company took title, Marshall informed the Trust Company's attorney of his desire to have Hetrick associated with Pettit and him in the purchase of the property and of Hetrick's desire for an agreement to secure repayment to the Bradley Company stockholders and the attorney refused to commit the Eastern Company or the Trust Company to such an agreement, but upon Marshall's insisting he advised the formation of the Coast Holding Company to take title from the Eastern Company and thereupon Marshall and Pettit caused that corporation to be incorporated April 17, 1925, and they gave Hetrick a stock interest therein and made him its president. The Eastern Company, by deed dated May 12, 1925, conveyed the lands in question to Coast Holding Company for the consideration of $745,000, taking mortgages for the whole purchase price and thereafter the Coast Holding Company delivered an agreement to Hetrick whereby out of the first profits realized by Coast Holding Company from the sale of its property, after paying the mortgages, interest and all expenses, Coast Holding Company agreed to pay Hetrick $36,223 to reimburse stockholders of Bradley Company for their subscriptions, it being expressly provided that the agreement should not enure to the benefit of anyone other than Hetrick.

Conclusions.

Hetrick denies that he ever promised the directors of Bradley Company to dispose of that company's option in the event that he was unable to raise sufficient money to finance the company's hotel projects, but if he had made such promise, the evidence fails to show that the promise was known to the Eastern Company, or to Coast Holding Company or to anyone connected with those corporations. So far as Marshall or Pettit knew, the Bradley Company's option had expired and its stockholders and creditors had no further rights in the land. Hetrick was Mayor of Asbury Park and president of the Chamber of Commerce of that city. In the eyes of Marshall and Pettit he was a man of prominence and influence in his community and they considered it good business to have him associated with them in the property they agreed to purchase and through him obtain the good will of the citizens of Asbury Park. They knew that Bradley Company had failed and that its stockholders stood to lose their investment therein and they hoped, by meeting Hetrick's desire to repay them, to avoid possible antagonism and opposition from that source. Hetrick's sole interest in agreeing to become associated with Coast Holding Company appears to have been to eventually discharge a moral obligation which he felt he owed the stockholders of Bradley Company who had subscribed for their stock on the faith of his connection with that company. He had no connection whatever with Eastern Company and although, as director of Coast Holding Company he voted for the purchase by that company from Eastern Company, he had no part in fixing the terms of the purchase. The agreement by Coast Holding Company to pay Hetrick $36,223 at a future time, was wholly vol-

untary on the company's part and was without consideration moving to it other than Hetrick's consent to become associated with the corporation, and since the agreement specifically provides that it shall not enure to the benefit of anyone other than Hetrick, it cannot be enforced by Bradley Company stockholders even when the time arrives when, according to its terms, the money is payable. I shall dismiss the bill of complaint as to the defendant Coast Holding Company.

As to the case against Hetrick. He denies, as heretofore stated, promising the directors of Bradley Company to dispose of that company's option. The proof in support of such promise must be found in the testimony of directors J. Herbert Reid and Smith. Reid's testimony is that the promise was made to Smith and him at a conference with Hetrick in October, 1924, and Smith testified that the promise was not only made at such conference, but also at the meeting of directors of Bradley Company, held August 28, 1924 and both Reid and Smith testify that Hetrick promised to sell the land. It is obvious that neither Hetrick nor Bradley Company could dispose of the land because title was in the Bradley estate and Bradley Company was without funds to take it over under the option. The minutes of a stockholders' meeting held April 5, 1924, show that the company then had a deficit of $8,690.18 and the minutes of the directors' meeting of August 28, 1924, show that the company then had but $5,814.41 in bank, of which $5,000 was voted to pay for an extension of the option. To realize on the option (if it was assignable) the amount claimed from Hetrick in this suit, the company would have had to find a purchaser willing to pay $95,756.67 for it and the purchaser would have

had to pay the Bradley estate the balance due on the option.

It appears that there was doubt in the directors' minds prior to the meeting of August 28, 1924, as to whether the money to finance the purchase of the land and the erection of hotels would be forthcoming. There had been some general discussion as to the advisability of disposing of the option, but as to that subject the minutes are silent and at no directors' meeting had a motion or resolution been proposed to dispose of it. At the meeting of August 28, 1924, according to Smith, the first serious discussion of the sale of the property was had. The board then consisted of thirteen directors, of whom seven were present, including Reid, Smith and Hetrick. All directors present at this meeting, except Hetrick, at first opposed an extension of the option and favored a sale. The option would then have expired in three days and undoubtedly the time was too short to arrange for its sale; it had to be extended or it would lapse. The directors knew that Hetrick had been endeavoring, without success, to raise money but they granted his plea for further time and a motion was passed to pay $5000 for an extension of the option to November 1, 1924 and nothing was said in the motion about affecting a sale of the option before the time for its expiration arrived. Smith says that the meeting adjourned with the understanding that if Hetrick could not raise the money, he would arrange to dispose of the property, but the directors must have known that Hetrick could not dispose of the option or the property without formal action by the directors or stockholders. Smith's testimony is that after this meeting he was too busy to give the matter further attention and he did nothing. Reid's

testimony is that after that date he was at Baltimore at the bedside of a sick brother and could give no attention to the company's affairs.

I gather from the testimony that Hetrick was the most enthusiastic and active member of the board and that his fellow directors were willing to permit him to do all the work, but he had no more power or authority and owed no greater duty to the stockholders than the other twelve directors of the company. He was desirous that the purpose for which the company was organized should be carried out and he probably voiced his opinion to his fellow directors at informal and formal meetings. They had the right to agree or differ with him and he had but one vote to cast at board meetings. At the meeting of August 28, 1924, the directors who favored a sale of the property could have adopted a resolution, over his opposition, to sell the property, but they did not. At that meeting, he may have expressed the belief that the option or the land could be sold for a sum above the option price but, because he had always opposed such sale, he had never attempted to ascertain whether or not his belief was on a firm foundation and he was expressing no more than his opinion. It meant no personal profit to him to make a definite promise to sell the option and no director present (except Smith) says that such promise was made at the meeting of August 28, 1924. Had Reid understood that Hetrick had made such a promise, in his letter of September 29, 1924, to Hetrick, Reid would have called on Hetrick to perform it, but in that letter Reid said that if nothing definite regarding the financing of the hotels had been accomplished, the disposal of the land should be taken up (not by Hetrick) by the directors of the Bradley Company

or by some real estate operator. It must also be noted that although all directors present at the meeting of August 28, 1924, had actual notice and the other directors must be presumed to have had notice that the option expired November 1, 1924, no director called on Hetrick to make good on his alleged promise until September 8, 1925, nearly a year later, when Reid wrote Hetrick, although the sale of the property by the Bradley estate to Marshall in April, 1925, was given much publicity in the local press. I think Smith's recollection of what was said by Hetrick at the meeting of August 28, 1924, is at fault. His testimony was given nearly three and a half years after that meeting and he says that his recollection of what occurred at that meeting is "rather dim".

The promise is also said to have been made by Hetrick at an informal conference with Reid and Smith in October, 1924, Reid wrote Hetrick from Baltimore September 29, 1924, that the option would expire November 1 and that all directors would be chargeable with negligence if they failed to take steps to sell the lands and telling Hetrick to call a directors' meeting at once. At the same time he sent directors Smith and Soria a copy of this letter. Early in October, 1924, Reid and Smith had a conference with Hetrick at the latter's office in Asbury Park, at which Hetrick informed them that he had been unable to raise money for the company and it is at this conference Reid and Smith say Hetrick promised to dispose of the land. At a directors' meeting held October 31, 1923, a resolution was adopted that the directors should meet weekly, but they never did so and all subsequent meetings seem to have been held on call by the president. At the conference in October, 1924, none of

the conferees suggested that a directors' meeting be called to act on the situation. Reid and Smith knew that such a meeting was necessary,—Reid had said so in his letter of September 29, 1924, a copy of which Smith had received—and none of the ten other directors did anything about a meeting. Hetrick was under no duty to call a meeting. As a director he had no such authority and as a vice president he could act only in the absence or disability of the president. Reid was president and under the by laws had authority on his own motion and at any time, to call a special meeting of the board. Instead of writing Hetrick, September 29, 1924 to call such meeting and sending a copy of his letter to Smith, the secretary, he should have written Smith direct to call a meeting, or at the conference in October, 1924, Reid should have directed Smith to call the meeting forthwith. Hetrick denies that at this conference he promised to dispose of the property, but if he did, it was no promise to the corporation and Reid and Smith knew that it was a promise impossible of performance, first, because the company did not own the land and was without funds to take title to it and second because corporate action, through a meeting of the board, was necessary to authorize a sale of the option. I cannot find that anything occurred at this conference which bound Hetrick to any duty to the corporation, nor can I find on any evidence in the case, that he owned any greater obligation to the corporation than did his fellow directors. I shall also dismiss the bill of complaint as to the defendant Hetrick.

Final Decree.

(Filed July 16, 1928.)

IN CHANCERY OF NEW JERSEY.

Between PETER BENTLEY, Receiver of Bradley Hotels System, Inc., Complainant, and CLARENCE E. HETRICK and COAST HOLDING CORPORATION, Defendants.	On Bill &c. Final Decree.

This cause coming on to be heard in the presence of Herbert Clark Gilson, solicitor for complainant, and Merritt Lane, of counsel with complainant; James E. Hamill, solicitor for and of counsel with defendant Hetrick; Wall, Haight, Carey & Hartpence, solicitors for defendant, Coast Holding Corporation, and Albert C. Wall, of counsel with said defendant; and the bill, answer, replication, briefs and exhibits having been read and considered and the arguments of the respective counsel having been heard; and the court having considered the same; and it appearing to the satisfaction of the court that the complainant, Peter Bentley, Receiver of Bradley Hotels System, Inc., is not entitled to the relief sought and prayed for by him in his bill of complaint;

It is, on this 16th day of July, 1928, by Edwin Robert Walker, Chancellor of the State of New Jersey,

Final Decree.

ORDERED, ADJUDGED AND DECREED that the complainant's bill be and the same is hereby dismissed.

E. R. WALKER,
C.

Respectfully advised:

JAMES F. FIELDER
V. C.

25 FEB.1.1929

New Jersey Court of Errors and Appeals

Between PETER BENTLEY, Receiver of Bradley Hotels System, a corporation, Appellant, and CLARENCE E. F. HETRICK and COAST HOLDING CORPORATION, Respondents.	On Bill, &c.

BRIEF OF APPELLANT.

The appellant is receiver of the Bradley Hotels System, Inc. He filed his bill praying that the defendants pay to him the value of an option held by the corporation to purchase certain lands in Asbury Park, N. J., and that an equitable lien be impressed on the lands, and that the lands be sold to pay the amount found to be due to complainant, or that the defendant, Hetrick, who was vice-president, director and member of the executive committee of Bradley Hotels System, be decreed to pay an amount sufficient to pay the creditors of the corporation and the stockholders the amounts paid in on their stock; the liability of Hetrick being based on his conduct as an officer and director of the corporation as charged in paragraphs 5 to 8 of the bill of complaint. Upon this latter branch of the case it is only necessary to read the cross examination of Hetrick (pp. 104-132; 167-170), to indicate a liability. The decree dismissing the bill was advised by Vice Chancellor Fielder (Conclusions, p. 206; decree, p. 218).

Facts.

In July, 1923, the respondent, Clarence E. F. Hetrick, arranged for an option to purchase three tracts or blocks of land in Asbury Park, N. J. from Samuel H. Gillespie, sole acting executor and surviving trustee of the estate of James A. Bradley, deceased. The consideration of the option was to be $5000 and the purchase price of the lands was $270,000 to be paid in installments covering one and one-half years (Test., p. 31; Ex. C-3). The Bradley Hotels System was incorporated by Hetrick, Judge William A. Smith, J. Herbert Reid and others (p. 30). Hetrick agreed to sell and assign the option to the corporation for $5000 in cash and 100,000 shares of stock without par value. The $5000 was used to obtain the option (pp. 57 and 87), and 51,000 shares of stock were issued to Hetrick and his nominees; the balance of 49,000 shares were "donated" by Hetrick to the treasury of the corporation (Test., p. 34; and Minutes of corporation, Ex. C-2).

The plan of the corporation was to build a hotel on the lands (pp. 69, 87). Preferred stock was sold to finance the construction of the hotel, and subscriptions for 529 shares of the preferred stock were obtained, payable 30% on the signing of the subscription and 10% monthly thereafter. The subscribers paid $11,201 in installments and others paid in full amounting to $25,022, aggregating $36,223 in cash paid by subscribers (Test., p. 28; and Exs. C-1, C-15).

Although the scheme was Hetrick's and he received the stock of the Bradley Hotels System for his option, and the stockholders unquestionably came in because of his connection with the proposition, he being the Mayor of Asbury Park (p. 85), and the president of the Board of Trade (p. 96) he, like so many promoters, did not put any money in

the proposition himself (p. 104), and he comes out of the transaction as a result of his handling of the option, as president of the Coast Holding Corporation which acquired the property and having already received moneys from that corporation (p. 133); and the stockholders of Bradley Hotels System are left until an agreement to protect them which Vice Chancellor says cannot be enforced (p. 213), and the creditors of Bradley Hotels System, whom it was the first duty of Hetrick to protect, are left with nothing.

The option was renewed five times upon payment of $5000 by the corporation for each renewal, until November 1st, 1924 (Exs. C-3, C-4, C-6) and (Test., pp. 67, 90). Sometimes the renewals were taken in the name of Hetrick and assigned to the corporation (pp. 36, 67).

About the time of the last renewal (September 1st, 1924), the officers of the Bradley Hotels System, realizing they could not obtain the money to carry through the plan of building the hotel, concluded to sell the option at a price which would permit them to pay the debts and to return to the subscribers to stock the cash they had paid (pp. 41, 70). Hetrick protested against the sale of the option and stated that he was interested in building a hotel and not in a land speculation and that, if given an opportunity, he could obtain other capital to build the hotel, and in case he failed, he would arrange for a disposition of the option or the property so that the stockholders of the Bradley Hotels System would be reimbursed and all debts paid. Hetrick said, and now says, that the property was worth four times the option price, for use other than Hetrick desired it to be used (pp. 105, 107). Judge Smith, one of the directors, urged the board to give Hetrick the opportunity he requested, and the board thereupon authorized the renewal of the

option upon the promise of Hetrick that if he failed to interest other capital, he would arrange for a disposition of the option or the property so that the stockholders would be reimbursed and the expenditures of the corporation would be paid "dollar for dollar" (Test., pp. 41, 70, 72; Ex. C-10).

The option was then renewed on September 1st, 1924 for two months (C-6), *and the disposition of the option was intrusted to Hetrick* (p. 42). Nothing was heard from Hetrick during the next few weeks, and on September 29, 1924, J. Herbert Reid, one of the directors, wrote to Hetrick and called his attention to the fact that the directors would be chargeable with neglect by the stockholders if advantage were not taken of selling the option at a substantial profit (Ex. C-9).

Hetrick entered into negotiations with one, Isaac Marshall, for the sale of the property. He informed Marshall that the option held by the Bradley Hotels System *had not expired,* and that it would be necessary to make some arrangement to return the money invested by the stockholders amounting to $36,223 (p. 118; Ex. C-15). From the very beginning of the negotiations with Marshall that was insisted upon by Hetrick (p. 119). Mr. Gillespie, executor of the Bradley Estate, had also told Hetrick that he would not enter into another contract to sell the property unless the investors in the Bradley Hotels System were reimbursed (p. 129). Marshall's New York attorney then prepared an agreement in April, 1925, (about the time Marshall entered into the contract for the purchase), whereby it was agreed to turn over to Hetrick $36,223 to be used to reimburse the persons who had paid cash on their subscriptions to stock of the Bradley Hotels System (pp. 138, 144). While apparently attempting to protect stockholders Hetrick *did nothing* to protect

creditors, the protection of whom was his *first* duty (p. 107).

The sale was consummated at $370,000 (p. 148), and title was first taken in the name of Marshall's corporation (Eastern Parkway and Bedford Avenue Corporation), on May 8th, 1925. Four days later (May 12, 1925) the property was conveyed by that corporation to the respondent, Coast Holding Corporation, another corporation of Marshall's which had been organized on April 8, 1925, for the purpose of taking over the property in question (Test., pp. 101, 150; Exs. C-13, C-14). Hetrick was president, and Marshall was treasurer of the Coast Holding Corporation (pp. 101, 82). The consideration for the latter conveyance was a purchase price mortgage of $745,000 to cover the $370,000 borrowed by Marshall from the Central Union Trust Co. for the Eastern Parkway and Bedford Avenue Corporation to pay to the Bradley Estate for the property, and for additional collateral security for a previous loan to Marshall for the Eastern Parkway and Bedford Avenue Corporation of $375,000 (Test., pp. 147, 148, 149).

A resolution was then passed by the directors of the Coast Holding Corporation on May 15, 1925, ratifying the agreement to turn over the $36,223 to Hetrick to reimburse the stockholders of the Bradley Hotels System (Test., p. 80; Ex. C-15).

The Coast Holding Corporation has sold two of the three tracts. It has received $500,000 in purchase price mortgages, and also $100,000 in cash from the sales (p. 152). Marshall and Hetrick voted themselves $10,000 each for services and they have received at least 80% thereof (Test., pp. 80, 81, 146). They also voted themselves salaries of $15,000 yearly as officers of the Coast Holding Corporation (p. 82).

The evidence shows that in addition to the $11,201 paid by subscribers to its stock on installment the sum of $25,022 was paid in full by subscribers; and claims of creditors have been filed with Receiver amounting to $29,538.67. The assets collected by the receiver amount to $171.37 (p. 28).

ARGUMENT.

The Bradley Hotels System was induced to allow the option to lapse by the respondent, Hetrick.

Hetrick became a trustee of the option for the benefit of the creditors and stockholders of the Bradley Hotels System, and the manner in which he performed his trust, he being an officer and director at the time, makes him liable for all debts of the corporation.

The learned Vice Chancellor held that "There is no proof that Hetrick requested his fellow officers and directors to permit him or a corporation to take over the option, or that, in such event, he would pay the creditors and stockholders of the Bradley Company; or that he allowed or induced his fellow directors to permit the option to lapse so that he or a corporation might purchase the property" (p. 209, l. 13).

The proof of those facts is not only the testimony of Judge Smith and J. Herbert Reid, but also in that of Hetrick himself, and the correspondence and the circumstances surrounding the disposal of the property, and the fact that the corporation which acquired the property agreed to reimburse the stockholders of the Bradley Hotels System.

All of the witnesses agree that when the last option was obtained the lands were worth considerably more than the amount of the option, $270,000.

Judge Smith said that Hetrick stated at the meeting that "he had people who would take the property at an advance sufficient to make us whole" (Test., p. 42, l. 4). J. Herbert Reid said the land could be sold at a substantial profit (Test., p. 188, l. 39). *Hetrick swore that it was worth four times as much as the option* (Test., p. 106). And the property was finally sold to Marshall's corporation for $370,000.

Hetrick and Judge Smith had been appointed a committee to arrange for an extension of the option (p. 37); and Hetrick was a member of the executive committee (p. 53).

All of the directors, excepting Hetrick, decided that the best thing to do was to sell the property in order to protect the interests of the stockholders. *The only reason the option was not sold at a profit at that time was because Hetrick stated he wanted to try to interest other capital and if he failed to do so he could arrange for a disposition of the property at a price to reimburse all investors and pay all expenditures.*

Judge Smith, secretary of the Bradley Hotels System, testified as follows:

> "I might say that in the discussion—it was discussed that it was almost a sure thing that we could get much more for the property, that is, that the option was at a very low figure and they were practically to a man, except Mayor Hetrick, anxious then to realize upon the property. Mayor Hetrick objected and said that he was not interested in a real estate speculation down there but he was interested in getting a hotel and developing the property. He said he could have had the real estate speculation without getting us into it, if he wanted that, but he was there to help Asbury Park and help develop the property and get the hotel there. I knew that was his object, as he had told it to me, and I urged the meeting to give him an

> opportunity to interest other capital which he had asked to do. It is my recollection that that meeting adjourned with the understanding that he would try to interest other capital, and that if he could not interest other capital, he would then arrange for a disposition of the property; and it is my recollection that he stated that he had people who were ready, able and willing to use a legal phrase, to take the property at an advance sufficient to make us whole. Just the words he used, I do not recall, but that is the way I carry it in my mind. In other words, if he could not get capital to go on with the proposition, he could dispose of the property before the expiration of the option. It was on that condition that the extension was authorized" (Test., pp. 41 and 42).

And on cross examination, Judge Smith said:

> "Q. State that promise? A. I have stated it before, that at the meeting of the board, as I recall it, of August 28th, if they would give him an opportunity to raise the money to carry out the project and stop any attempt now to sell it, *why he would dispose of the property if he could not get the money; if he could not raise the money he would dispose of the property at a sufficient sum to take care of everybody.* He told that to the board at that meeting" (Test., p. 66).

J. Herbert Reid, vice-president of the Bradley Hotels System, testified as follows:

> "It was definitely stated by Mayor Hetrick that he could sell the land, he had parties who were willing to buy it, who would pay a price for the land sufficient to reimburse the Bradley Hotels System, Incorporated, for every dollar of their expenditures to date" (Test., p. 75).

And on September 29th, 1924, Reid wrote to Hetrick and stated:

> "We all understand that this land can be sold at a substantial profit and it would seem that we would all be chargeable with neglect by the stockholders if we do not take advantage of this opportunity to protect their interest and it would seem that the only way in which we can protect their interest would be through the disposal of the land" (Ex. C-9).

Both Judge Smith and Reid, also swore that Hetrick reiterated the foregoing promise at a conference in October, 1924, a few weeks before the expiration of the last option (pp. 44 and 70).

Shortly after the conference in October, 1924, Hetrick opened negotiations with Isaac Marshall for a sale of the property. Marshall and his silent partner, Pettit, were obviously the ones Hetrick had in mind when he told Judge Smith and Reid in October, 1924, "that he had people in New York who were ready to take the property" (p. 45, l. 21).

Hetrick finally realized he could not raise new capital to build the hotel and concluded to dispose of the property. He immediately went to see Mr. Gillespie, executor of the Bradley Estate, and obtained his promise that he would not "let the property go to somebody else unless he was assured the original investors of Bradley Hotels System were paid" (p. 118, ll. 26-40; p. 129, ll. 13-30). This assurance is not inconsistent with Mr. Gillespie's letter to Hetrick of April 1, 1925 (D-4), for in that letter Mr. Gillespie referred to the *"Bradley Land Company"* and not to the *Bradley Hotels System,* when he said he considered the $30,000 paid at various times "forfeited under the terms of the agreement". The Land Company was an earlier corporation organized by Hetrick which failed to carry through after moneys had been subscribed to develop the same property (p. 86, ll. 1-14).

Hetrick then put Marshall "in touch" with Mr. Gillespie (p. 97). Marshall knew that the Bradley

Hotels System had an option or a contract to purchase the lands (p. 119), and the further negotiations were about the details of protecting the stockholders. That was the "uppermost question in the mind" of Hetrick, and he never stopped talking to Marshall about it (p. 101). In the meantime the option expired, but Hetrick did not let Marshall know it (p. 120). Marshall said:

> "You got to show me there will be no trouble ahead. I said: if you show me, I think perhaps you and I can make a little money after" (p. 157, l. 37).
>
> "Give me a list. Be sure what it is. I do not want to deal with stockholders" (p. 160, l. 20).

Hetrick did not get up the list of stockholders for *four or five months* (evidently from November to April) (pp. 138 and 164), and when the list was delivered, the contract for the purchase of the property was signed, and the agreement to pay Hetrick $36,223 for the stockholders was entered into in April (pp. 144, 145, 164; Ex. C-15). Both Hetrick and Marshall's New York attorney (Muhleman) understood that Marshall was buying the property (p. 118, l. 10; p. 136, l. 40). Marshall and Hetrick finally organized the Coast Holding Corporation for the purpose of taking over the property (p. 101), and Hetrick became president, and Marshall was treasurer (pp. 79, 82, 101). The first form of the agreement to pay the $36,223 expressly provided that it was to reimburse the stockholders of the Bradley Hotels System, and it did not postpone the payment until the property was sold by Marshall or his corporation (p. 144). But the second form, which was the one executed, provided that the $36,223 was for "the purpose of reimbursing certain persons known to him (Hetrick) who

were associated with him in transactions concerning the property subsequently acquired by the party of the second part"; and it also provided that the payment of the $36,223 will be made out of the proceeds from sales of the property after the payment of mortgages aggregating $745,000 (p. 198). The sale was consummated on May 8th, 1925 (Exs. C-13, C-14).

Hetrick did not tell Judge Smith or Reid or anyone connected with the Bradley Hotels System about the sale of the property nor about the agreement by which he was to receive $36,223 for the Bradley Hotels System investors, until the fall of 1925, when he received the following letter from Reid dated September 8th, 1925, viz.:

> "You must appreciate, Mr. Mayor that our friends to whom we sold stock in the Bradley Company are referring to me for information. I have already informed some of them, as per our understanding with you, that by stepping aside the Bradley Company was permitting the sale of this land at a price that would guarantee to us the return of all expenses up to the date of the sale, making possible a return to all of our investors dollar for dollar the amount of their investment. This was the very definite understanding had with you in the presence of Judge Smith and others, and I am at a loss to understand why you are not giving me definite information as to when this sale is to be consummated so that we can advise our investors when their money will be returned to them." (Ex. C-10.)

Hetrick replied to that letter and stated that "after the option contract had been expired for months, I managed to interest people in the purchasing of the land and in the giving of an agreement that out of the first profits received from the land the cash paid in to the treasury of the de-

fendant Bradley Hotels System by purchasers of stock would be returned to such investing stockholders." (Ex. D-1.) *And Hetrick did not deny the statement in Reid's letter that it was very definitely understood that by stepping aside the Bradley Company was permitting the sale of the land.* Hetrick could not explain why he did not deny that statement, except by saying that it was probably an oversight. (Test., p. 113, l. 40.)

On September 16, 1925, Judge Smith wrote to Hetrick and arranged to meet him (Ex. C-8). Judge Smith then learned about the sale and the agreement to reimburse the investors of the Bradley Hotels System. Hetrick promised to send Judge Smith a copy of the agreement, but he never did it (p. 49).

Hetrick admitted that he did not consider he was under any obligation to notify his fellow directors of the Bradley Hotels System that he had failed to procure new capital or to dispose of the property before the option expired (pp. 108, 109). And yet he was the most active officer (p. 52); "the whole shooting match" (p. 54), and in charge of the option (pp. 53, 54), and he admitted it was not sold because he wanted time to negotiate for its disposal (pp. 110, 187, 190). He was vice-president and a member of the executive committee.

The only asset of the corporation was the option to purchase the lands, and yet he said he represented Marshall in purchasing the property; and that he understood Marshall was the purchaser (p. 118). Hetrick said he "never received any commission from anybody directly or indirectly from this property" (p. 97, l. 24). But Marshall gave Hetrick 100 shares of stock of his Coast Holding Corporation, $10,000 for "services" and a salary of $15,000 for acting as president of that corporation (pp. 79-82; 160).

The court below also found that Judge Smith's "recollection of what was said by Hetrick at the meeting of August 28, 1924, is at fault" (p. 216, l. 14). Judge Smith did not pretend to give a *verbatim* statement of Hetrick's promises (p. 65), but when he read the minutes and correspondence his memory was refreshed (p. 42). It is perfectly clear that Judge Smith and Reid were not mistaken about the substance of what Hetrick said. It is equally clear that one of the very things happened that Hetrick promised, viz.: a corporation which he helped to organize and of which he is president, took over the property and agreed to reimburse the stockholders "dollar for dollar".

And the Court below found that Hetrick denied that at the conference in October, 1924, "he promised to dispose of the property, but if he did, it was no promise to the corporation, and Reid and Smith knew that it was impossible of performance, first, because the company did not even own the land, and was without funds to take title to it; and, second, because corporate action, through a meeting of the board, was necessary to authorize a sale of the option" (p. 217, l. 21). It is not necessary that the promise at the conference in October be made to the corporation; it was a reiteration of the promise Hetrick made to the board of directors in August, and it induced Judge Smith and Reid to take no further steps to call another meeting or to obtain a renewal of the option. Nor is it material whether the corporation owned the land or was without funds to take title. It was Hetrick's duty as an officer of the corporation with whom the disposal of the option was entrusted, to notify his fellow directors of his failure to dispose of the option or to sell the land in time for them to take some corporate action. But no further action was necessary in view of the fact that Hetrick could have obtained

exactly what he did eventually procure; an agreement from the purchaser to reimburse the stockholders.

It is elementary that Hetrick being an officer and director of Bradley Hotels System was a trustee for the creditors and stockholders and that he was bound to act with the utmost good faith without being swayed by his personal interest. It is also fundamental that where a director secures to himself any advantage over other stockholders or creditors, equity will charge him as trustee for the benefit of the injured parties, and will not allow him to make any secret profits. Nor can a director legally act for an opposing interest, or deal with the property for himself. And even if other directors were negligent, or if some of them entrusted their duties to one member, it would not relieve him (14 A *Corpus Juris,* 97, 112, 112).

In the case of *The Trenton Banking Co.* vs. *McKelway,* 8 N. J. Eq. 84, where the president of the corporation told the other members of a committee appointed to purchase certain lands that he would effect an arrangement for the purchase, and the negotiations were entrusted to him, the fact that the other members of the committee were inactive did not relieve the respondent of responsibility nor permit him to make a profit. The principle is the same in the instant case.

We will refer to the admissions and statements made by Hetrick on his examination and particularly on his cross examination, for we submit that facts are therein indicated which indubitably establish liability on his part to account.

He concedes (p. 104) that he himself made no investment in Bradley Hotels System Inc., although the project was his and he was in the position of a promoter (pp. 88, 89). The corporation was established upon the option which he had, and that,

aside from its stock subscriptions, was its only asset (pp. 86, 87, 88, 89). He became vice president and a director of the company and a member of the executive committee, and was the most active member of the Board—indeed, according to his own store (pp. 107, 108, 109), about the *only active member* who did anything for the corporation.

He concedes (pp. 104, 105) that: *he* desired that the property should be developed under a certain plan and that he never departed from that view; he "opposed any program which looked towards realization of this option which did not agree with the development of the property in line with your desires * * *"; he was the only director who so opposed; he opposed the use of the property for other purposes although he realized, at the time, that the property was worth, for other purposes, four times the contract price (pp. 107, 110); it was at *his* request that nothing was done to dispose of the option or to use the property for other purposes; the directors yielded to *his request.*

The effect of his testimony is that he admits that this option, the *only asset of the corporation, was turned over to him to do with as he saw fit for the interest of the corporation.*

His conception of his duty to the creditors and stockholders of the corporation is indicated by what he said on cross examination on page 107:

> "Q. Certainly, and you opposed any program which looked towards realization on this option which did not agree with the development of the property in line with your desires didn't you? That is true, isn't it? A. Yes; I was the only director that could oppose it.
>
> Q. *Although you believed at that time that the property for other purposes was worth four times the contract price; is that right?* A. *Yes.*
>
> Q. You realized, didn't you, that you had a duty to perform with respect to the creditors

and stockholders of this company? A. I am the only one that did realize it.

Q. I asked you whether you realized that you had a duty to perform with respect to the creditors and stockholders of this company? A. I did; yes.

Q. *You did?* A. Yes.

Q. *You thought your duty towards the creditors and stockholders of this company was being performed when you took a stand which prevented the sale of that property for more than enough to pay everything that had been invested in it, because it did not agree with your views of how the property should be developed;* is that right? A. I was only one of thirteen directors.

Q. Is that right? A. *Yes; that is right.*

Q. And you thought that that agreed with your duty to your stockholders and your creditors; *is that right?* A. Absolutely. May I say why?

Q. Your counsel will give you all the opportunity to do that. * * *"

Although examined on redirect he was not asked, and he did not tell why he thought that, although he knew the property was worth four times the contract price for *other* purposes, his inducing the directors to refrain from dealing with it for other purposes and to, in effect, turn it over to him and his failure to even attempt to realize upon it for the benefit of the corporation and his failure to advise the directors "as to what was doing", was consistent with his duty to creditors and stockholders.

He concedes, in effect, that, although at his request, the option was turned over to him to deal with, he never notified the directors of the company that he had failed, if, in fact, he had failed. He says (p. 109):

"Q. So that you thought that having requested an opportunity before the sale of this

property for purposes other than your idea of how it should be developed, and having secured time to do that thing, that no duty rested upon you to advise the stockholders or to notify anybody that you had failed; is that right? A. Of course, it is not right.

Q. Then, what is right? You say you were given the time to do that and you say you did not notify them. I think you said that you thought it was not your duty? A. *They had a little obligation themselves there, hadn't they?*

Q. Didn't you think that you, the man who had made the quest, were under some obligation to notify them? A. *No, sir; I do not think I had any obligation to notify them.*

* * * * * * *

Q. So that you allowed the time for exercising the option to go by without even notifying anybody that you had failed in doing the thing that you requested time to do; is that right?

Mr. Hamill: Objected to.

The Court: Objection sustained."

He concedes that, *without notice to the other directors of the company,* he engaged in the negotiations with Marshall and that, even after the option to the company had expired, *he used it as if it were in existence for the purpose of securing the sale of the property to Marshall.* He says (p. 120):

"Q. You discussed with Mr. Marshall, didn't you, the fact that the Bradley Hotels System had that property under option? A. No; I was very careful of that. *He knew that they had it, but he did not know that it had been lapsed, or I might have lost Mr. Marshall.*

Q. So that when you were dealing with Marshall you dealt with him as if the contract of the Bradley Hotels System had not yet lapsed? A. I did not mention it. *I mentioned the fact that I was still interested in that property.*

Q. So that you dealt with him with knowledge that he thought the contract of the Brad-

ley Hotels Company was still in existence; is that right? A. No; I won't say that. I don't know what he thought; I know what I thought.

Q. Then, I do not understand your statement that he knew that they had had an option but he did not know that it had been lapsed? A. He knew that they had a contract on it—everybody in the country knew it—by publication, by articles in the press, by propinquity.

Q. But he did not know it had lapsed? A. *He did not know that it had lapsed; but I did know that it had lapsed.*"

And page 121:

"Q. So that you made that a condition to get this agreement out of him that he would take care of the stockholders of the Bradley Hotels System? A. *You may put it that way.*

Q. I do not want to put it any way? A. *Well, say, 'yes'.*"

He says that he used the supposed continued existence of the option with Marshall for the purpose of forcing the agreement, which he says he obtained, "to take care of the stockholders of the old Bradley Hotels Company" (p. 127). This is the contract which the Vice Chancellor says, because of its form, cannot be enforced by stockholders (p. 213) although the determination of that question was not before the court and not within the issues.

But what of the creditors?

He puts himself in the position of using the only asset of the company, which constituted a trust *res* for the benefit of creditors, for the purpose of securing an agreement *in the interest of stockholders.* The use of this option, for the purpose of forcing such an agreement in the interests of stockholders, *was a diversion of property which should be applicable to the payment of debts to the protection of stockholders* and a breach of his duty to creditors.

That would be so even if he had no personal interest in the purchaser, but he concedes that he represented Marshall who was the purchaser (p. 118) and he concedes that, as a result of the transaction, he became president of the Coast Holding Corporation, which ultimately got the property and that he received, if not the whole, at least part of $10,000., which, under the resolution of the Coast Holding Corporation of December 2, 1925 was directed to be paid to him "on account of services heretofore rendered by Mr. Hetrick and disbursements incurred by him", Marshall getting the same amount (p. 133, Exhibit printed 193, 194), and he also received a salary of $15,000. as president (Minutes printed, p. 194).

Although he secured an agreement which he says protects *stockholders* and with respect to the obtaining of which he says (p. 111)—"I really thought that I had performed a very laudable thing", which agreement he says he obtained co-incident with the deal by which Marshall secured the property, but not later than May, 1925 (Ex. C-15, p. 197). *He did not notify any of the directors of the Bradley Hotels System, Inc. that any such agreement had been obtained until after the receipt by him of the letter of Reid of September 8, 1925* (Ex. C-10, p. 190), in which letter Reid said, *inter alia*:

> "However, my previous letters to you asking for information regarding the return to be made to the Bradley Hotels System put of the proceeds from the sale of the land that was held by our company under option have all remained unanswered.
>
> You must appreciate Mr. Mayor that our friends to whom we sold stock in the Bradley Company are referring to me for information. I have already informed some of them, as per our understanding with you, *that by stepping aside the Bradley Company was permitting the*

sale of this land at a price that would guarantee to us the return of all expenses up to the date of the sale, making possible a return to all of our investors dollar for dollar the amount of their investment. This was the very definite understanding had with you in the presence of Judge Smith and others, and I am at a loss to understand why you are not giving me definite information as to when this sale is to be consummated so that we can advice our investors when their money will be returned to them. I have written to you and I understand Judge Smith has written to you—we have not even had a reply to our letters. I have tried to see you, but, unfortunately could not reach you. The situation is becoming extremely embarrassing and something must be done at once.

It should not be necessary for the company to go to the expense of filing a petition in Chancery to review the facts involved in the sale of this land, but, unless we can have this matter straightened out by you at an early date it will be necessary for the directors of the Bradley Company, in pursuance of their trust, to take such action as in their judgment might be necessary."

He replied to this letter of September 8, by the letter of September 9th in which letter, although advising Reid that "I was the only one connected with the Bradley Hotels System who worked and worried and endeavored to protect the interests of persons who had invested money in the stock of that company * * *", he did not take issue with Reid as to any of the facts and that he did not so take issue he says was an oversight (p. 113).

And the agreement to protect stockholders, which he takes such pride in getting, the court has held is ineffective to protect stockholders.

The statements of fact referred to above are not taken from the testimony of either Smith or Reid but from that of Hetrick himself.

Upon well settled principles of law Hetrick is bound to account to the corporation, and its receiver, for his conduct with respect to this option, and is bound to pay a sum sufficient to liquidate the indebtedness of the corporation and also to liquidate the amounts invested by stockholders. Perhaps the receiver cannot recover in the right of stockholders, but he may recover a sum sufficient to liquidate the indebtedness due to creditors.

To say the best for Hetrick he has deliberately used the sole asset of the corporation, in his capacity as an officer and director of the insolvent corporation, knowing it to be insolvent, in such a way as to benefit stockholders as against creditors and likewise benefit himself, and with a total disregard of his fiduciary duty.

Thompson on Corporations, 3d Ed., Vol. 2, sec. 1320, p. 778, states the general rule:

> "The rule is thoroughly embedded in the general jurisprudence of both America and England that the status of directors is such that they occupy a fiduciary relation toward the corporation and its stockholders, and are treated by courts of equity as trustees. They are regarded as agents entrusted with the management of the corporation, for the benefit of stockholders collectively, and as occupying a fiduciary relation in the sense that the relation is one of trust; and are held to the utmost good faith in their dealings with the corporation. They must manage the affairs of the corporation solely in the interest of the corporation without regard to the effect of policies and management on the fortunes of any individual stockholders."

And further (p. 781):

> "And by assuming the office, he undertakes to give his best judgment in the interest of the corporation in all matters in which he acts for it, *untrammeled by any hostile interest in him-*

> *self or others.* There is an inherent obligation on his part that he will in no manner use his position *to advance his own interests as an individual as distinguished from that of the corporation.*"

In this instance Hetrick not only dealt with the property of the corporation, and with its rights, but he likewise represented the purchaser of the property, an inconsistent position for him to take and he likewise secured an advantage for himself.

Thompson says, sec. 1321:

> "The peculiar trust relation held by a director does not admit of his creating any relation between himself and the trust property which will make his interest antagonistic to that of his beneficiary."

In this case he knew that the property was worth four times the option price if the property were used for purposes other than that for which Hetrick desired that it be used for. He opposed the use of the property in such a way as would be of advantage to the stockholders and to the creditors, *for his own personal interest,* and succeeded in prevailing upon the other directors to permit him to pursue his own way.

He permitted himself to be put in a position where his interest was "antagonistic to that of his beneficiary", and the result of his conduct is that this corporation is left with $29,533.67 of debts and assets of $171.77.

Thompson says, sec. 1324, p. 789:

> "That the directors of a corporation owe its creditors a certain duty is evident. While the relation between directors and creditors may not be fiduciary in its character, yet the law imposes a duty, for the breach of which a creditor may have relief against the directors personally. The property of a corporation being devoted to the payment of its creditors, to the

> extent, at least, that it may not be diverted to other purposes; the corporation and the directors owe to the creditors the duty not to divert the corporate property from the general purpose of paying such creditors".

To say the best for Hetrick he *diverted the only asset of the company from creditors to stockholders.*

Thompson says, sec. 1326, p. 795:

> "Directors of a corporation are said to be charged with the duties of trustees, and are bound to care for its property and manage its affairs in good faith, and to be accountable in equity the same as other trustees for such a violation of these duties *as results in waste of its assets, injuries to the property, or unlawful gain to themselves.*"

The conduct of Hetrick in dealing with this option amounted to waste and that waste he permitted to be incurred and was a party to it, *because of his personal interest that the property should not be used for purposes for which he did not desire it to be used,* although it was worth four times the price which the corporation had agreed to pay for it for such other purposes.

The Vice Chancellor seemed to feel that Hetrick did not owe any greater obligation to the corporation than did his fellow directors (p. 217), and, in effect, that an action would not lie against Hetrick alone. The Vice Chancellor, we submit, ignores the testimony of Hetrick, and he also ignores the rule that directors are *severally* liable for their acts. They may sometimes be jointly liable but they are always severally liable.

> *Thompson on Corporations,* 3d Ed., Vol. 2, sec. 1398.

Assuming that all of the directors are liable it was the receiver's privilege to pursue whom he

pleased (*Barry* v. *Moeller,* 68 Eq. 483, at 489), but the facts clearly indicate that all of the directors are not liable, at least not in the same degree, as is Hetrick for no one of the other directors received any personal benefit from the manner in which this option was handled, nor did any of the other directors oppose the use of the option in the most advantageous way it could be used for the corporation because of any personal interest nor did any other directors induce the board to permit any of them, other than Hetrick, to assume the obligation of dealing with this option.

Of course, generally speaking, Hetrick was under no greater obligation to the corporation than his fellow directors but by his conduct he placed himself under a greater duty. That a bill in equity lies to call a director to account for conduct such as that of Hetrick is settled by *Wilkinson* v. *Dodd,* 40 Eq. 123; *Landis* v. *Sea Isle Hotel Co.,* 31 Atl. 755; *Hayes* v. *Pierson,* 65 Eq. 353.

And Hetrick publicly stated, on May 14, 1926, in an interview in the press which he concedes to have given out (p. 130; Ex. C-16, p. 200) that:

> "I personally protected all the persons who bought stock or subscribed to stock in the Bradley Hotels System, Inc., by securing an agreement with the Coast Holding Company which later purchased the property in question, whereby the purchasers of stock in the Bradley Hotels System, Inc., would be returned the money invested in the Bradley Hotels System, Inc., from the profits of the resale of the property.
>
> Under the terms of that agreement between the Coast Holding Company and myself the Coast Holding Company will pay to those who bought stock in the Bradley Hotels System, Inc., the amount paid on account of the purchase of stock.
>
> While I was only vice president of the Bradley Hotels System, Inc. *thru the assistance of*

Samuel Gillespie, executor of the Bradley estate, I was able to secure the agreement, with Coast Holding Company, which finally bought the property in question."

But what right had he to use the property and the rights of the corporation to get this agreement for the benefit of stockholders, leaving creditors wholly unprotected?

The Coast Holding Corporation is Chargeable with the Trust.

Vice Chancellor Fielder held that if Hetrick made the alleged promise to dispose of the option and reimburse the stockholders of Bradley Hotels System if he could not procure new capital to build the hotel, it was not "known to the Eastern Company or to the Coast Holding Company or to anyone connected with those corporations" (p. 212, l. 8). Hetrick, Marshall, Muhleman and Pettit were the stockholders and directors of Coast Holding Corporation; and Marshall, Muhleman and Pettit were the stockholders and directors of Eastern Parkway &c. Corporation (p. 193, l. 20; p. 136, ll. 9 & 12). They not only knew of the promise of Hetrick and the condition imposed by Mr. Gillespie for its fulfillment, but they also put through the agreement to perform the promise (Ex. C-15). And the evidence shows that Hetrick and Marshall who were president and treasurer respectively of the Coast Holding Corporation, (pp. 101 & 82) talked about the promise from the *beginning of their negotiations* (p. 118). And Muhleman, an officer of both corporations, knew about the promise and agreement to reimburse the stockholders when Marshall consulted him about financing the purchase (p. 137, l. 25); and Muhleman prepared the form of agreement at least as early as April, 1925, before the

corporation was formed and a month before the sale was consummated (p. 144). Marshall was also the active officer of the Eastern Parkway &c. Corporation. Hetrick said he negotiated the sale to the latter company (p. 99).

And the court below found that "the agreement by the Coast Holding Company to pay Hetrick $36,223 at a future time, was wholly voluntary on the company's part and was without consideration moving to it other than Hetrick's consent to become associated with the corporation, and since the agreement specifically provides that it shall not enure to the benefit of anyone other than Hetrick, it cannot be enforced by Bradley Company stockholders even when the time arrives when, according to its terms, the money is payable" (p. 213, l. 10).

And yet Hetrick swore that he kept telling Marshall the organizer of Coast Holding Corporation, that upon a sale of the option or the property, the stockholders of Bradley Hotels System would have to be reimbursed. That was a condition (pp. 119, 120, 121). The consideration for the agreement was the obtaining of the property for a smaller consideration by avoiding the "trouble" with the stockholders which Marshall feared. The agreement was also necessary to meet Mr. Gillespie's condition, and it was expected to induce the stockholders to forebear instituting suit. But the validity of the agreement was not in issue, and therefore, the appellant had no reason to offer any evidence on that question. It was pleaded by the Coast Holding Corporation merely to show that the $36,223 was not yet due under the arrangement with Hetrick. The result of the decision holding that the agreement cannot be enforced may be that the appellant is barred from any action without having his day in court on the issue of the validity of the agreement.

Moreover, no one ever contended that the agreement was invalid. Marshall and Muhleman testified that they expected to pay the $36,223 in about two years (p. 161, l. 20; p. 154, l. 20). *And as late as May 14, 1926, Hetrick stated in a newspaper interview that he had protected every stockholder of the Bradley Hotels System by securing the agreement with the Coast Holding Corporation* (p. 130; Ex. C-16).

While it is true that title to the property was first taken in the name of the Eastern Parkway & Bedford Avenue Corporation (one of Marshall's corporations) on May 8, 1925, (Ex. C-14), that was done for financing purposes (See Point III). The property was transferred four days later to the Coast Holding Corporation which was organized by Marshall and Hetrick for the purpose of acquiring title to the property (Ex. C-13; pp. 101 & 150).

The manner in which the price as between the Eastern Parkway Corporation and the Coast Holding Corporation was fixed as described by Hetrick is perfectly absurd (pp. 124, 125, 126).

After stating, on page 125, in response to the question as to who dealt for the Coast Holding Corporation and who represented the Eastern Parkway Association, that he was dumb, and was afraid he could not give the information, and that he was clear in his mind that he did not have anything to do with the matter, he says, that Mr. Muhlmann, the lawyer representing both companies "negotiated between them". He finally said that he agreed upon paying the $700,000. consideration ("and I naturally would") (p. 126), and then, after admitting that he knew that the Coast Holding Corporation paid the Eastern Parkway Corporation some $300,000. more than the Eastern Parkway Corporation had bought the lands for four days before he said (p. 127):

"Q. What led you to pay $700,000. or more or agree on behalf of your corporation to pay $700,000. or more?

Mr. Wall: I object. What possible materiality has that?

The Court: I imagine the reason is to tie the Coast Holding Corporation up to the charge in the bill of complaint about information and knowledge. Objection overruled.

A. *Because I would have done anything if I had a change to get hold of this property to get enough out of it to take care of the stockholders of the old Bradley Hotels Company. That is the whole thing in a nut shell.* That was the underlying thought.

Q. So that the reason why you had agreed to let the Coast Holding Corporation pay $745,000. for what the Eastern Parkway Corporation had bought for only $300,000. a few days before, was that you might protect the stockholders of the late Bradley Hotels System; is that right? A. That is right."

The Eastern Parkway & Bedford Avenue Corporation Was Used Merely for Financing Purposes.

The Eastern Parkway & Bedford Avenue Corporation, which took title to the property in question on May 8, 1925, and transferred it to the Coast Holding Corporation on May 12, 1925, was also owned by Marshall. He had a sort of silent partner, one Henry Pettit, who did not appear in the negotiations with Hetrick nor as a witness. Pettit was also vice-president of Coast Holding Corp. (p. 133, l. 26). Marshall and Pettit owned all of the stock of the Eastern Parkway Corporation, although one-third of the stock of the Eastern Parkway Corporation stood in the name of a "dummy" for the Central Union Trust Company to secure a loan (p. 140). Marshall and Pettit also owned all the stock of the Coast Holding Company and they made a

"gift" of one-third of it to Hetrick (p. 140). Both corporations were organized by Marshall's New York attorney (Donald C. Muhleman) and the incorporators of the Coast Holding Company were Muhleman's assistants, Maginnis and Noble (p. 134).

The officers of the Eastern Parkway &c. Co. were merely dealing with themselves as officers of Coast Holding Corporation (pp. 125, 126). The officers of the Eastern Parkway &c. Corporation were Henry Pettit, president; Isaac Marshall, treasurer, and Donald C. Muhleman, secretary (pp. 82 and 195). The officers of the Coast Holding Company were: Clarence E. F. Hetrick, president; Henry Pettit, vice-president; Isaac Marshall, treasurer, and Donald C. Muhleman, secretary (pp. 82, 133, 193, 199). Marshall's New York attorney (Muhleman) had "absolutely control" of both corporations and no checks would be honored by the bank unless countersigned by him (p. 139). Muhleman was a director and officer of both corporations and he was also attorney for the Central Union Trust Company, which had loaned the $370,000 to purchase the property (p. 134). His chief concern was to see that the trust company did not violate any of the banking rules (p. 149). Marshall told Muhleman that if the trust company would advance the $370,000 to purchase the property in question, he would be able to liquidate a balance of $375,000 on a previous loan to the Eastern Parkway &c. Corporation as well as the new loan of $370,000 (p. 135). Muhleman went to Asbury Park to look at the property and then recommend to the trust company that it advance the $370,000 (p. 153).

It is perfectly obvious that the reason for taking title first in the name of the Eastern Parkway &c. Corporation was for financing purposes. The deed from the Bradley Estate being from an executor

and trustee, had to express the true consideration ($345,000 plus taxes and interest aggregating $370,000). It had been arranged that a mortgage for $745,00 on the property in question would be given to the trust company to secure the $370,000 purchase price and also as collateral for the balance of $375,000 of the old loan to the Eastern Parkway &c. Corporation (pp. 147, 151). The grantee from the Bradley Estate could not give the trust company a purchase price mortgage for $745,000 when the deed showed the purchase price to be $370,000. So it was conceived that by making the Eastern Parkway &c. Corporation the grantee from the Bradley Estate, and then transferring the title to the Coast Holding Corporation (the corporation organized for the purpose of acquiring the property), the latter could give a purchase price mortgage for $745,000. The trust company thereupon advanced the $370,000 and title was taken in the name of Eastern Parkway &c. Corporation without giving the trust company any mortgage until the title was transferred to the Coast Holding Corporation which executed the $745,000 mortgage (p. 148). The property was thereby encumbered with a mortgage for $745,000 and the Coast Holding Corporation obligated itself on the bond in a like amount, although it received only the property which had cost $370,000 four days before the transfer. The Coast Holding Corporation also issued its 300 shares of stock to Marshall, Hetrick and Pettit, despite the fact that it started off with a liability far in excess of its own asset.

It is apparent that Marshall, Hetrick, Pettit and the corporations all knew that the Bradley Hotels System had stepped aside and allowed the property to be sold "without any trouble" (as Marshall expressed it), upon the express understanding that it would be reimbursed for its expenditures and its stockholders would be paid "dollar for dollar".

CONCLUSION.

The value of the option held by the Bradley Hotels System was at least $100,000. The consideration for the sale mentioned in the option was $270,000 and Hetrick negotiated the sale for $370,000. The amount necessary to reimburse the stockholders and the Bradley Hotels System pursuant to Hetrick's promise, is $95,776.67. It is admitted that the amount due the stockholders is $36,223; and it is also admitted that the amount paid on account of the option and its five extensions, was $30,000. It is not denied that $29,533.67 is due creditors. The respondent, Coast Holding Corporation, has received more than $600,000 from the sale of two of the three tracts; $100,000 in cash, part of which was distributed to Hetrick, Marshall, Pettit and Muhleman, the officers; and $500,000 in purchase-price mortgages which were turned over to the trust company on account of the $745,000 mortgage (p. 152).

The respondents should have been decreed to pay to appellant the sum of $95,776.67, and the remaining property to be sold to pay that amount, in accordance with the prayer of the bill. The decree dismissing the bill should be reversed.

Respectfully submitted,

HERBERT CLARK GILSON,
Solicitor and of Counsel with Appellant.

New Jersey Court of Errors and Appeals

Between
Peter Bentley, Receiver of Bradley Hotels System, Inc.,
Appellant,

and

Clarence E. F. Hetrick and Coast Holding Corporation,
Respondents.

On Bill, &c.

BRIEF ON BEHALF OF RESPONDENT, CLARENCE E. F. HETRICK.

The Bradley Hotels System, Inc., was a corporation organized under the laws of the State of Delaware. It was formed for the purpose of acquiring certain lands located in Asbury Park, and of building thereon apartment hotels. It procured an option to purchase these lands and it sold certain preferred stock and incurred certain debts.

The option constituted the sole asset of the company and it was from time to time renewed. Finally, for lack of funds to obtain a further renewal, the option was allowed to lapse and the sole asset of the company was lost.

Five months after the date of the lapse of the option the property was acquired by Eastern Parkway-Bedford Avenue Corporation, which in turn sold it to Coast Holding Corporation, a cor-

poration of New Jersey. The defendant, Clarence E. F. Hetrick, had been a director of the Bradley Hotels System and he became an officer of the Coast Holding Corporation. A receiver was appointed for the Bradley Hotels System and he filed a bill praying that Coast Holding Corporation or Hetrick, or one of them, be deemed to pay complainant the amount of the claims of the creditors of the Bradley Hotels System and the amount paid by the stockholders upon their stock subscriptions or, in the alternative, the value of the option which had lapsed. Complainant also prayed that he be given an equitable lien on these lands for such an amount as might be found to be due him and that the lands or the interests therein of Hetrick and the Coast Holding Corporation be sold for the purpose of satisfying such lien.

Receiver seeks to hold Hetrick liable on the ground that Hetrick, as alleged in his Bill, promised that if the option was allowed to lapse he would sell the property and obtain sufficient monies to pay these creditors and preferred stockholders.

He seeks to hold the Coast Holding Corporation liable on the ground that it was Hetrick who formed the Coast Holding Corporation and became the President of it, and that this company agreed to assume an obligation which he alleges was made by Hetrick to pay the stockholders the amount which they had subscribed and that the Coast Holding Corporation is chargeable with the trust of reimbursing the stockholders and creditors of the Bradley Hotels System.

The learned Vice Chancellor dismissed the bill as to both defendants, and from his decree this appeal is taken.

The Facts.

At the outset we respectfully call attention to certain mis-statements of the facts appearing in the brief of appellant. These mis-statements will be referred to later herein under the heading "Comments on Brief of Appellant".

The Bradley Hotels System, Inc. was incorporated July 27, 1923, under the laws of Delaware. It was incorporated at the instance and by the promotion of Mr. J. Herbert Reid and his brother Walter. In answer to a question by his counsel (Case, pp. 68 and 69), as to how the organization of that corporation came about, Mr. J. Herbert Reid tells how the first he heard of it was from his brother Walter, who told him that Mayor Hetrick had an option and as a result of what his brother told him he saw Mayor Hetrick. He tells us that the option that Mayor Hetrick had was, according to his understanding, only a verbal option, but that if he could raise $10,000.00 they could secure a legal option from Mr. Gillespie, the administrator of the Bradley Estate. So with that feeling he went to see a dozen of his friends and prevailed upon them to put up $1,000.00 or $2,000.00 apiece, and come into the enterprise with the agreement that this money should be returned to them out of the proceeds of the first stock that was sold, and so he got this group together (Case, p. 68, ll. 32-40; p. 69, ll. 1-22). The fact is noted that the corporation was the creation of the Reids for the reason that it was attempted to show in the testimony that Mayor Hetrick was a promoter of it.

How Mayor Hetrick became connected with the company is related by him in his testimony (Case, p. 86, l. 30 to p. 87, l. 25). Mr. Winkler, a fellow commissioner of Asbury Park, came to him and told him that he had a gentleman who was inter-

ested in this property of Bradley's and wanted to develop it as the Mayor had wished; that is to say, for the purpose of building hotels on it, and Mr. Winkler said he would like Mayor Hetrick to meet this gentleman. Accordingly, Mayor Hetrick met Mr. Walter Reid, Jr., and explained the proposition to him. After that a meeting was held in the Newark Athletic Club, or in the offices of Judge Smith, and the idea of forming a corporation was discussed. It was J. Herbert Reid who procured a promotional fund of from $8,000.00 to $10,000.00. It was this promotional fund which made possible the procurement of the option. Hetrick was delegated to go to Mr. Gillespie and procure the option, which he did, and pay to Mr. Gillespie the sum of $5,000.00 which he received for that purpose. This work of getting the option was done by Hetrick as an agent of the company, and the plan was then evolved (Case, p. 87, ll. 30-40; p. 77, ll. 22-40) that 100,000 shares of no par value stock be issued, of which 49,000 shares was allocated to various members of the Board of Directors. Hetrick received 3400 shares. No certificates were ever issued for this stock (Case, p. 89, ll. 12-17). The balance of the shares were turned back to the company, in accordance with this agreement. The Reids put their friends in as officers. The officers were J. Herbert Reid, president; Clarence E. F. Hetrick, vice president; William A. Smith, secretary; William C. Krueger, treasurer; and Mayor Hetrick, assistant treasurer.

Those present at the first meeting of the Board of Directors were J. Herbert Reid, Clarence E. F. Hetrick, William C. Krueger, Paul Heller, Clinton G. Holden, Walter W. Reid, Jr., Morland B. Soria, Charles A. Gould, Corbett W. McCarthy and Benjamin A. Britwood.

All of these were friends of the Reids (Case, p. 69, ll. 14-28).

Although their formal minutes show that Hetrick sold an option to the company, the real truth is that Hetrick acted as the agent of these men who formed the company, and obtained the option from Mr. Gillespie, whom he knew as a result of having had dealings with him in the project to carry on the old Bradley Lands Corporation, which was disbanded, and the money for subscriptions turned back to the subscribers (p. 86, ll. 1-5). The plan of the corporation was to build hotels on the land, big hotels of the type of apartment hotels (p. 87, ll. 22-30). The option which formed the sole asset of this new corporation was renewed from time to time. It was renewed five times. It was renewed November 1, 1923, also May 1, 1924, and extensions were arranged for which carried the option up to September 1, 1924.

At that time there was, according to Judge Smith, talk about extending the option for another period and Mayor Hetrick met at the latter's office on the ground floor of a building in Asbury Park, and Mayor Hetrick and Judge Smith went to an office upstairs where the Mayor telephoned Mr. Gillespie and obtained the assurance of the extension (p. 40). The extension was obtained for two months; that is to say, until November 1, 1924. It was never again renewed and it accordingly lapsed, and the main and only asset of the corporation became valueless.

ARGUMENT.

Paragraph 5 of complainant's bill of complaint says:

> "And finally the said Clarence E. F. Hetrick represented to the officers and directors of the Bradley Hotels System, Inc. that it was impracticable for the Bradley Hotels System to proceed with the development of the land to be purchased under said option and that if they would allow him and a company to be organized by him to take over the property mentioned in said option that he and the said company would pay the creditors and stockholders of the Bradley Hotels System, Inc. the full amount of their claims and the amounts paid in on account of the capital stock of said corporation."

The statement above quoted in the bill of complaint that Hetrick represented that it was impracticable for the corporation to proceed with the development of the land to be purchased is not true, or rather is not sustained by any evidence. In fact Judge Smith, who is the main witness of the complainant, testifies that Mayor Hetrick very strenuously objected to the selling of the property and wanted the opportunity to develop a hotel on the property (p. 41, ll. 15-38).

Counsel for appellant, in his brief, on page 3 of his brief, makes this statement:

> "About the time of the last renewal (September 1st, 1924) the officers of the Bradley Hotels System, realizing they could not obtain the money to carry through the plan of building the hotel, concluded to sell the option at a price which would permit them to pay the debts and to return to the subscribers to stock the cash they had paid" (Appellant's Brief, p. 3).

But they did nothing in pursuance of this determination, if there was such a determination, and Mr. Reid, who testified, was the President of the company and he never called the Board together to take action on the option. The only action that was taken, and it was the last action taken by the company, was the resolution of August 28, 1924, when Judge Smith and Mayor Hetrick were directed to obtain a renewal of the option. The whole matter becomes a case where there was a discussion regarding what course to follow, and Mayor Hetrick thought they should proceed with the proposition and some other directors thought they should not proceed with it, but nothing was done in the matter.

There Was No Liability on the Part of Hetrick to Dispose of the Option, or of the Property.

An attempt is made to prove a contract made by Hetrick at the meeting of August 28th. The Court addressed to Judge Smith, when he was on the stand, the following question (p. 52, ll. 38-40; p. 53, ll. 1-10):

> "Can you put it in this way: Do you know of any authority by resolution of the stockholders or by resolution of the directors to perform different work than what the by-laws provide for the officers of the company to do or what the duties of a director call for?"

The answer was:

> "Only in the minutes of the meeting of August 28, in which the matter of the extension of the option was referred to Mayor Hetrick and myself."

What, then, do the minutes of the meeting of August 28, 1924, show in the way of a contract

with Hetrick? The minutes, set forth on pages 36 and 37 of the testimony, and quoted, read:

> "Q. Will you read us what they have to "say about further extensions of this option "at that time? A. The question of the exten- "sion of the existing option from the Bradley "Estate was discussed, and on motion duly "made, seconded and carried, it was directed "that Mr. Hetrick and Mr. Smith be ap- "pointed a committee to arrange for an ex- "tension of the option for two months upon "payment of $5,000."

So that the minutes of the meeting of August 28th to which Judge Smith refers to establish the contention that Mayor Hetrick agreed to reimburse the stockholders merely tell us that the question of the option was discussed and that Mayor Hetrick and Judge Smith were deputized not to sell but to procure an extension of the option. Mayor Hetrick carried out his part of this duty and the option, as is admitted, was extended to November 1, 1924.

But the minutes are not at all the basis relied upon to establish a contract between Hetrick and the company. Judge Smith relates what happened at the meeting. It will be remembered that Judge Smith is the only witness for the complainant who does testify as to the meeting of August 28, 1924. Mr. J. Herbert Reid, the other witness, tells what happened between September 1st and November 1st, 1924. Judge Smith says, in substance (see his testimony, pp. 39, 40, 41 and 42):

> "The meeting of August 28, 1924, which is, "I believe, the crucial meeting—my recollec- "tion of this is rather dim—when the last "extension was obtained * * * he (mean- "ing Hetrick) and I met at his office, an office "on the ground floor of one building and he "took me to another office upstairs and he "telephoned to Mr. Gillespie or someone rep-

"resenting him and obtained the assurance "of the extension."

So it therefore appears that even before the meeting was called the Judge had in mind, and presumably the others, that the purpose of the meeting would be to extend the option.

The Judge goes on further to say (p. 40, ll. 28-31):

"Then at this meeting of the 28th, which "was a meeting of the board of directors and "which is not reported in full in my minutes "he (meaning Hetrick) merely made a gen- "eral statement"

and then follows the statement of a discussion held in the meeting regarding the building of the hotels. Then the Judge further on says (p. 41):

"So at that time we were faced with the "proposition as to what we should do. Prac- "tically all of the members of the board who "were there thought the best thing to do was "to sell the property; that is to take up the "option in some way and make a disposition "of the property. Mayor Hetrick objected "very strenuously to this * * * and I urged "the meeting to give him an opportunity to "interest other capital which he had asked "to do. It is my recollection that that meet- "ing adjourned with the understanding he "would try to interest other capital and that "if he could not interest other capital he "would then arrange for a disposition of the "property, and it is my recollection that he "stated at that meeting that he had people "who were ready, able and willing, to use a "legal phrase, to take the property at an ad- "vance sufficient to make us all whole. Just "the words he used I do not recall but that is "the substance of it. That is the way I carry "it in my mind" (p. 41, ll. 13-40; p. 42, ll. 1-11).

It is singular, to say the least, that if there were a contract, which would have been the most important contract the company would have had to make, that it was not reduced to writing by Judge Smith, who was the legal advisor of the company. There is no contract stated even in what he says happened at the meeting. There was a discussion as to what course the company would take, and that discussion eventuated in the company authorizing Judge Smith and Mayor Hetrick to extend the option. Complainant would like the Court to take the "impression" and the recollection and the "understanding" of Judge Smith as proof of a contract without a single word of what terms of offer were made by Hetrick, or what terms of acceptance given by the company. Furthermore, the complainant does not state anywhere, and it is a fact, that there was not any consideration whatever to Hetrick for doing such a thing.

Further on (p. 61, ll. 19-21 and see pp. 52 and 61) this question was put to Judge Smith on cross-examination:

> "He (meaning Hetrick) had not any spe-
> "cial powers as a director other than those
> "the other directors possessed?"

and the answer of Judge Smith was:

> "It seemed he had the power."

If he had possessed any power which was other or more extensive than what the other directors possessed, Judge Smith would not have answered the question in that way. Then this other question was put (p. 61, ll. 28-40):

> "Was there any consideration offered to
> "him for doing this?"

and the answer by Judge Smith was:

> "The only consideration I know of was the
> "giving of $5,000.00 to take over the option,

"I mean to extend the option, and the direc-
"tion from the president to him to act as
"president. This is the only consideration
"that was given to him" (p. 61, ll. 28-40).

But the money, the $5,000.00, was paid to Gillespie to extend the option and if he had any power to act as president that could only come from the by-laws of the company and not from the president. If Judge Smith means the designation to Hetrick to act as president, stated in the letter of September 29, 1924 (marked Ex. C-9, p. 188), it will be noted that there was no such designation and that letter merely expresses anxiety about the situation and tells Mayor Hetrick that he is the proper person to call a meeting. It does not even tell him to call a meeting. Besides, what benefit would have accrued to Hetrick in carrying the $5,000.00 to Mr. Gillespie, or in calling a meeting, over the benefit that would have accrued to the co-directors? Hetrick would have obtained only such benefit as his stock holdings would entitle him to, in the same manner as the other directors.

Another thing to be noted with regard to the statement of Judge Smith (p. 41, ll. 16-20) "that practically all the members of the board thought the best thing to do was to take up the option in some way and make a disposition of the property" is this: there is not one word to inform us how they intended to do this or where they intended to get the money, thus showing that the matter of taking up the option was merely a vague thought or hope at best in the minds of the directors. To take up the option would require the payment of $270,000.00, and we are not informed how they intended to get this sum of money.

Judge Smith, on cross-examination, tells how, when he met Mayor Hetrick after August 28, 1924, when they were authorized to save the option and

pay the $5,000.00, that Mayor Hetrick had said he would do all he could to save this project but does not mention any specific promise or contract from Mayor Hetrick to the company, or any specific contract between Mayor Hetrick and the company.

The meeting of August 28, 1924, was the last meeting of the company and there are no minutes whatever after that.

What Took Place After the Meeting on August 28, 1924.

J. Herbert Reid says that prior to November 1st, 1924, when the last extension of the option expired, they had come to the conclusion that the project was too big and that the only remaining thing to do was to take the profit that they anticipated all along if the land were sold, and reimburse their stockholders, and that this matter was frequently discussed with Mayor Hetrick and with Colonel McAlpin (pp. 70 and 71). Why should there be any discussion about the advisability of selling the land if it had been decided at the meeting of August 28th that Hetrick was to assume this responsibility?

On September 29, 1924, Reid wrote to Hetrick. This letter states that a meeting of the directors ought to be called at once and the matter of disposing of the land be taken up at once. It states his regret at not being able to be present, and tells Mayor Hetrick that, as vice-president, he would be the proper one to call the meeting (Exhibit C-9, p. 188). It is to be remarked here that there is no reference to any agreement to dispose of the land, charged as having been made by Hetrick in the meeting of August 28th, 1924. It shows that the question of what to do with the land was

still an open question, and that there was no contract or agreement on the part of anybody to sell it, and Reid himself adds that they would all be chargeable with neglect by the stockholders if they did not take advantage of the opportunity to protect their interest.

Finally they did meet, however, some time between the 1st and 15th of October (p. 73, ll. 3-22). They met either at Asbury Park or in Newark. Reid was then home, yet he did nothing whatever to call a meeting as he had suggested in his letter. When Reid was asked what was his reason for stepping aside and letting the option expire (p. 73, ll. 22-40; p. 74, ll. 1-10) he stated it was because he was kept out of the State by reason of his brother's illness and because Mayor Hetrick was the only one who had had any dealings at all with the representatives of the owners of the property, and because all previous options had been attended to by Mayor Hetrick. Therefore, it was not because of any contract that Hetrick had made according to the claim of Reid, and Judge Smith, to obtain money for the option or to dispose of the property. At the meeting of August 28, 1924, Mayor Hetrick contended that they must arrange for what they considered the one great need; that is, money to purchase the property (p. 93). He contended, that is to say, for work on the part of all concerned. There is no mention in the testimony that either Reid or Judge Smith called his attention to any contract which they believed he had made to dispose of the property, and they certainly would have done this if he had made such a contract. Mayor Hetrick did put in every effort possible to aid in the matter. He wired Mr. Clark, of Chicago, who already, at his instance, had put in $10,000.00, asking him to put up another $10,000.00 but Mr. Clark refused, saying that the "Colonel" ought

to come across (pp. 93 and 94). He approached Colonel McAlpin, another director, but could obtain no money there. He approached Mr. Watson of the bank (p. 94) but Mr. Watson's reply was that "Our board of directors would not consider it" (meaning the proposition to lend money). There was therefore no money, and both Reid and Judge Smith ran away and either forgot all about the matter or neglected to do anything regarding it.

Judge Smith tells us that he was busy in court and could not help (p. 45, l. 20; p. 46, ll. 17-25). Mr. Reid did nothing. On September 8th, 1925, however, Reid wrote a letter to Hetrick telling him how those to whom stock was sold were referring to him for information, and then calling Hetrick's attention to what he said was his (Smith's) understanding of the situation. That understanding was that Hetrick was to take care of the matter as stated in the letter, and that the investors were to get dollar for dollar (See Exhibit C-10, p. 190). Mayor Hetrick responded to this letter on the day after, calling the attention of Reid to what he had done and telling him how he had managed to interest people in the purchasing of the land and the giving of an agreement that out of the first profits received from the land, the cash paid in to the treasury of the defunct Bradley Hotels System would be returned to the interested stockholders. He repudiates the insinuation and charges contained in the Reid letter. Judge Smith, on September 16, 1925, wrote a letter similar to the Reid letter to Mayor Hetrick. It will be noted that both of these letters are a palpable effort to shift responsibility. At that time the friends of Reid in Newark were evidently making it unpleasant for him, and he wrote this letter and then told Judge Smith, who wrote a similar letter.

Besides, with regard to the Reid letter, when was the understanding to which Reid refers made? Reid could not have meant the meeting of August 28, 1924, because he testifies to nothing regarding it. He could only have meant the meeting that took place after August 28, 1924, which was not a director's meeting, and which was attended only by himself and Judge Smith and Hetrick, and they certainly had no authority at that conference to depute Hetrick, or anyone else, to give away the only asset of the company. Judge Smith also tells the Mayor that he had the same understanding as Mr. Reid. But it must be remembered that the recollection of the Judge is, according to his own admission, hazy.

And, furthermore, it must be remembered that Judge Smith himself admits that he is an "interested party" (p. 58, ll. 1-10). It was when he was asked regarding the disposition of the stock, that he demurred against answering on the ground that he was interested. Naturally that interest, to protect himself, would cause him the more easily to have even these understandings about what Hetrick said than he would if he had been a disinterested witness. I do not mean to say that Judge Smith did not mean to tell the fact as he remembered it, but I do say that the bent of his mind would be naturally affected by the fact that when he was testifying to these things which would involve Hetrick he was saving himself. As to Mr. J. Herbert Reid, he was saving himself also. He should have called a meeting of the directors and he failed to do it. The easiest way out, then, after he had neglected the whole matter for a year, would be to sit down and write a letter charging everything on Hetrick and making statements in the letter which are not borne out by the evidence.

Hetrick, all through his testimony, tells what he did. He says (p. 94, ll. 8-29):

> "I could do nothing further. The optional "period came on November 1, 1924. I had "no money, and the company had no money, "therefore the option was permitted to "lapse. My experience with property would "have taught me the impossibility of my say- "ing definitely to any board of directors or "to any gentleman that I would positively "guarantee to take care of it and sell it. "I had already appealed to the people of "Asbury Park, begging for subscriptions to "a company; I had seen that company which "I created and which I had received sub- "scriptions for four hundred and some odd "thousand dollars and the money had to be "returned because of internal jealousies; "I had gone through that; I had gone through "that trouble and I knew or thought I knew "that I could not turn to anybody more than "I had done to get money to carry along this "company, and what worried me was the pos- "sibility that the moneys that had been paid "into the treasury by innocent stockholders "for the purchase of stock."

and further on he says, when asked "Why was that uppermost in your mind?":

> "Because I was Mayor of the City of As- "bury Park. I was president of the Board of "Commerce. I had brought that property to "the attention of people all through the city "of Asbury Park time and time again.
>
> "Q. Was there any legal obligation? A. "There was no legal obligation at all, but I "felt I must endeavor to protect these people "if I could" (p. 96, ll. 13-20).

It was the anxiety and solicitude for a man whose reputation might be reflected upon, and who wanted to protect investors whom he had invited into the proposition, even though there was no legal obligation for him to do it.

And assuredly there was no legal obligation, nor was there any consideration whatsoever, moving to Hetrick in the matter.

Relations of Hetrick with Mr. Marshall, and Mr. Pettit, and with the Eastern Parkway-Bedford Avenue Corporation and the Coast Holding Corporation.

Mayor Hetrick met Mr. Marshall in March or April of 1925 (p. 96, ll. 24-40), and Mr. Marshall asked Mayor Hetrick how he had been operating with the Bradley Hotels System (p. 97, ll. 1-10), and the Mayor was reluctantly forced to confess that he was fearful the project could not be carried through (pp. 96-97). Mr. Marshall then expressed the opinion that he might be able to raise the money to handle these lands, and as a result of the conversation the Mayor went to Mr. Gillespie and put Mr. Marshall in touch with Mr. Gillespie (p. 97). There was no compensation whatever paid to him in this matter (p. 97, ll. 20-26). As a matter of fact, Mayor Hetrick never received any commission from anybody, directly or indirectly, from this property. In other words, it cost him money (p. 97, ll. 25-26). He was not an officer or a stockholder of the Eastern Parkway-Bedford Avenue Corporation (p. 97, ll. 27-28). The Eastern Parkway-Bedford Avenue Corporation was a New York corporation. The sale of the property to the Eastern Parkway-Bedford Avenue Corporation was not negotiated by Hetrick (p. 99, ll. 15-20). He merely brought Mr. Marshall and Mr. Gillespie together (p. 99, ll. 15-20). He received nothing for so doing. The property was conveyed to the Eastern Parkway-Bedford Avenue Corporation. Then afterwards the Coast Holding Corporation was formed; that is to say, the Coast Holding Corporation was

formed after the Eastern Parkway-Bedford Avenue Corporation had taken the property. He succeeded in having the Coast Holding Corporation agree that out of the first profits accruing after the mortgages and expenses were met, if there were any such profits, to take care of the stockholders and he represented to the Coast Holding Corporation—that is to say, to Mr. Marshall and Mr. Pettit, who were the moving spirits in this company —that it would be good business for them to do so (p. 101, ll. 10-40).

There was newspaper publicity about the time of the purchase of the Eastern Parkway-Bedford Avenue Corporation and the Coast Holding Corporation (p. 111, ll. 29-33).

This agreement with the Coast Holding Corporation was made on May 15, 1925. This agreement was obtained gratuitously for the benefit of those who had put money into the Bradley Hotels System. It shows that Mayor Hetrick did do all possible to protect the investors in that company when under no legal obligation to do so, and when Judge Smith and Mr. Reid had failed to do anything to aid him, and when also all the other members of the board let the proposition lapse and go by default.

Comments on Brief of Appellant.

In his brief, page 1, counsel for appellant says:

> "the liability of Hetrick being based on his conduct as an officer and director of the corporation as charged in paragraphs 5 to 8 of the bill of complaint. Upon this latter branch of the case it is only necessary to read the cross-examination of Hetrick (pp. 104-132; 167-170), to indicate a liability."

On cross-examination (Case, p. 105, l. 13) the attention of Hetrick was directed to a letter of

September 29, 1924, written by Mr. Reid to Hetrick, expressing to Hetrick the opinion of Mr. Reid, who was the president, that a meeting should be called. Why, then, did not Mr. Reid, who was president of the company, call the meeting or direct that a meeting be called? He merely expresses his opinion that a meeting should be called. Mr. Reid, the president, did nothing, but on September 8, 1925 (Exhibit C-10, Case, p. 190), he writes a letter to Hetrick telling him how he had informed the stockholders substantially that Hetrick had agreed to take care of them. This was a self-serving declaration written almost one year after the option had expired, and it was the first time that the president had shown any interest in the proposition since the expiration of the option. Then Judge Smith, on September 16, 1925 (Exhibit C-8, Case, p. 187), sends a letter to Mayor Hetrick informing him that Mr. Reid told him how he had written a letter and expressing the idea that Mr. Reid's letter was a little harsh. He also states that he is being importuned by many of the interested parties in the proposition and that he thinks a meeting should be held. This was the first time after the expiration of the option that Judge Smith became interested in the matter, and this letter is likewise a self-serving declaration. It is necessary to refer to what was actually done before the expiration of the option to find out whether there was or was not an agreement made. The fact is overwhelmingly proved all through the testimony that Mr. Reid and Judge Smith did not do anything in the matter but because Hetrick had worked industriously they left the matter to him, hoping that everything would turn out all right, and then blaming him because he could not do the impossible when the stockholders and creditors began to complain to them.

Counsel for appellant, in his brief (p. 2), writes as follows:

> "Although the scheme was Hetrick's and he received the stock of the Bradley Hotels System for his option, and the stockholders unquestionably came in because of his connection with the proposition, he being the Mayor of Asbury Park (p. 85), and the president of the Board of Trade, he, like so many promoters, did not put any money in the proposition himself (p. 104), and he comes out of the transaction as a result of his handling of the option, as president of the Coast Holding Corporation which acquired the property and having already received moneys from that corporation (p. 133)."

The scheme, as counsel calls it, was not by any means the scheme of Hetrick. On the contrary, it was the scheme of the Reids; that is to say, of Mr. J. Herbert Reid and of his brother, Walter, who gathered a number of their friends together and, through their friend, Judge Smith, formed a corporation. Hetrick was taken in merely because he had knowledge of the property, having been interested in it through the old Bradley Lands Company. Hetrick, in procuring the option from Mr. Gillespie, was selected as the agent of the company because he probably knew Mr. Gillespie better than any of the others and could induce him better than anyone else to give the option.

Appellant proceeds upon the assumption that the option was entrusted to Hetrick to dispose of it, whereas the truth of the matter is that Hetrick and Judge Smith were appointed a committee to obtain an extension of the option, and this they procured. When the property was sold to the Eastern Parkway-Bedford Avenue Corporation and the Coast Holding Corporation, there was newspaper publicity (Case, p. 111, l. 30); yet none of the directors, except Mayor Hetrick, paid any

attention to the fact and it was not until a year afterwards that Mr. Reid wrote the letter of September 8th, 1925 (Exhibit C-10, Case, p. 190), and Judge Smith wrote the letter of September 16th, 1925 (Exhibit C-8, Case, p. 187).

Mayor Hetrick, in his letter of September 9th, 1925 (Exhibit D-1, p. 202), said to Mr. Reid:

> "Of all the officers and directors, including yourself as President, I was the only one connected with the Bradley Hotels System who worked and worried and endeavored to protect the interests of persons who had invested money in the stock of that company" (p. 202, ll. 13 to 19).

And further on, in the same letter, he says to Mr. Reid:

> "It is gratifying to me to learn that after months and years you have finally been aroused to a conscious sense of your duty as President and Director of the Bradley Hotels System and that you are now giving some thought to the protection of the innocent stockholders who purchased stock and made certain cash payments on account or in full payment for same."

Conclusion.

It is respectfully submitted that the appeal should be dismissed and the decree of the Chancellor confirmed.

Respectfully submitted,

James A. Hamill,
Solicitor for Respondent,
Clarence E. F. Hetrick.

New Jersey Court of Errors and Appeals

Between

PETER BENTLEY, Receiver of THE BRADLEY HOTELS SYSTEM, INC.,
Appellant,

and

CLARENCE E. F. HETRICK, and COAST HOLDING CORPORATION,
Respondents.

} On Bill, & etc.

BRIEF ON BEHALF OF RESPONDENT COAST HOLDING CORPORATION.

This is an appeal by the receiver of the Bradley Hotels System, Inc., a corporation of Delaware, from a decree of the Chancellor, advised by Vice-Chancellor FIELDER, dismissing the bill of complaint as to both defendants.

The Question Involved.

The sole question for decision is whether Coast Holding Corporation, the purchaser of three parcels of land situated in Asbury Park, New Jersey, from Eastern Parkway-Bedford Avenue Corporation, which in turn purchased in the open market the said three parcels of land, owes any duty to the receiver of Bradley Hotel System, Inc., a corporation which at one time held an option to purchase the said property, said option having expired five months before the contract to purchase the land in question in the open market had been made by Eastern Parkway-Bedford Avenue Corporation.

Facts.

We dissent sharply from the statement of facts contained in appellant's brief. The facts are summarized clearly and correctly in the conclusions of the learned Vice-Chancellor (p. 206). A more detailed statement of the facts than that set forth in the conclusions of the learned Vice-Chancellor is as follows:

On April 1, 1925, Eastern Parkway-Bedford Avenue Corporation, a corporation of New York, purchased the land in question in the open market from Samuel A. Gillespie, as sole acting executor of and surviving trustee under the last will and testament of James A. Bradley, deceased, for a cash consideration of $375,000 which was duly paid to said executor (p. 192, Exhibit C-12, p. 205; Exhibit D-4, pp. 158, 159; p. 135, fol. 20; p. 156, fol. 30). The stock of Eastern Parkway-Bedford Avenue Corporation was owned absolutely and in fact in equal shares by Central Union Trust Company of New York, Henry H. Pettit and Isaac Marshall (p. 135, fols. 30-40; p. 141, line 11).

On or about July 27, 1923, Bradley Hotels System, Inc., a New Jersey corporation, organized on or about said date (p. 30, fol. 40), acquired by assignment from the defendant, Clarence E. F. Hetrick, an option, dated July 27, 1923, to buy three certain parcels of land situate in Asbury Park, New Jersey (p. 31, fols. 20-30; p. 32, fols. 10-20), for a price of $270,000 (p. 36, fol. 30; Exhibit C-3, p. 178). The land was owned by the estate of James A. Bradley, deceased, and the option owned by Hetrick had been purchased by him from Samuel A. Gillespie, as sole acting executor of, and surviving trustee under, the last will and testament of said Bradley (pp. 177-182, 184-186; Exhibits

C-3-4-6). Before organizing the Bradley Hotels System, Inc., Hetrick had organized another corporation known as Bradley Lands Corporation for the purpose of taking over the aforesaid option and promoting the building of hotels on the sites covered thereby. The corporation had failed in its project, the money subscribed for the purchase of stock had been returned to the stockholders and the option retained by Hetrick (p. 86, fols. 10-20). *No money was ever paid by the Bradley Lands Corporation for the option* (p. 103, fols. 10-20). The Bradley Hotels System, Inc., had much the same experience. It is undisputed that five extensions of the option were obtained from the executor of the Bradley Estate (p. 90, fols. 1-10). These options were for periods of from two to three months and were renewed for a consideration of $5,000 each (pp. 177-182; 184-186; Exhibits C-3, C-4, C-6), and the purchase price was finally increased from the sum of $270,000 payable under the original option to $280,000. The management of the Bradley Hotels System, Inc., was conducted by a Board of Directors composed of thirteen or fifteen persons, of whom Hetrick was one (p. 107, fol. 30). Hetrick was also a Vice-President of the corporation and a member of the executive committee of the Board of Directors, the personnel of said committee being five of the directors of the corporation (p. 52, fols. 10-20). The plan of the company was to finance the purchase of the land and building of hotels by the sale of preferred stock and by borrowing funds from hotel men or bankers. Although the corporation was active for something more than a year, the total sales of preferred stock amounted to 529 shares, upon which a total of $36,223 was paid in (p. 28, fols. 10-20; p. 173, Exhibit C-1, p. 197; Exhibit C-15,

pp. 160, 161). The common stock consisted of an issue of 100,000 shares of no par value, all of which were issued to Hetrick, 49,000 being returned by him to the treasury of the corporation, 47,600 distributed among the remaining members of the Board of Directors and 3,400 shares retained by Hetrick (pp. 31-34, 58, fol. 40).

These are the facts established by the testimony and found by the learned Vice-Chancellor (p. 207, fols. 10-20):

> "Thereupon Hetrick directed that 51,000 of said shares be issued to him, to the two Reids and to various other persons who had been induced to join the enterprise, and that 49,000 shares be donated to the company's treasury."

Certificates representative of this stock were never issued (p. 32, fol. 30; p. 83, lines 15-16).

The option was many times in danger of lapsing (p. 59, fols. 10-20). The fourth extension of the option obtained by the company expired on September 1, 1924, and a meeting of the Board of Directors was held on August 28, 1924, to determine what steps were to be taken with respect thereto (p. 176, Exhibit C-2, p. 36, fol. 40; p. 90, fol. 10). It appears that some of the members of the Board present at the said meeting were in favor of selling the option, while Mayor Hetrick and Judge Smith were in favor of retaining the option, obtaining a renewal thereof, if possible, and of borrowing funds to go ahead with the project for which the corporation had been organized, namely, to build hotels upon the property (pp. 56-57, 92, 93). Thereupon, Mayor Hetrick and Judge Smith were appointed a Committee of two to obtain an extension of the option (p. 176, fols. 30-40, Exhibit C-2; p. 53, fol. 30). An extension was obtained

by Mayor Hetrick to November 1, 1924 (p. 63, fol. 10; p. 64, fol. 20; p. 90, fols. 10-30; p. 70, fol. 10; p. 94, fol. 10), although by that time renewals were hard to obtain (p. 91, fol. 40). No meetings of the Board of Directors, Executive Committee thereof, or of the stockholders of the Bradley Hotels System, Inc., have ever been held since the meeting of the Directors on August 28, 1924 (p. 176, fol. 30, Exhibit C-2; p. 62, fol. 10; p. 77, fol. 20).

These facts are overwhelmingly established by the evidence of Hetrick, Reid and Smith, and are so found by the learned Vice-Chancellor (p. 208, fols. 10-20):

> "No further action with respect to the option was taken by the directors after August 28, 1924, in fact, no meeting of the board was held for any purpose after that date and the option lapsed November 1, 1924."

After the payment of the $5,000 for the final option, the corporation had less than $1,000 in assets aside from the option and when the Receiver, subsequently appointed by the Court, took over the assets, the total property received by him was $171.37 in cash (p. 28, fol. 30). The option was never renewed and was therefore not in existence after November 1, 1924. Subsequent to the meeting of August 28, 1924, and in or during the month of October, 1924, Mayor Hetrick, Judge Smith and Herbert A. Reid, the latter the President of the corporation and a member of the Board of Directors, had an informal meeting, either at Asbury Park or the Newark Athletic Club or at Mr. Reid's office in Newark, the precise place not being fixed by the testimony of any of the witnesses (p. 44, fol. 30; p. 73, fol. 10; p. 95, fol. 20). These three gentlemen discussed the problem of financing the corporation.

Smith and Reid assert that they agreed on behalf of the Bradley Hotels System, Inc., to step aside and allow Hetrick to sell the land to another corporation or to some other people who would be able to promote the hotel project and development which Mayor Hetrick wished, on the condition that Mayor Hetrick would obtain from the new group sufficient moneys to pay the stockholders of Bradley Hotels System, Inc. (pp. 45, fol. 20; p. 65, fol. 20; p. 72, fol. 20). Smith's recollection of the matter is dim (p. 45, fol. 10). *But even Reid and Smith say that this alleged agreement was made only with them and not with the Board of Directors of the corporation* (p. 66, lines 1-10). Mayor Hetrick on the other hand claims that he made no such agreement, but does assert that he said that he would do all in his power to protect the stockholders of Bradley Hotels System, Inc. (p. 94, fol. 30; p. 96, fol. 10; p. 99, fol. 30; p. 104, fol. 10; p. 112, fol. 30; p. 115, fol. 30). *His experiences in trying to develop real property for the civic purposes of Asbury Park, and with this particular proposition had taught him the futility of making any such promise* (p. 95, fol. 30). Nothing appears in the record or in the minutes of the Bradley Hotels System, Inc., which would indicate that Messrs. Smith and Reid had any authority expressed or implied to thus give away the only asset of the corporation (aside from cash), the interests of which they had sworn to protect. It seems inconsistent that Smith and Reid should be willing, a short six weeks at most, after the meeting of August 28, 1924, to permit of the disposition of the property which they claim they authorized Mayor Hetrick to make, if the option had the great value asserted by them in their testimony, and also the value which they claim they believed the option had at the time of the Direc-

tors' meeting above referred to. It lends support to Hetrick's testimony that the option was worthless because of the fact that the funds were lacking to purchase the land and to develop the property for the corporation, and that a buyer could not be found who would take the option off of their hands for any substantial amount. Reid says that the meeting took place some time early in October, "between the 1st and 15th" (p. 73, fol. 20). He was President of the corporation. He had plenty of time before November 1st, if he believed the option to be worth anything, to call a meeting for the purpose of getting authority to negotiate a sale thereof, or to obtain another extension. As the matter then stood nobody had any authority to obtain an extension of the option or to dispose of it. Hetrick's contention that there was no such agreement as that alleged by Smith and Reid is further borne out by the fact that as the time for the expiration of the option on November 1, 1924, drew near, he turned to everybody whom he believed would advance money sufficient to keep the option alive for another two or three months or for whatever period he might be able to obtain from Mr. Gillespie. It is important to note that he turned to all who had theretofore evinced a willingness to put up any money. He wired to Mr. Clark, and applied to Mr. McAlpin, Mr. Britwoods and to the bank in Asbury Park for funds. He was refused by all of these people (pp. 93-94, 203, 204, Exhibits D-2, D-3). It was testified that neither Messrs. Smith or Reid had any more money to put into the proposition (p. 46, fol. 20; p. 64; p. 104, fols. 20-30), and that Mayor Hetrick had appealed to those who would be most likely to furnish funds. At the Hetrick, Reid, Smith meeting, Smith, on leaving Hetrick testifies that "I told him (Hetrick) he could not get any more help from

me" (p. 45, fols. 30-40). Hetrick was not under a duty and had no authority to call any meeting of the Board of Directors or of the stockholders (p. 102, fol. 10). Thereupon the option lapsed on November 1, 1924. This is conceded by the complaint and by Reid and Smith (p. 7, fol. 40; Complaint, Allegation 6; p. 64, fol. 20; p. 70, fol. 10; p. 74, fol. 40; p. 77, fols. 1-10).

The learned Vice-Chancellor has found that there is absolutely no proof that Hetrick made the request and promise alleged by Reid and Smith, and as asserted in the complaint, and finds (p. 209, fols. 10-20):

> "There is no proof that Hetrick requested his fellow officers and directors to permit him or a corporation to take over the option or the property, or that, in such event, he or it would pay the creditors and stockholders of Bradley Company; or that he allowed, or induced his fellow directors to permit the option to lapse so that he or a corporation might purchase the property."

At this point the Bradley Hotels System, Inc., passes out not to reappear until September 8, 1925.

The Bradley Estate had owned considerable land in the immediate neighborhood in which the property in question is situated. Theretofore one Isaac Marshall had purchased certain adjoining lots from Mr. Gillespie, as Executor of the Bradley Estate, and was interested in real property operations in Asbury Park (p. 155, fol. 20). He learned that the option of the Bradley Hotels System, Inc., had expired in the fall of 1924, that the land was put on the general real estate market in Asbury Park, and was offered for sale by various brokers. Some of them offered it to him (p. 155, fol. 40; p. 163, fol. 20). Marshall was also a stockholder, officer and director of the Eastern Parkway-Bed-

ford Avenue Corporation, a New York corporation organized in 1921 or 1922, whose chief holding consisted of a forty-two year lease on certain real property in Brooklyn, New York (p. 134, fol. 10). The Eastern Parkway-Bedford Avenue Corporation had financed the purchase of its interest in this land by borrowing $400,000 from Central Union Trust Company of New York, which transaction occurred in 1921 or 1922. Payments on the loan had been slow up to the spring of 1925, and the corporation then owed the bank about $375,000 on its obligation. The bank took up the question with the officers of the Eastern Parkway-Bedford Avenue Corporation, one of whom was Marshall, of evolving methods for a speedier liquidation of the obligation of Eastern Parkway (p. 134, fol. 10). The stockholders of the Eastern Parkway at that time were and now are Henry H. Pettit, the said Isaac Marshall, and Central Union Trust Company of New York, each of whom owned one-third of the stock of the corporation (p. 135, fol. 30). The Central Union Trust Company of New York owns its stock absolutely and not as pledgee, bailee, or otherwise for anyone (p. 136, fol. 10). It is claimed in the brief for the appellant that said company holds said stock merely as security despite the direct and emphatic testimony of Mr. Muhleman to the contrary (p. 141, fol. 10). The directors of the Eastern Parkway-Bedford Avenue Corporation were, and now are, the said Marshall, Henry H. Pettit, and Donald C. Muhleman, attorney for the corporation, and also for the Central Union Trust Company of New York (p. 136, fol. 10; p. 151, fol. 20).

At this time, Marshall advised his fellow stockholders and directors that the lots in question were being offered for sale by various real estate brokers in Asbury Park for $300,000; that he believed with

proper development a great deal more could be realized from the property (p. 156, fols. 30-40). Mr. Muhleman went down and looked at the land and several appraisals were had which indicated that the property was worth more (p. 135, fols. 10-20; p. 139, fol. 30). Thereupon, Central Union Trust Company of New York agreed to loan to the Eastern Parkway-Bedford Avenue Corporation a sum sufficient to enable it to purchase these additional lots under the condition that the property should be subject to a lien of the company for the full obligations of the corporation (p. 134, fol. 40; p. 156, fol. 40). All of the stock of the company was put up as collateral security for the loan (p. 135, fol. 30).

About this time, March or April, 1925 (p. 156, fol. 10), Marshall, while going to Asbury Park where he lived, met Mayor Hetrick by chance on the train and took up with him the proposition of purchasing this land. Hetrick told Marshall that he could get it for him for $280,000, which was $20,000 less than it was being offered for in the street (p. 96, fol. 20; p. 156, fol. 10). The learned Vice-Chancellor has so found (p. 210, fol. 10). Marshall knew that the Bradley Hotels System, Inc., had failed and that the option had lapsed (p. 163, fol. 10). Hetrick testified on examination before the Receiver that he told Marshall that he was afraid that the Bradley Hotels System, Inc., would not be able to go through with the proposition and that it would have to lose the option (pp. 167-168). Hetrick testified at the trial before the Vice-Chancellor that he tried to convey to Marshall the idea that the option was still good, but that they would not be able to put over the project which he had always endeavored to carry out (pp. 119-120).

The upshot of the conversation was that Hetrick went to Gillespie to buy the land for Marshall for $280,000, but did not say for whom Marshall was acting or whether he had any authority to act for anybody (p. 118, fol. 10; p. 156, fol. 10). Marshall himself went to see Gillespie several times (pp. 156-157). He saw him once at his home in Morristown (p. 157). Gillespie would not sell the property for $280,000, but insisted upon receiving $300,000 for it (p. 156, fol. 20). Thereafter and at the time of the signing of the contract on April 1st, he raised the price to $345,000, plus assessments of some $25,000 (p. 156, fol. 30). The learned Vice-Chancellor has so found (p. 210, fol. 20). The property was purchased by the Eastern Parkway-Bedford Avenue Corporation amid lots of newspaper publicity (p. 111, fol. 30), at which time no stockholder, director or officer of the Eastern Parkway-Bedford Avenue Corporation knew, had notice of, or cause to believe that Hetrick or the Bradley Hotels System, Inc., had any option to buy the land from Gillespie, or that Hetrick had any agreement with the Bradley Hotels System, Inc., or with Judge Smith or with Mr. Reid, to let the option lapse and then sell the option for an amount sufficient to repay the stockholders of Bradley Hotels System, Inc., the amounts of their investments. Hetrick had never met anyone connected with the Eastern Parkway-Bedford Avenue Corporation except Marshall. He had no agreement with Eastern Parkway-Bedford Avenue Corporation. He did not know that company (p. 100, fol. 1; p. 124, fol. 30). All that he ever told Marshall was that he wished to get enough out of the sale to protect the stockholders of Bradley Hotels System, Inc., as he felt that he had a moral, but no legal, obligation to do so (p. 96; p. 100, fol. 20; p. 101, fol. 20). Marshall

in turn had done nothing more than to tell Hetrick that he, as an individual, would see what he could do to help Hetrick realize his wish (p. 100, fol. 20). Marshall made certain from Gillespie that the option had expired on the day of signing the contract, and obtained a letter (p. 102, fol. 10; p. 205, Exhibit D-4), which was addressed to Hetrick, dated that day, to the effect that the moneys of the Bradley Hotels System, Inc., were forfeited under the option agreement.

The appellant, in his brief, attempts by innuendo to minimize Exhibit D-4, because it speaks of "Bradley Lands Corporation" instead of "Bradley Hotels System." The evidence is clear that the Bradley Lands Corporation never had paid any amount on account of its option (p. 103, fol. 20), and that Bradley Hotels System had paid $30,000, as mentioned in said letter, in amounts of $5,000 for the option, and $5,000 for each of the five extensions of said option.

Thereupon on April 1, 1925, the contract with Gillespie for the purchase by Eastern Parkway-Bedford Avenue Corporation was signed. Thereafter the subject of Hetrick's wish was communicated to Mr. Muhleman and Mr. Pettit, the other directors of the Eastern Parkway-Bedford Avenue Corporation, for the first time. Mr. Muhleman insisted that the corporation could have nothing to do with any such arrangement and that the corporation refuse to take any action with respect thereto, until the principal and interest of the loan by the Central Union Trust Company of New York was paid out of the New Jersey property and/or out of the New York property of Eastern Parkway-Bedford Avenue Corporation. This amounted to a total sum of $745,000 advanced to the Eastern Parkway-Bedford Avenue Corporation (p. 136, fol. 40; p. 138; p. 135, fol. 30), Marshall

wanted the benefit of Hetrick's knowledge of Asbury Park and his experience in handling properties thereof and his good-will and the good-will of the people of Asbury Park (p. 159, fol. 30). The corporation had no funds to pay salaries at that time. Therefore in order to obtain the benefits of Hetrick's experience, ability, etc., and in order to enable him, Hetrick, to fulfill what he believed to be his moral obligation to return to the stockholders of the Bradley Hotels System, Inc., the amounts paid in by them on their stock, a new corporation was organized, known as the Coast Holding Corporation, and the Asbury Park properties of the Eastern Parkway-Bedford Avenue Corporation were sold to the Coast Holding Corporation on May 12th, four days after the taking of title to Eastern Parkway-Bedford Avenue Corporation for the sum of $745,000, and mortgages taken back by the Eastern Parkway-Bedford Avenue Corporation which were assigned to Central Union Trust Company of New York as security for their loan (pp. 137-139). Thereafter and under date of May 15, 1925, Coast Holding Corporation, voluntarily and without any consideration therefor, made an agreement with Hetrick whereby out of the first profits realized out of the Asbury Park lands, Coast Holding Corporation would pay or cause to be paid to Hetrick the sum of $36,223, being the amount paid in on stock subscribed for by the stockholders of the Bradley Hotels System, Inc., according to the statements of Hetrick. The agreement was ratified by the Board of Directors on said date and actually delivered to Hetrick some months thereafter, being held up by Mr. Muhleman until receipt of the list of the stockholders of the Bradley Hotels System, Inc., which was to be appended thereto and to show to whom Mayor Hetrick intended to pay these funds upon their

receipt by him (p. 136, fol. 30; p. 138, fol. 20). Mr. Muhleman's testimony was clear on this point that the period of four or five months was after May 15, 1925, and not from November, 1924, to April, 1925, the day the appellant by innuendo seeks to convey to the Court in his brief. This is further confirmed by Hetrick and by Smith's testimony that Hetrick told Smith the contract was made but had not been formally delivered in September, 1925 (p. 48, fol. 20; p. 112, fol. 10; p. 172, fols. 10-20).

POINT I.

The appellant had no rights in the property after November 1, 1924.

This is shown by the chronology of the case. The chronology follows:

1921 or 1922—Eastern Parkway-Bedford Avenue Corporation, Incorporated (p. 134, fol. 10).

July 27, 1923—Bradley Hotels System, Incorporated (p. 30, fol. 40).

July 27, 1923—Option from Bradley Estate to Hetrick (pp. 31-32).

July 30, 1923—Minutes of Directors' meeting of Bradley Hotels System (pp. 28, 31, 173, fol. 30, Exhibit C-2).

Aug. 20, 1923—Hetrick letter to Bradley Hotels System (pp. 33, 175, Exhibit C-2).

Aug. 24, 1923—Directors' Meeting Bradley Hotels System (pp. 33, 174, fol. 30).

Nov. 1, 1923—Extension agreement between Gillespie and Hetrick (pp. 35, 177, Exhibit C-3).

Mar. 24, 1924—Authority to extend option (p. 36, fol. 10).

May 1, 1924—Extension agreement (pp. 36, 180, Exhibit C-4).

Aug. 28, 1924—Meeting of Directors of Bradley Hotels System (p. 176, fol. 30).

This is the meeting referred to by Judge Smith as the "Crucial Meeting" and there is no record of any meeting after this (p. 39).

Sept. 1, 1924—Extension agreement (pp. 37, fol. 10, 184, Exhibit C-6).

Sept. 1, 1924—Last time the option was renewed (pp. 63, 64, 70, 90, 94).

Sept. 3, 1924—Letter with checks for extension (pp. 37, 183, Exhibit C-5).

Sept. 4, 1924—Letter from Hetrick to Smith (pp. 38, 186, Exhibit C-7).

Sept. 29, 1924—Letter of Reid to Smith and Hetrick (pp. 43, 188, Exhibit C-9).

Oct. 3, 1924—Letter of Hetrick to Smith (p. 44, fol. 20).

Oct. 1-15, 1924—Smith, Reid and Hetrick have informal meeting (pp. 44, 45, 73, 95).

Oct. 28, 1924—Hetrick wired Clark, approached McAlpin, Britwoods, etc. (pp. 93, 94, 203, 204, Exhibit D-2).

Oct. 28, 1924—Telegram from Clark to Hetrick (pp. 94, 95, 204, Exhibit D-3).

Nov. 1, 1924—Bradley Hotels System option expired (pp. 8, 64, 70, 74, 77).

A month before Marshall met Hetrick in the spring of 1925 the property had been offered to Marshall (pp. 155, 163).

Spring of 1925 real estate men in Asbury Park offered the property to Marshall (pp. 155-163).

March or April, 1925, Hetrick met Marshall (pp. 96, 156).

Spring of 1925, Marshall and Gillespie met in Morristown (pp. 156, 157).

Apr. 1, 1925—Letter of Gillespie, executor, to Hetrick (pp. 82, 192, Exhibit C-12).

Apr. 1, 1925—Letter from Gillespie to Hetrick (pp. 103, 205, Exhibit D-4).

Apr. 1, 1925—Hetrick read D-4 to Marshall (pp. 102, 158).

Spring of 1925—C-12 brought to Marshall by Hetrick (p. 158).

Apr. 17, 1925—Coast Holding Corporation incorporated (pp. 79, 191, Exhibit C-11).

Apr. 21, 1925—First meeting of Coast Holding Corporation (pp. 79, 193, Exhibit C-12).

May 8, 1925—Deed of Gillespie to Eastern Parkway-Bedford Avenue Corporation (pp. 84, 195, C-13. This deed was recorded May 9th.

May 12, 1925—Deed of Eastern Parkway-Bedford Avenue Corporation to Coast Holding Corporation (pp. 84, 196, Exhibit C-14). This deed was recorded May 20th.

After the property was purchased by the Eastern Parkway-Bedford Avenue Corporation, Marshall told Muhleman of the proposition concerning the $36,223.00 (pp. 137, 138).

May 15, 1925—Agreement between Coast Holding Corporation and Hetrick (pp. 136, 138, 84, 197; Exhibit C-15).

May 15, 1925—Directors' Meeting Coast Holding Corporation, approving agreement (pp. 80, fol. 10; 193, fol. 20, Exhibit C-12).

Sept. 2, 1925—Directors' Meeting of Coast Holding Corporation (pp. 80, 193, fol. 20, Exhibit C-12).

Sept. 8, 1925—Letter of Reid to Hetrick (p. 54).

Sept. 16, 1925—Letter of Smith to Hetrick (pp. 39, 187; Exhibit C-8).

Sept. 26, 1925—Meeting of Smith and Hetrick. Smith also knew about sale of land from the newspapers (p. 48).

Sept. 26, 1925—Hetrick told Reid or Smith about transfer to Coast Holding Corporation and of contract on pages 36, 223 (p. 48).

April 20, 1926—Directors' Meeting of Coast Holding Corporation (pp. 81, fol. 40, 194, fol. 30, Exhibit C-12).

May 11, 1926—Complainant appointed Receiver of Bradley Hotels System (p. 28).

May 14, 1926—Newspaper interview of Hetrick (pp. 130, 200, Exhibit C-16).

Fall of 1926, Hetrick, Marshall and Pettit got some money (about 50% to 80% of resolution of December 2, 1925), from Coast Holding Corporation (pp. 131, 146, 161, fols. 10-20).

No money ever paid to Hetrick, Marshall, Muhleman or Pettit under resolution of meeting of April 20, 1926 (pp. 146, 161, fols. 10-20).

Mr. Muhleman first heard of the Bradley Hotels System when he received the bill of complaint in this action (p. 141, fols. 20-30).

These dates show the inactivity of the Bradley Hotels System after the failure to secure the money to exercise or extend the option on October 28, 1924. This inactivity except on the part of Hetrick continued until the letter of September 8, 1925, in the fall of the following year.

These dates also show that Marshall did not begin to negotiate for the property until after it had been offered to him by real estate agents in Asbury Park in the spring of 1925, prior to his meeting with Hetrick. In addition to this, before

the contract was entered into between the Eastern Parkway-Bedford Avenue Corporation and Gillespie, executor, a letter was obtained on April 1, 1925, set forth on page 102, fol. 30, to the effect that the executor considered the money paid on account of the option as forfeited under the terms of the agreement. This taken in connection with the facts that the option had been for $270,000 and the price paid by the Eastern Parkway-Bedford Avenue Corporation was $345,000 plus $25,000 taxes and assessments, effectually disposes of the appellant's suspicion that the purchase by Eastern Parkway-Bedford Avenue Corporation was designed to reap the benefit of the lost option to Bradley Hotels System.

The testimony is clear as to why the Coast Holding Corporation made the agreement of May 15, 1925, by which Pettit and Marshall subordinated their equity in the property to the payment of $36,223. The good-will and cooperation of the Mayor of the town was useful to them and that good-will would be considerably diminished if the persons who had contributed the $36,223 through Hetrick's efforts should lose these moneys.

POINT II.

Hetrick was abandoned by his fellow directors of Bradley Hotels System, Inc.

"I told him he could not get any help from me." Judge Smith, page 45, folios 30-40 of Testimony, and on page 46, folio 20, he says:

> "I told him that I could not help, that I was busy in Court and could not help, and the option would expire on the first. From what Mayor Hetrick had said to me about his ability to get extensions, I left it with him to handle

it, knowing that we could not put up any more money unless he did something, so that the matter just went along from that time."

And on page 56, folio 20, in reference to the last meeting of directors on August 28, 1927:

"Q. That is, Mayor Hetrick persuaded the others to renew the option and not to sell the land then? A. I would not say to renew the option. That was decided on. They wanted to sell the land then. Renew the option and then dispose of the land.

"Q. So, the renewal of the option was decided on at that time? A. Yes."

This was the option that was renewed on September 1st, and which expired on November 1st, 1924. There was no further corporate action to renew the option beyond that day. And on page 63 is the following:

"Q. When this meeting was held on August 28th, 1924, and you were appointed along with Mayor Hetrick to look after this option, when did you find that the option had expired? A. Well, the option was up, as I recall it about November 1st, and it was in Mayor Hetrick's hands either to extend it in some way without money from the Company, because it did not have any, or to let it lapse."

And Mr. Reid, the president, testified as follows on page 76, folio 30:

"Q. You told us that the reason you did nothing about saving this option, was because you were not familiar with your property, and because you thought Mayor Hetrick would take care of it? A. Yes.

"Q. But you did nothing at all because of that? A. Yes, that is right."

And on page 78, folio 30:

"Q. And you also say that it was the illness

of your brother in Baltimore that prevented you from being on hand to prevent the expiration of the option? A. Yes."

The whole trouble was that no one would put up the necessary money for the renewal of the option. Hetrick made strenuous efforts to get money for the renewal. He refers on page 93, lines 5 and 6 to the "One great need," that is, the money that was necessary to purchase the property, and he arranged in various ways to secure from members of the Board moneys for that purpose. He approached Colonel McAlpin and H. H. Clark. Neither would act. As a last resort on October 28th, two days before the option expired he wired Mr. Clark asking him to assist the Company with $10,000 so that Hetrick could go to Gillespie and ask him for an extension of the option, the Company having less than $1,000 in its treasury. He approached Mr. Clark, Colonel McAlpin and Mr. Britwoods. He even tried at a bank to arrange for raising the necessary money. "I could do nothing further, the optional period came on November 1st, 1924. I had no money and the company had no money, therefore, the option was permitted to lapse. My experience with property would have taught me the impossibility of saying definitely to any Board of Directors, or to any gentleman, that I would positively guarantee to take care of it and sell it" (p. 94, fol. 10).

The long silence and inactivity of Judge Smith and Mr. Reid between September, 1924, and the fall of 1925 is explained by the fact that they knew the corporation could not advance the money for the option, and unless Hetrick could fix it up in some fashion, it was up to him to let the option lapse. As Judge Smith says: Reid, Smith, McAlpin, Clark, Britwoods, and the bank could not help

him. From the testimony of Smith and Reid, one would think that the question was whether to go on with the hotel scheme or sell the land. The company never had any land. It never had any interest in the property, except an option to exercise which it was necessary to pay the purchase price, and no money was forthcoming for this purpose. The option could not be extended except on the payment of money for the extension. Despite Hetrick's strenuous efforts to obtain money he was unsuccessful through no fault of his. Mr. Reid in his letter of September 8th, 1925 (p. 190, Exhibit C-10, fol. 20), long after in the next year, says:

> "However, my previous letters to you asking for information regarding the return to be made to the Bradley Hotels System out of the proceeds from the sale of the land which was held by our Company under option have all remained unanswered."

It is difficult to see how he could have thought that there would be any proceeds from the sale of lands held by the company under option, and on page 74, folio 30, he says that there was nothing else for them to do except avail themselves of the opportunity to dispose of the land and at page 75, folio 20: "that the inducement was the reaping of the profit on the land to make a return to our investors" and this he says on the same page was due to the statement by Mayor Hetrick that he could sell the land, that he had parties who were willing to buy it. From October 28th, 1924, to September 8th, 1925, no one connected with the Bradley Hotels System except Hetrick made any effort to do anything in respect of the Bradley Hotels System, Inc., interest.

POINT III.

The alleged contract between Smith and Reid and Hetrick was a mere expression of hope and confidence.

The officers and directors of the Bradley Hotels System, Inc., were well aware of the situation. As far back as the meeting of October 31, 1923, the President (p. 34, fol. 30), in dealing with the option that was to expire on November 1, 1923, said that there were three alternatives:

1. To abandon the option;

2. To make the payment of $10,000 under the option;

3. To pay $5,000 to the Estate of James A. Bradley and obtain an extension of the option for three months.

At the meeting of August 28, 1924, page 12, Mr. Hetrick and Judge Smith were appointed a committee to arrange for an extension of the option for two months upon payment of $5,000, and on page 42, folio 10, Judge Smith says:

> "In other words if he could not get capital to go on with the proposition, he could dispose of the property before the expiration of the option. It was on that condition that the extension was authorized."

And Judge Smith says again on page 45, fol. 30:

> "He (Hetrick) left with the understanding on my side that he was willing to handle the negotiations for the disposal of the property."

And on page 56, fol. 20, Judge Smith said that Hetrick said that he was going to try to carry

the hotel project through, or he was going to put the sale through. And on page 59, folio 20:

> "Q. The net result of the talk was that he would do all he could to save this project, that he was going to use his best endeavors? A. Yes. I think he talked that way at the meeting."

And on page 63, folios 1-10, in the middle, he says:

> "That it was in Mayor Hetrick's hands either to extend the option in some way without money from the Company, because it did not have any, or to let it lapse."

When Judge Smith was asked to point to any promise of Mayor Hetrick's to pay, he said, on page 64, folios 36-40, that there was not a direct promise to pay, but he would call it a promise from the fact that Mayor Hetrick said he had people that would buy this particular property, and he would arrange its sale for a sufficient sum to pay all these people. And, at page 65, folios 1-10, in reiterating that he would call the above a promise, he answered that Mayor Hetrick was in charge of the option and let the option expire. But as nobody connected with the Company would put up the necessary money to extend the option, or to exercise it, this can only mean that Judge Smith thought that Hetrick should furnish the money himself. On page 65, folios 20-30, when asked to state as accurately as he could, what he would consider the words were that Mayor Hetrick used which constituted a promise, Judge Smith said:

> "A. Well, I would say, it is pretty hard for me to give anything verbatim, but at that meeting he was unable to get anybody who was going to put up the money to erect the hotel and Mr. Reid told him that he had to go ahead

> and dispose of this property to the people he had. He said he would, and that was following out the lines of the discussion at the meeting of August 28th when he said that if he could dispose of that property, he could get enough to take care of everybody, but he wanted first an opportunity to try and raise money.
>
> "Q. That is all that there was to the promise? A. Yes."

The alleged promise was addressed to Mr. Reid and Judge Smith, and never to the Board of Directors (p. 66, fol. 1). How could Hetrick dispose of the option without the money or authority to exercise or extend it?

At page 71, folios 1-10, Mr. Reid says that "Mr. Hetrick continued to tell us that he still felt that the undertaking could be financed, and that he felt that he could get in touch with the people who would finance it." This is the language of hope, not of contractual obligation. Mr. Hetrick in describing the same occurrences, says on page 92, folio 20:

> "I would say and always did say, and always acted in accord that I would endeavor, I would try, I would do everything in my power to consummate the plans that I had been working on which I had outlined for the development of this property. That was my endeavor, it was my earnest endeavor, and that today is my endeavor."

On pages 93-94 Mr. Hetrick describes his efforts to prevent the lapse of the option, and he states on page 95, folios 10-20, that on August 28th, at the time of the meeting, he did not have in mind any corporation to which the property could be sold.

Comments on Appellant's Brief.

A very different case is presented by the brief from that set forth in the bill of complaint. The bill after stating Mayor Hetrick's relation to the Bradley Hotels System says that the directors and officers of that company, relying on Hetrick's representation, allowed the option to expire, and Hetrick thereafter organized the Coast Holding Corporation, and in April, 1925, that company contracted to purchase the land; that the Coast Holding Corporation knew of Hetrick's representations and the agreement that he had made with Bradley Hotels System, assumed Hetrick's obligations to the Bradley Hotels System and agreed with Hetrick that they, Coast Holding Corporation would pay all the creditors of Bradley Hotels System, and all the stockholders, the moneys actually paid by them; that Coast Holding Corporation has not paid the creditors and stockholders of Bradley Hotels System (pp. 7-8-9, Allegations 6-7-8). There is no suggestion of any fraud, conspiracy or resulting trust. The prayers are for decree directing Hetrick or the Coast Holding Corporation to pay the creditors of the Bradley Hotels System, the stockholders' subscriptions, or in the alternative the value of the option of the Bradley Hotels System, and further that it be decreed that the complainant has an equitable lien found due him, and that the land of the defendant, Coast Holding Corporation, be sold to satisfy the lien.

In appellant's brief his point on page 25 is that the Coast Holding Corporation is charged with the trust and obligation of Hetrick to reimburse the Bradley Hotels System for its expenditures as well as to reimburse its stockholders.

The Coast Holding Corporation was incorporated April 17, 1925 (p. 79, fol. 20). On May 15,

1925, the agreement (C-15, p. 197) made by the Coast Holding Corporation with Hetrick was approved by the directors (p. 80, fol. 10). This agreement recites the purchase of the land by the Coast Holding Corporation from the Eastern Parkway-Bedford Avenue Corporation and the desire of Hetrick to receive from the Coast Holding Corporation $36,223 to pay it "under the following conditions." The conditions are that Coast Holding Corporation agrees to pay Hetrick $36,223 which Hetrick desires to use

> "for the purpose of reimbursing certain persons known to him, who were associated with him in transactions concerning the property subsequently acquired by the second party,"

which amount will be paid

> "out of any proceeds made by the second party after the payment of $745,000, the amount of the mortgages now liens on the property has been made, plus interest and all expenses and charges payable by the second party."

The agreement further provided that the liability of the Coast Holding Corporation should not accrue until it has paid the present mortgages on the property plus interest, charges and expenses, and that the amount should in no way exceed $36,223, no interest should be payable, and that the agreement should not in any event inure to the benefit of any person other than Hetrick, and no other person should at any time have any right to the whole or any part of the sum of $36,223.

The appellant's brief seeks to make a point that an unexecuted draft of an agreement differed in certain respects from C-15. Mr. Muhleman on page 144, line 27, explains the matter. He says "that agreement was never executed." He is referring to C-16 for Identification, but C-16 for

Identification was excluded on page 142, lines 16-21, and in any event was never offered in evidence.

Appellant's brief says (pp. 25-26), that Marshall, Muhleman and Pettit knew that the Bradley Hotels System "had the option or a contract to purchase the property." This is erroneous. At that time the Bradley Hotels System had no option or contract, that was in March, 1925, five months after the option had expired (pp. 8, 64, 70, 74, 77). Marshall as a matter of fact knew so little about the Bradley Hotels System that he thought they originally had a contract to buy until he heard the option had lapsed late in 1924 (p. 157, fol. 30).

Marshall, Muhleman and Pettit did not know of any promise of Hetrick to pay the stockholders or directors of Bradley Hotels System, Inc., any amount. *In fact the learned Vice-Chancellor has found there was no such agreement* (p. 209, fols. 10-20). Some time after the Eastern Parkway-Bedford Avenue Corporation had contracted to purchase the land, Muhleman learned that Marshall and Pettit wanted Hetrick to assist them in the development of the land and that Hetrick's only wish and hope was that he would be able to eventually receive funds sufficient to pay to the stockholders of Bradley Hotels System, Inc., enough to reimburse them for the amounts deposited on account of their stock subscriptions.

Marshall had seen Gillespie who never told him that he imposed any condition upon the sale of the property.

The evidence is also clear that the title to the property was not first taken in the name of Eastern Parkway-Bedford Avenue Corporation for financing purposes. The Central Union Trust Company as the owner of one-third of the stock of said corporation has very different interests from the stockholders of Coast Holding Corporation.

Muhleman's testimony is perfectly clear as to the manner in which the price was fixed by Eastern Parkway-Bedford Avenue Corporation, and Hetrick's testimony as to this is not absurd as is stated on page 27 of appellant's brief. Hetrick in fact did not know anything about Eastern Parkway-Bedford Avenue Corporation, and he never did know the underlying reason for the fixing of the price at $745,000 (p. 100, fols. 1, 30-40; p. 124, fol. 30). Hetrick was out of the picture when the property was sold to Eastern Parkway-Bedford Avenue Corporation, and Marshall told him that he would "like to have him in this property at $745,000" (p. 160, fol. 1) because, as he testified, the good-will of the citizens of Asbury Park and the assistance which Hetrick could give to Coast Holding Corporation in developing the land, made it good business to have him own stock of the corporation (p. 159, fols. 30-40). This was the only way in which Hetrick could protect the stockholders of Bradley Hotels System, Inc., and that was all that he wanted to do, he did not want to have any interest in Coast Holding Corporation (p. 161, line 5). Marshall's and Muhleman's testimonies clearly show that the stockholders of Bradley Hotels System will be protected under the terms of the agreement (C., 15), and that the $36,223 probably will be paid in another year.

Muhleman's chief concern was not to see that the Trust Company did not violate any of the banking rules. This was unnecessary as no question of the violation of the banking rules was involved.

The statement that Marshall and the Coast Holding Corporation did not live up to the agreement (C-15) because salaries and bonuses were voted by Coast Holding Corporation to various officers, is also wrong, because the agreement expressly pro-

vides for charges and expenses and there is no testimony to indicate that the amounts paid were not proper charges and expenses, furthermore, as above noted, in our statement of facts no part of the $15,000 salaries voted have ever been paid and no amounts except about $5,000 to $8,000 have been received by Marshall, Pettit or Hetrick, which sums were largely used as expenses for developing the land, and not for personal use (p. 161, fols. 10-20), nor is there any evidence to show that Marshall or the Coast Holding Corporation knew of any inducement or arrangement between the Bradley Hotels System and Hetrick which caused the Bradley Hotels System to step aside and allow the Coast Holding Corporation to acquire the property. When Marshall first took up the matter with Hetrick, the Bradley Hotels System had long since stepped out of the picture. Further, the learned Vice-Chancellor has found that there was no such promise (p. 209, fols. 10-20).

POINT IV.

The appeal should be dismissed and the decree of the Chancellor affirmed.

Respectfully submitted,

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