INDEX

	PAGE
Bill of Complaint	1
Answer of Defendants	17
Replication	27
Opinion of Vice-Chancellor	28
Final Decree	38
Notice of Appeal	40
Petition of Appeal	41
Answer to Petition of Appeal	43

TESTIMONY.

For Complainant.

James D. Carton,	direct examination	44
	cross "	66
	re-direct "	116
(recalled)	further cross examination	119, 227
	re-direct "	121
	direct "	122
Emelius M. Bentell,	direct examination	116
	cross "	117
Daniel Gouldy,	direct examination	118
	cross "	118

For Defendant.

Herbert Boggs,	direct examination	125
	cross "	128
Morris Eichengreen,	direct examination	129
	cross "	149
	re-direct "	191
Charles Jones,	direct examination	192
	cross "	200
	re-direct "	227
William V. Morris,	direct examination	229
	cross "	229

EXHIBITS.

		Off'd	P't'd
C. 1.	Abstract of Deeds	44	231
C. 2.	Abstract of Title—Eichengreen Land Company	44	246
C. 3.	Letters *re* McNulty Interest	52	291
C. 4.	Letters *re* Gulick Interest	53	315
C. 5.	Letters *re* Housewright Interest	53	331
C. 6.	Letter dated March 5, 1923, Eichengreen to Carton		353

		Off'd	P't'd
C. 7.	Letter dated November 30, 1923, Boggs to Carton	63	354
C. 8.	Letter dated April 23, 1924, Boggs to Carton	64	355
C. 9.	Notice to Remove Signs	65	356
C. 10.	Cunningham Agreement	119	356
C. 11.	Tax Certificates	119	363
P. 12.	Letter dated September 6, 1923, Carton to Ronon	125	395
P. 13.	Letter dated March 28, 1922, Eichengreen to Carton	152	396
P. 14.	Search by Edward Taylor	160	397
P. 15.	Letter dated March 7, 1923, Carton to Eichengreen	228	415
D. 1.	Letter dated September 12, 1923, Carton to Ronon	72	416
D. 2.	Letter dated May 9, 1922, Carton to Ronon	73	417
D. 3.	Letter dated August 3, 1923, Carton to Ronon	75	418
D. 4.	Letter dated April 18, 1922, Carton to Moorshead & Johnson	80	419
D. 5.	Deed—James D. Carton, *et ux,* to Borough of Neptune City	120	420
D. 6.	Letter dated April 22, 1924, Carton to Boggs	127	424
D. 7.	Option of February 14, 1911	130	425
D. 8.	Transcript of Proceedings in Suit to Carry Out Option	130	427
D. 9.	Lis Pendens	130	444
D. 10.	Letter dated October 28, 1921, Eichengreen to Ronon	132	448
D. 11.	Deed—Edwin A. Bradley and Others to Irma Klophaus	142	449
D. 12.	Deed—Florence S. Johnson to Irma Klophaus	142	456
D. 13.	Deed—Inez H. McNulty to Irma Klophaus	142	461
D. 14.	Deed—James I. Gulick and Wife to Irma Klophaus	142	467
D. 15.	Receipts for Taxes	145	472
D. 16.	Letter dated December 21, 1923, Eichengreen Land Company to Collector of Taxes	146	473
D. 17.	Letter dated December 27, 1923, Eichengreen Land Company to Collector of Taxes	146	474
D. 18.	Letter dated June 12, 1924, Eichengreen Land Company to James D. Carton	148	475

BILL OF COMPLAINT.

In Chancery of New Jersey

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

The bill of complaint of James D. Carton, of the City of Asbury Park, in the County of Monmouth and State of New Jersey, respectfully shows:

1. The complainant is, and for twenty-nine years has been practicing law throughout the State of New Jersey, with an office at Asbury Park, in said County of Monmouth.

2. One Henry M. Bennett, at, and prior to his death, which occurred in or about the month of July, 1902, was seized of certain lands and premises, including all that tract or parcel of land and premises, situate, lying and being in the Borough of Neptune City, in the County of Monmouth and State of New Jersey:

> Beginning at the low water mark at the southwest corner of lands formerly belonging to Mrs. E. M. Bell, now deceased, about fifty-five feet southwardly from a marble monument on the top of a bank along Shark River; thence (1) by and along the westerly line of said land north forty-four degrees and twenty three minutes east fourteen hundred and thirty-three feet, more or less, to the middle of the public road or highway leading from Hamilton to Avon; thence (2) along the middle line thereof north thirty-one degrees and thirty minutes west one hundred and ninety-two feet and six tenths

feet; thence (3) continuing along said road north fifty-one degrees and forty-five minutes west seventy-five and eight tenths feet to the line of lands belonging to Alexander Morris; thence (4) along said line north eighty-five degrees and fifty-three minutes west eighty-six feet; thence (5) south forty-four degrees and twenty-three minutes west forty-two and two tenths feet; thence (6) north fifty-one degrees and fifty-seven minutes west ninety-two and six tenths feet; thence (7) north thirty-six degrees and thirty-three minutes east eighty nine and five tenths feet to the centre line of the road or highway aforesaid; thence (8) along the centre line thereof north fifty-one degrees and forty-five minutes west one hundred and fifty-nine feet to the easterly line of an avenue fifty feet in width, known as Windsor avenue; thence (9) along the easterly line of said avenue and the prolongation thereof south forty-three degrees and forty-five minutes west twelve hundred and five feet, more or less, to the edge of Shark River; thence (10) southeastwardly along the several courses of said river six hundred and sixty feet, more or less, to the place of BEGINNING, and containing eighteen and twenty-eight one hundredths acres.

3. At the time of the death of said Henry M. Bennett, he left a last will and testament dated the 27th of September, 1901, which was duly admitted to probate by the Orphans' Court of the County of Monmouth on the 28th of July, 1902, in and by which Peter J. McNulty, James W. Piatt and John F. Hawkins were ap-

pointed executors, to whom on the day and year last aforesaid, letters testamentary duly issued. Said last will and testament, among others, contained the following clause:

"Thirtieth: All the rest and residue of my property of whatsoever kind and wheresoever situate, I give, bequeath and devise unto my executors hereinafter named, and to the survivors or survivor of them, in trust, for the purpose specified in my will, with full power to sell and dispose of the same, at public or private sale, at such times and upon such terms and in such manner as to them shall seem meet and proper."

4. Pursuant to the authority imposed in said executors by said last will and testament, by their deed dated the 7th of July, 1903, and duly recorded in the clerk's office of Monmouth County in Book 714 of Deeds at page 39, the said executors, for a large and valuable consideration, sold and conveyed to one Richard M. Gulick, certain land, the second tract of which was the same as the premises hereinabove described.

5. On or about the 17th of August, 1903, by deed of that date, the said Richard M. Gulick and Kathryn Carr Gulick, his wife, conveyed the premises last above described to the Lynore Land Company, a corporation of the State of New Jersey, which said deed, having been first duly acknowledged, was recorded in Book 714 of Deeds for Monmouth County, at page 227.

6. The complainant was professionally employed by the said Richard M. Gulick in connection with his purchase of the said tract of land from the executors of the estate of said Henry

M. Bennett. Among the beneficiaries under the will of said Henry M. Bennett, were the said Richard M. Gulick and one Peter J. McNulty. The complainant was employed by them to organize, under the laws of the State of New Jersey, a corporation styled "The Lynore Land Company" (the grantee in the last deed hereinabove referred to). By said deed the said the Lynore Land Company became seized, not only of the lands and premises hereinabove particularly described, but of other lands in said County of Monmouth.

7. Peter J. McNulty departed this life, in, or about the year 1907, possessed of an interest in the corporate stock of the said The Lynore Land Company.

8. By deed dated January 12, 1910, and recorded on the 11th of March in that year in Book 872 of Deeds for Monmouth County, on page 55, the said The Lynore Land Company sold and conveyed to Richard M. Gulick and Margaret A. McNulty, widow of said Peter J. McNulty, the lands and premises hereinabove particularly described.

8½. Meantime one Laura Bigger, beneficiary under the will of Henry M. Bennett, deceased, had filed in this court a bill of complaint against the said executors of the said Henry M. Bennett, challenging each and every executive act they had performed, and demanding an accounting, and specifically challenging the title to the premises in question then owned by the Lynore Land Company, reciting the history of the transfers of said premises from the original conveyance by Bennett's executors to Gulick into the Lynore Land Company substantially as hereinbefore stated. The executors defended this action as did

also the Lynore Land Company, and the complainant was, in association with the late Edmund Wilson, counsel for the executors and also for the Lynore Land Company, and successfully conducted the same not only through the Court of Chancery, but through the Court of Errors and Appeals. The complainant was never paid by the Lynore Land Company nor by the Gulick or McNulty interests succeeding to the interests of the Lynore Land Company to the premises in question for his services and disbursements in connection with that litigation, and that fast was taken into account in proceedings hereinafter alluded to.

9. The said Richard M. Gullick departed this life on or about the 6th day of August, 1911, leaving a last will and testament by which he appointed one Florence S. Housewright his executrix, to whom he devised the bulk of his estate, and bequeathed to his son, James C. Gulick, 2nd, the sum of $100 only. Certain proceedings were had in the Probate court of the County of Allegheny, in the State of Pennsylvania, where the said Richard M. Gulick resided at the time of his death, by which the said Florence S. Housewright renounced her executorship of said will, and also agreed to assign to the said James C. Gulick, 2nd, or his nominee, one-half of the interest acquired by her as chief beneficiary under the will of the said Richard M. Gulick.

10. The said James C. Gulick, 2nd, by deed dated February 25, 1915, after reciting the death of the said Richard M. Gulick, and his being seized of an equal undivided one-half part of a tract of 18.26 acres, situate in the Township of Neptune City, in the County of Monmouth and State of New Jersey (being the lands and premises hereinabove particularly described), and

further reciting an agreement dated the 14th of September, 1911, by and between the said James C. Gulick, 2nd, and Florence S. Housewright, under and by virtue of the terms of which the said James C. Gulick, 2nd, is entitled to a conveyance from said Florence S. Housewright of an undivided fourth part of said land and premises, did sell, assign, transfer, set over and convey unto John C. Gulick, all his right, title and interest in said agreement between said James C. Gulick, 2nd, and the said Florence S. Housewright, to have and to hold unto the said John C. Gulick, his heirs and assigns forever.

11. By deed dated March 4, 1915, the said Florence S. Housewright, did grant, bargain, sell and convey unto John C. Gulick, the equal undivided fourth part of all the said lands and premises which deed, having been duly acknowledged, was recorded in the Monmouth County Clerk's Office on the 18th of November, 1915, in Book 1009 of Deeds, page 348.

12. Said John C. Gulick, to whom said last mentioned conveyance was so as aforesaid made, at the time of his death resided in the City of New York, and departed this life on the 20th of June, 1916, leaving a last will and testament bearing date the 10th of July, 1914, which was, in due course, duly admitted to probate by the Surrogate of the County of New York. The fifth clause of said will reads as follows:

"5. I devise and bequeath all the rest of my property to my sister, Mariana G. Bradley, and Milicent Crissman my brother James I. Gulick and my nephew, James C. Gulick, to be divided equally between them."

13. All the legal matters in connection with the interest of Richard M. Gulick and Peter J.

McNulty in connection with said lands and said corporation, including the litigation in the Court of Chancery and the Court of Errors, commenced by the said Laura Bigger, were attended to by the complainant, but without the payment by the interested parties of complainant's charges for such varied and protracted services and disbursements. The complainant's interest in the property was, therefore, kept alive, and becoming aware that by certificate of tax sale dated the 14th day of October, 1911, Edwin F. Bennett, tax collector of the district in which the premises hereinabove described were located, transferred to H. S. Kinmouth the premises hereinabove described because of unpaid taxes for the year 1910, paid to said E. S. Kinmouth the amount he required, and took from him on assignment of said tax title.

14. The certificate from Edwin F. Bennett, collector, to said H. S. Kinmouth, is recorded in Book 428 of Tax Deeds, for said County of Monmouth, on page 317. The complainant still owns said tax title. Later, by several certificates of tax sale dated respectively September 28, 19—, ovember 22, 1913, December 16, 1914, November 22, 1915, December 26, 1915, October 23, 1916, March 24, 1918 and August 4, 1923, the complainant purchased said premises at sale for taxes for the years 1911, 1912, 1913, 1914, 19— and 1921 respectively.

15. On the 22nd of November, 1915, the complainant, by assignment of tax sale dated that day and recorded the 24th of November, 1915, in Book 72 of Tax Deeds for said County of Monmouth at page 74, assigned to the said James C. Gulick, the interest acquired by the complainant by tax certificate for taxes bearing date

November 22, 1913. With the exception of this last assignment, the complainant still owns all the said tax certificates for the years prior to the proceedings hereinafter related and was in possession of said premises holding said tax titles, as well as occupying said premises, for the benefit of the owners of said lands whose predecessors had been his clients and whose exact whereabouts were unknown to the complainant.

16. Correspondence ensued between the complainant and the legal representatives of the owners of the equity, subject to said tax titles, of said lands and premises as soon as the complainant ascertained their whereabouts, the complainant informing them of the fact that he had, at large expense, purchased said lands at these tax sales, and asking reimbursement therefor, as well as compensation for his legal services, but the complainant could at first get no satisfaction beyond the expression of a desire on the part of the owners, through the statements of their respective attorneys, that the complainant should make an offer to them for their interests in said property, as they were unwilling to make any further expenditure in connection therewith. This suggestion the complainant at that time declined to adopt, and the matter dragged along in that way.

17. The complainant was visited by the said Florence S. Housewright, who explained to him that she had an interest (which complainant has ascertained to be as hereinabove set out) in said lands and premises, and endeavored to persuade the complainant to purchase the said property, reimbursing himself for all that was due him, and pay the owners the balance. At first the complainant declined to consider the matter, but

finally, after several visits, he was persuaded by the said Florence S. Housewright to purchase the property at a value of $8,000, from which the complainant was to deduct all moneys paid by him for taxes, his bill for professional services and other expenses, and an agreement to that effect was prepared and signed both by the complainant and said Florence S. Housewright, but the other persons interested in the property never signed the said agreement. Later, the arrangement hereinabove adverted to between the said Florence S. Housewright and James C. Gulick, 2nd, occurred, and negotiations were reopened for the purpose of carrying out the agreement that had been signed by Mrs. Housewright and the complainant. While these negotiations were in progress, John C. Gulick paid to the complainant a portion of the taxes he had theretofore paid upon said property, resulting in the assignment of the tax title to said Gulick hereinabove referred to. Again the matter was held in abeyance for some time, the complainant having lost sight of the whereabouts of the persons interested in the equity in said land, and being not fully posted either as to where such persons were, or who, indeed, had succeeded to the title, correspondence was revived by counsel in Philadelphia representing the McNulty interest, to whom the complainant again expressed his desire to be reimbursed for the taxes and other expenditures incurred by him in connection with said property. Complainant later got in touch with counsel in the City of New York representing the Gulick interest in said property, and similar requests were made of him for such reimbursement, but without avail. Such requests were always met by the counsel for both interests

with a statement that the owners, whom they represented, had no desire to make any expenditure upon said property, but on the contrary were anxious to sell their right, title and interest therein to the complainant. Negotiations along this line continued until about the year 1921, when they resulted in a statement by the attorneys for the two interests living in New York and Philadelphia respectively, that they would procure a quit-claim deed to the complainant for their respective client's interest for $2500 to be paid by the complainant for each half interest. At that time the disbursements which the complainant had made for taxes and otherwise in connection with said property, amounted to upwards of $3,500. The correspondence and negotiations between the complainant and the lawyers of the respective interests, were conducted, as the complainant believes and charges, in entire good faith, and a definite agreement was reached between the complainant and the counsel of the respective interests, that if the complainant would pay each of said interests $2,500, he could secure a quit-claim deed from them for said property. A long period of time elapsed during the progress of these negotiations, as the counsel of the respective interests claimed to have great difficulty in bringing their varied clients to one mind about the subject.

18. After the foregoing understanding had been arrived at, one Morris Eichengreen, developer of real estate, who owned property adjoining the premises in question, called upon the complainant expressing a desire to buy the property. Complainant at that time was in possession thereof, and had been in such possession for the past ten years, and was generally reputed to be, and understood by the said Eichengreen to

be the owner of the property. The said Eichengreen offered the complainant $20,000 cash for the property. This was about February, 1922. The complainant refused the offer stating that he was not in a position to give a marketable title, although he held the legal title, and had possession under the tax deeds. Eichengreen saw the complainant several times thereafter in the Spring of 1922, and some time in the month of March of that year, the complainant told Eichengreen that the lowest price for which the complainant would sell the property was $25,000 cash, less a plot 200 feet by 200 feet situated on the southeast corner of the tract, which the complainant desired to reserve for a member of his family. The property had in the meantime enhanced in value, as the complainant well knew. He lived very near to the property and was fully aware of its value and condition. Moreover, he was in possession of the identical property, and had employed men to keep it in condition and expended considerable money in the care, protection and improvement of the property. The result was that said Eichengreen finally agreed, on behalf of Eichengreen Land Company, Inc., of which he was President, to purchase the said property, less the reservation of 200 feet before mentioned, for $25,000, $10,000 to be paid in cash, and $15,000 to remain as a purchase money mortgage. He was well aware that the complainant was unable at the moment to make title, but offered to pay down the sum of $500 earnest money. This the complainant declined to take until he had succeeded in getting the deeds for the two interests in question, but a definite and complete agreement was made between the complainant and the said Eichengreen, including a

right on his part in the meantime to take possession, survey the land, trim up the underbrush, put in some drains, open streets, &c. The complainant warned him that he should not go to any considerable expense along those lines until the complainant had completed his title and was in a position to give a marketable title to the property, but the said Eichengreen expressed his satisfaction with the situation and avowed the purpose to take his chances, and thereafter took possession of the property by surveying, clearing up, mapping out streets and other work, during the time that it was arranged that the complainant should complete his title to the property.

19. The said Eichengreen thereupon employed a local engineer to make a survey and lay out the streets, and proceeded to trim trees and do other work on the property, by virtue of said arrangement. The complainant immediately renewed his correspondence with the two attorneys of the respective interests, and the matter was proceeding, as the complainant supposed, in a satisfactory manner. Said Eichengreen visited the complainant from time to time to inquire how the details of getting the title were progressing, and the complainant frankly explained the whole situation, naming the attorneys, and the parties, so far as he knew them, and expressing the hope and belief, from his correspondence with the attorneys, that title could be obtained, and passed to said Eichengreen within a month or so. Eichengreen expressed the belief that he could accelerate the matter, and the complainant thereupon told him that if he could hurry the matter up, he was at liberty to call upon the parties and speed the matter along.

20. In the Autumn of 1923, the complainant was dumbfounded to ascertain that the said Eichengreen had, notwithstanding his arrangement with the complainant, and his taking possession of the property thereunder, gone to the parties who owned the equity in said property and procured, without notice to the complainant, deeds for the said property. Complainant at once got in touch with the said Eichengreen and inquired if this rumor were possible, and was told that it was true, stating that he had gotten tired of waiting for the complainant to complete title, and boasting that he, Eichengreen, had been able in a month to close up a matter about which the complainant had been negotiating for about two years. The complainant at once notified the said Eichengreen notwithstanding his conduct in the premises, which amounted to a gross fraud, that he was still bound by his definite agreement to purchase the said property in the manner hereinabove stated; that he had in fraud of the complainant's rights, and by fraudulently using the information the complainant had in good faith furnished him with after the consummation of his agreement to purchase the said property, gone to the owners, whose names and whereabouts had been so as aforesaid confided to him by the complainant, and purchased the said property from them at the same figure that their respective attorneys had finally been able to state, as the attorneys had reported to the complainant, that they would sell the said lands to the complainant. The complainant told the said Eichengreen that notwithstanding the fact that he had procured in manner aforesaid, the said title, the complainant would resist his availing himself thereof, and would take steps to have it adjudged by the courts that he, the said Eichengreen, or

in whosever name he had purchased the said property, was bound to carry out said agreement. Said Eichengreen tried to effect some compromise of the situation, and referred the complainant to his counsel in the City of Newark, but without avail. This was in the Spring of 1924. In the month of June 1924, while the complainant was collecting information as to who the owners of the property were, and what had in fact transpired, the complainant observed that the said Eichengreen had erected on said property a couple of signs, advertising lots thereon for sale. The complainant thereupon prepared and served upon the said Eichengreen, a notice protesting against such conduct and demanded the removal of said signs.

21. Complainant has since learned that the said Eichengreen has undertaken to pay to the Tax Collector of the district wherein said lands are located, what he claims to be the amount the complainant has paid for the tax titles. Such payment, the complainant charges, is of no avail whatever. None of it has ever reached the complainant, nor have any steps been taken, if indeed they can be taken, to redeem said tax titles. When the complainant interviewed the Newark counsel, to whom said Eichengreen referred complainant, the complainant was advised by him that he would recommend the said Eichengreen to take proceedings to redeem said tax titles, in which proceedings it was suggested by the Newark counsel, that the complainant whose interest had been fully explained to the lawyer, could, by counter-claim, set up his rights, and the complainant expected that such course would be taken by the said Eichengreen.

22. Complainant caused an examination to be made of the records, by which he ascertained that one Irma Klophaus, by deed dated October 25, 1923, had undertaken to grant, bargain, sell and convey unto Eichengreen Land Company, Inc., a body corporate, the said lands and premises, which said deed, having been duly acknowledged, was recorded in the Clerk's Office of Monmouth County in Book 1241 of Deeds at page 92, and that by several mesne conveyances from the several parties interested in said property of both the McNulty and Gulick interests, the said Irma Klophaus had become seized of the rights of both of said interests, all after the agreement of the said Eichengreen with the complainant to purchase said property.

23. Complainant alleges that said conduct on the part of said Eichengreen is fraudulent, and contrary to all equity. He is the President and Manager of said Eichengreen Land Company, Inc., and the said corporation is a mere dummy for him in the transaction. He could not, under the circumstances related, acquire any title, or interest in said land in derogation of the rights of the complainant therein, and the complainant charges that it should be decreed that the said Eichengreen and Eichengreen Land Company, Inc., upon being reimbursed for the moneys paid by it to the owners of the respective interests of the property, which the complainant alleges was exactly the amount the complainant had agreed to pay therefor, namely $5,000, holds the title to said property in trust for the complainant, and that upon such payment by the complainant, the said corporation shall, by the decree of this Court, be directed to convey to the complainant all right, title and interest said corporation so as

aforesaid acquired in and to said premises, and that it should in the meantime be enjoined and restrained from selling, conveying, mortgaging, or otherwise disposing of said lands and premises, and that the complainant may have such other and further relief as shall be equitable and just.

Complainant therefore prays:

1. That the said Morris Eichengreen and the said Eichengreen Land Company, Inc., a corporation, may, without oath, answer the premises.

2. That a writ of subpoena may issue directing such answer.

3. That a writ of injunction may issue commanding and enjoining the said Eichengreen Land Company, Inc., as hereinabove prayed, and that the complainant may have such other and further relief as shall be equitable and just.

McCARTER & ENGLISH,
Solicitors for and of Counsel
with Complainant.

ANSWER OF DEFENDANTS.

Filed January 29, 1925.

IN CHANCERY OF NEW JERSEY.

Between JAMES D. CARTON, *Complainant,* *and* MORRIS EICHENGREEN and EICHENGREEN LAND COMPANY, INC., a corporation, *Defendants.*	*On Bill.* *Answer of Defendants.*

The defendants, Morris Eichengreen and Eichengreen Land Company, Inc., a corporation, answering the Bill of Complaint, say:

1. They admit the contents of paragraph 1.

2. They admit the contents of paragraph 2.

3. They admit the contents of paragraph 3.

4. They have no knowledge of the contents of paragraph 4.

5. They have no knowledge of the contents of paragraph 5.

6. They have no knowledge of the contents of paragraph 6.

7. They admit the contents of paragraph 7.

8. They have no knowledge of the contents of paragraph 8 except that they admit that one Laura Bigger did in fact file in this court a bill of complaint against the executors of Henry

M. Bennett, and they refer to the record of said suit. They are uncertain as to what complainant means by the following language in paragraph 8—"and that fact was taken into account in proceedings hereinafter alluded to." If by this language the complainant refers to any transactions between complainant and these defendants they deny the statement.

9. They have no knowledge of the contents of paragraph 9.

10. They have no knowledge of the contents of paragraph 10.

11. They have no knowledge of the contents of paragraph 11.

12. They have no knowledge of the contents of paragraph 12.

13. They have no knowledge of the contents of paragraph 13. They specifically deny that the complainant had any interest whatever in the property referred to in the bill of complaint and in said paragraph.

14. They admit they have been advised that certificates of tax sale mentioned in paragraph 14 with the exception of that assigned by the complainant, referred to in paragraph 15, are in the possession of complainant but they say that the taxes represented by said certificates have all been paid and that the property has been redeemed and that the certificates should be cancelled.

15. They admit the complainant made the assignment referred to in said paragraph; they deny that the complainant still owns the tax certificates therein referred to although he may

have possession thereof. They say that the taxes represented by said certificates have, in fact been paid in strict compliance with the provisions of the statute in such case made and provided and that the tax certificates representing said taxes are no longer liens upon said property. They deny that the complainant was in possession of said lands and premises. They deny that the complainant was in possession for the benefit of the owners of said lands and they deny that the complainant did not now the exact whereabouts of the owners of said land.

16. They deny the contents of paragraph 16 except that they admit that no agreement was made between the complainant and the owners of said land.

17. They deny the statements contained in paragraph 17 and they say that no agreement or memorandum of any agreement as referred to in said paragraph was ever reduced to writing and they plead the provisions of the 5th section of an act "An act for the prevention of frauds and perjuries," the said agreement therein referred to having to do with land or an interest therein.

18. Answering paragraph 18 they admit that defendant Morris Eichengreen, owned property adjoining the premises in question. They deny that complainant was in possession of said property or that he had been in possession for the then past ten years or any other time. They admit that the complainant was generally reputed to be the owner of said property and that it was understood in February 1922 by the defendant Morris Eichengreen, that he was the owner of said property, and that understanding was based

upon a statement made by the said complainant as stated in the bill of complaint that he had legal title to the property, and defendants further say that the said complainant led the defendant, Morris Eichengreen, to believe that he was the owner of said property. So believing the said Eichengreen entered into some negotiations for the purchase of said property but defendants deny that there was ever any agreement made with respect to the said purchase. They admit that the said Eichengreen attempted to enter into a contract with the said complainant but said complainant would not enter into a contract. They admit that the said defendant offered to pay down the sum of $500 earnest money on account of a contract if said complainant would make a contract. No contract was, in fact, made, and these defendants plead the provisions of the 5th section of an act "An act for the prevention of frauds and perjuries."

And further answering these defendants say that the said statements of the said complainant that he held legal title to said premises were false; that they were made to the defendant Eichengreen for the purpose of inducing the said defendant Eichengreen to believe that the said complainant had title to said property and controlled the same whereas in fact, he did not and complainant knew that he did not; that if it be the fact that complainant held said property for the benefit of the owners thereof the conduct of the said complainant was a fraud upon those for whom he held the said property for these defendants charge that the said complainant did not at any time disclose to those who were beneficially interested in said property the fact that the defendant Eichengreen was negotiating with

the said complainant as the owner of said property and was offering any such sum of money as $25,000 or thereabouts for the purchase thereof.

Otherwise than as is herein admitted they deny the contents of paragraph 18.

19. Answering paragraph 19 they say that from time to time complainant saw the defendant Eichengreen and was never at any time prepared to enter into a contract with him, and that as late as March, 1923 defendant Eichengreen was advised that negotiations could not be taken up for the purchase of said property. Defendant Eichengreen caused a search of said property to be made and thereupon discovered that the said complainant did not have any interest in said property of any kind, nature or description except that he held certain certificates of tax sales. These defendants deny that complainant explained the whole situation as alleged in paragraph 19. They deny that the complainant at any time told the defendant Eichengreen that if he could hurry the matter up he was at liberty to call upon the parties to speed the matter along. On the contrary, these defendants say that the said defendant Eichengreen discovered the names of those interested in said property from the search made. These defendants further say that discovering the names of the said persons interested in said property the defendant Eichengreen negotiated with the said persons so interested and purchased the property without knowledge of any kind, nature or description that the said complainant had any interest in said property whatever except that he was entitled to be repaid the amount of taxes represented by the tax certificates. These

defendants say that there was and is no interest of the said complainant in said land evidenced in writing or any memorandum thereof, and they plead the provisions of the 5th section of the act "An act for the prevention of frauds and perjuries."

Otherwise than as is herein admitted they deny the contents of paragraph 19.

20. These defendants say that they deny that complainant discovered from any source other than the defendant Eichengreen that he had purchased the said property; on the contrary, these defendants say that the said Eichengreen as soon as he purchased the said property forthwith advised the said complainant that he had so purchased it, and these defendants further say that on the 21st of December, 1923, the entire amount of taxes represented by the outstanding certificates was paid to the said Collector, the said complainant having refused to accept the same. They deny that there was any notice by the said complainant that the defendant Eichengreen was bound by any definite agreement to purchase the property. These defendants ascertained that there was no such agreement. They deny that the defendant Eichengreen tried to effect any compromise of the situation; they deny in the month of June, 1924 there was any necessity for the complainant to collect any information as to who the owners of the property were, and what had in fact transpired; they say that complainant had full and absolute knowledge in the Autumn of 1923 of what had transpired; that defendants' deed was upon record; that the complainant had full and complete knowledge as to who the owners of said property were; that if he had not such full and complete knowl-

edge then he had not taken the proper steps to clear the title, and had not the correspondence which he refers to in his bill. Immediately after defendants purchased said property in January, 1924, they went into possession thereof. These defendants expressly deny that they ever had been in possession thereof theretofore, and expressly deny that they ever acted upon any oral agreement of the said complainant as referred to in the bill of complaint, and in reliance thereon spent money on said property. After the defendants purchased said property and their deeds were recorded they did go into possession of said property and have made improvements thereon beginning in January, 1924 and continuing down to the present time putting in streets, drains, pipes, etc., and have spent several thousand dollars improving the same and have sold some of the lots on installment contracts. Complainant had full and complete knowledge of the work as it progressed and knew that the said defendants had taken possession of said property in January, 1924. These defendants admit that in June, 1924 complainant served upon the said Eichengreen a notice protesting against the erection of certain signs, but that they paid no attention to said notice and nothing further was done by the said complainant with respect thereto.

Otherwise than as is herein admitted they deny the contents of paragraph 20.

21. Answering paragraph 21 they say that the taxes were paid to the tax collector pursuant to the provisions of section 57 of an act to provide for assessment and collection of taxes, approved April 8, 1903, as amended by chapter 273 of the laws of 1916, and these defendants say

that the provisions of said statute for redemption was strictly complied with.

Otherwise than as is herein admitted they deny the contents of paragraph 21.

22. These defendants say that complainant had full and complete knowledge of the deed of October 25, 1923 at or about the time of its execution. Otherwise than as is herein admitted they deny the contents of paragraph 22.

23. Defendants deny that defendant Eichengreen is the president and manager of Eichengreen Land Company, Inc. Otherwise than as is herein admitted they deny the contents of paragraph 23.

Further answering the bill of complaint these defendants say—

1. The various agreements referred to in the complainant's bill upon which he rests an interest in said property and against defendants are agreements with respect to an interest in or concerning lands and defendants plead and rely upon the provisions of section 5 of an act "An act for the prevention of frauds and perjuries."

2. Further answering the bill these defendants say that if the statements contained in said bill of complaint with respect to the negotiations of the complainant with the defendant Eichengreen are true and that complainant as alleged held said lands and premises for the benefit of the owners thereof that the conduct of the said complainant was a fraud upon the owners of said lands and premises, these defendants alleging that the complainant did not, in fact, disclose to the owners of said property any of the

negotiations alleged in said bill to be pending between the complainant and the said defendant Eichengreen, but, on the contrary, concealed the same from them. And these defendants further allege that the conduct of the said complainant in holding himself out as the owner of said property to the defendants and in inducing the said defendants to believe that he was the owner of said property when, in fact, he had no interest in said property except only the interest represented by the certificates of tax sale was a fraud upon the defendant Eichengreen. And these defendants say that the complainant does not come into this court with clean hands and for that reason should be denied relief.

3. These defendants further say that the complainant is in laches and they say that the complainant had full and complete knowledge of the purchase of said property by the said defendant Eichengreen in 1923 and knew that the defendants had taken possession of said property in January, 1924, and knew that the said defendants were improving said property and spending large sums of money thereon but took no action to establish his rights until the filing of this bill on or about the 29th day of December, 1924, and these defendants plead laches.

4. These defendants further answering say that the complainant did not diligently attempt to clear the title of said lands and premises and defendant Eichengreen was justified in abandoning any thought of dealing with the said complainant and was justified in dealing with the owners of said property.

5. These defendants further answering say that the bill of complaint does not set forth a

cause of action cognizable in equity for that it appears upon the face of the bill that the agreement made upon which the said complainant is resting are agreements with respect to interests in land and that there are no such agreements or any memorandum thereof in writing and they cannot be proved under the provisions of the statute'' An act for the prevention of frauds and perjuries,'' and for that it appears upon the face of the bill that the complainant is in gross laches, and for that it appears upon the face of the bill that the complainant represented himself to be the owners of said lands and premises whereas, in fact, he was not, and that he induced the defendant Eichengreen to believe that he was the owner of said premises, whereas, in fact, he was not, and that while the bill alleges that the complainant was holding said property for the benefit of the owners thereof it likewise appears that he negotiated for the sale of said property as if he were the owner thereof, in such a manner as to be a fraud upon the owners of said property, and for that it appears upon the fact of said bill that the defendant Eichengreen was justified in abandoning any attempt to negotiate with the complainant and to deal direct with the owners of said property; and for that it does not appear from the bill that complainant had any interest in said property or any rights in said property as against the defendant Eichengreen, or that the relations between the said defendant Eichengreen and the said complainant were such as to place any duty upon the said defendant Eichengreen as to the said complainant, and for that it does not appear from the bill that the defendant Eichengreen has violated any rights of the complainant, and for that it ap-

pears that the complainant has a full and complete and adequate remedy at law, and that this court has no jurisdiction in the premises and there is no equity in the bill.

6. And the defendants further plead, with respect to the prayer of the bill of complaint, that a trust should be declared in said lands and premises, the provisions of the 3rd section of the act for the prevention of frauds and perjuries alleging that there is no declaration of trust manifested or proved by any writing signed by them or either of them and that the facts do not warrant the establishment of either a resulting or constructive trust.

7. These defendants pray that the bill may be dismissed.

MERRITT LANE,
Solicitor for and of Counsel with Defendants.

A true copy.

THOMAS BARBER,
Clerk.

REPLICATION.

The complainant joins issue on the answer of the defendants.

McCARTER & ENGLISH,
Solicitors for and of Counsel with Complainant.

OPINION OF VICE-CHANCELLOR.

IN CHANCERY OF NEW JERSEY.

Between

JAMES D. CARTON,
Complainant,

and

MORRIS EICHENGREEN and EICHENGREEN LAND CO., INC., a corporation,
Defendants.

Evidence analyzed, and held, that the case is not within the doctrine, that "He who undertakes to act for another in any manner of trust or confidence shall not in the same matter act for himself against the interest of the one relying upon his integrity."

For complainant, McCarter & English (Robert H. McCarter).

For defendants, Merritt Lane.

BACKES, *V.-C.*

The complainant, Carton, owned the tax title in fee, unforeclosed, to eighteen acres of land in Neptune City, Monmouth County. He claims to have had an agreement with the owners, McNulty and the Gulicks, to buy their estates for $2,500 each, and that the defendant, through its president, Eichengreen, agreed to purchase the tract from him for $25,000, upon his title being perfected. He further claims that he accepted Eichengreen's offer to see the owners,

in order to speed up the conveyances by them to complainant, so that the agreement with Eichengreen could be carried out, but that Eichengreen double-crossed him and instead purchased the tract from them and had it conveyed to his, the defendant company. It is charged that Eichengreen's conduct was fraudulent and that in the circumstances he could not acquire any title or interest in the land "in derogation of the rights of the complainant therein" (meaning presumably his contract with the owners). The prayer is that, upon reimbursement, it be declared that the defendant company holds the property in trust for the complainant, and that the defendant be decreed to convey it to him. In his brief the complainant rests his case upon the principle that Eichengreen was engaged, and had undertaken to procure the title for the complainant, and that it was a violation of his trust to secure it for himself, and Rogers *v.* Genung, 76 N. J. Eq. 306, is relied upon. The doctrine there laid down is "that he who undertakes to act for another in any manner of trust or confidence shall not in the same matter act for himself against the interest of the one relying upon his integrity."

The history of the case, as disclosed by the evidence, is, that the title was in litigation from 1910 until after 1916 (Bennett *v.* Platt, 85 N. J. Eq. 436, aff'd 602), and in this litigation the complainant represented the McNulty and Gulick interests as solicitor. In the early stages of the litigation, and almost yearly thereafter, the property was sold for taxes; sometimes for a term of years and other times in fee. Except for the first year, 1911, the complainant was the purchaser, and for that year the sale certificate

was assigned to him by the purchaser. His total investment was approximately $4,000. He was moved to do this at first to protect his clients, and later to save himself. Under his deeds, the complainant was entitled to and took possession, and in later years was reputed to be the owner of the property, which he was at no pains to dispel. Eichengreen, who had developed two adjacent tracts, and was intent upon extending his operations to this property, was of that opinion. He knew who the owners had been, for in 1911 he had an option to purchase from McNulty and the Gulicks, and attempted to foreclose it by bill (Docket 34-262), but had the impression that Carton had acquired their interests, and this he felt was confirmed when he learned that Carton and wife had given a deed to the town for a strip of land to widen a street. After a call or two and offers by Eichengreen, first of $20,000, then $22,500, Carton says that in March, 1922, he, Carton, agreed but declined to commit himself in writing, to let him have the property for $25,000 upon getting in the outstanding interests, either by purchase, or by foreclosure of his tax liens, and that Eichengreen accepted. Eichengreen's version is that Carton represented that he had acquired all the outstanding interests except a small share, and that he offered $20,000; that Carton wanted $25,000, and that the nearest approach to a bargain was Carton's promise to sell the property to him when he got in the remaining interest, which he said would be within thirty days, and that then they would "make a deal and close it up." There was, no doubt, some loose understanding to sell in the future either for $20,000 or $25,000, but there can be no question

that Carton did not regard himself as bound to Eichengreen, for in April he wrote the attorney of the McNulty interest, in an effort to buy that interest, that "to date I have been unable to make any disposition of the same," which was literally, but disingenuously true; and in March of the following year, in answer to an importuning letter from Eichengreen, he wrote, "I have not yet completed my matter sufficiently to enable me to take up with you the negotiation for the property about which you spoke to me but hope to within a short time." Eichengreen was anxious to buy, and in a letter to Carton a few days after his offer spoke of the property as "purchased" by him, which, it is argued, evinces that an agreement had been reached, but, it would appear, that that referred to the only thing definitely arrived at, that Carton would sell to Eichengreen when he had cleared up his title. Their testimony is in agreement as to that but not as to the price, which Carton says was $25,000, while Eichengreen says Carton wanted that sum but that his offer was $20,000. The purchase price was held in abeyance until Carton was in a position to give title. Upon this phase of the case the situation is conceived to be that Carton did not consider himself bound beyond driving the best bargain he could with Eichengreen when the time arrived, and that he was free to bargain for better terms with others if opportunity presented itself. His disinclination to give written evidence of the understanding, his letter just quoted, and his later indifferent conduct, to be presently commented upon, all strongly indicate his attitude that he was not committed to Eichengreen.

In 1914 Carton had negotiated with the owners and had a contract with the Gulicks, which the McNulty interest refused to sign. The contract was not to be executed until the litigation involving the title was out of the way. Nothing came of it and all negotiations ceased in 1916. They were revived in 1921. By that time the McNulty interest had passed to his widow and then to his daughter, represented by one Morehouse and later by one Ronon, and the Gulick interests were held by five parties, represented by their attorney, Lawrence. In that year Carton opened correspondence with Lawrence, and in 1922 with Morehouse, and to the latter, by way of introduction, stated his desire for the address of Miss McNulty, and harking back to Morehouse's letter to him of June 16, 1916, recalled that the writer had there stated that Mrs. McNulty would sell her interest for $4,000, less taxes and interest. Morehouse referred him to Ronon, his successor. From that time on until August, 1923, there was desultory correspondence between Carton and the two lawyers, all plaintive on the part of Carton, that the margin between his investment and the value of the property was narrow, and that something had to be done to reimburse him, and salvage a little out of the wreck for themselves, or he would have to foreclose to save himself. His letters were as from one discouraged, and while their tone was urgent that they relieve him, and also solicitous that they save what they could for themselves, there was always subtle suggestion that the prospects were not bright. He never let out a peep that he had an offer of $20,000 or $25,000 from Eichengreen. On August 16, 1923, Lawrence wrote asking if he would give $2,500

for the Gulick interest, and if so he would forward deeds to his clients for execution, and on the 17th Carton answered, "You suggest that I agree to pay $2,500 for one-half interest in the property. In view of what I already have in the property and the large outstanding claim against it, the figure is high and I am sure more than the interest would amount to. However, I appreciate that because there are so many parties in interest with whom it would have to be divided and so that your suggested fee may be taken care of, I am, without prejudice, willing to make you this offer at this time," etc. Lawrence was away on vacation but acknowledged receipt on the 24th, and on the 29th promised prompt attention on his return, and it was about that time that Eichengreen bought for $3,500. On August 23, 1923, Carton wrote to Ronon, after some letters leading up to it, "However, and without prejudice, I am willing to make your client an offer of $2,000 for one-half interest in the property, which I consider is a very fair one, and I wish you would let me know at your early convenience if it is accepted or not. If it is not I must take some steps to protect my own interest under my tax title." Carton says a few days later, over the phone, he raised the figure to $2,500, which, he claims, was accepted, but the correspondence indicates that he is mistaken. In the meantime Eichengreen stepped in and purchased from McNulty for $2,500. The documentary evidence clearly shows that in March, 1922, at the time of the alleged agreement between Carton and Eichengreen, there were no contracts between Carton and the owners of the equity of redemption, and if there were any later, there was none that Eichengreen was

bound to take notice of before he purchased. Carton had no right or interest in the land in this respect which he, in his bill, alleges was threatened to be "derogated" by the title acquired by the defendant.

From March, 1922, to August, 1923, Eichengreen called upon Carton a score of times to inquire as to the progress he was making to clear up the title (he was of the impression that a fractional interest was yet to be secured), and to urge it along, and each time was put off with a hopeful promise of an impending adjustment until his impatience reached a critical point, and, according to Carton, he came to his office in the middle or latter part of August, 1923, "for a show-down apparently." (He says he thought that it was before his offer to Ronon of August 23rd, and after his offer to Lawrence of August 17th.) Before that, Carton says, on two or three occasions, when Eichengreen was insistent, he, Carton, had told him "he didn't want to be bothered with it, that he was busy with other things, and if he didn't want to carry out his agreement, they would abandon the thing; that he would take his own time to fix it up." At the August meeting, so Carton says, Eichengreen, threatening and importuning in turn, was told in some detail about the efforts he was making, and was given the names and addresses of the lawyers and of the parties, and was shown a letter from Lawrence giving that information; that Eichengreen took the names and addresses of Lawrence and Ronon, suggesting that he might see them, and then, as Carton says, "I told him it was not necessary to go to see them, that I had about concluded the matter, but I did tell him during the conver-

sation, if he could do any better, if he could hurry the thing faster, go on and hurry it up himself," and, Carton adds, "it turned out after that that is exactly what he did." Carton characterizes his remark as "foolish," that it was meant only to appease Eichengreen; that Eichengreen was not to call on the parties; that there was no agreement (understanding) that he would; that he did not agree to it, and that he certainly did not expect him to see them, and that he simply suggested that "if he could speed this up and make these people move faster than I am 'you can do it yourself.'" The remark was not a request, but a defiance, and, as Carton says, made with some asperity. Upon this assumed state of facts it is observed that there was neither authorization by Carton nor assumption by Eichengreen to act for Carton. In fact Carton seems to resent the imputation that there was. There was no agency nor trust relation, either express or implied, and obviously this state of facts does not bring the case within the doctrine of Rogers *v.* Genung.

But Eichengreen tells a different story. Carton claims he knew he had but a tax lien; that he had told him so; and that the entire equity of redemption was still in McNulty and the Gulicks. It is hardly likely that Eichengreen, who had some familiarity with real estate matters, would have treated with Carton as the owner had he known he had but a lien, and his story that he thought Carton owned all but a fragment or two commends itself as the more reasonable of the two. Eichengreen denies that he sought or that Carton gave him the information, or that he offered to or was directed to see the parties to hurry the matter along, as

related by Carton. He knew as well as Carton who the owners were, or might be, for he had had an option from them and he had called upon Miss McNulty and Ronon, her lawyer, two years before to negotiate a purchase. It was because Ronon failed to reply to his follow-up letter, and Carton's deed to the town for a strip of the land, that he had assumed that Carton had acquired her interest. The thing that excited his attention at the August meeting, he says, was Carton's remark that a holder of one of the interests was in California, whereas he had previously said he lived in Massachusetts. He consulted his lawyer and they had the title searched and found that McNulty and the Gulicks were still the record owners, and Carton only the holder of a tax lien. Eichengreen hied himself to Philadelphia and, after getting the house address of Miss McNulty out of the directory, telephoned his lawyer to come on. He also got in touch with Mrs. Housewright-Johnson, in Mt. Vernon, N. Y., who referred him to her lawyer, Lawrence. Mrs. Housewright-Johnson at one time owned the Gulick half interest and with McNulty had given Eichengreen the option, which, as already told, he tried to enforce by suit. She later conveyed half of her share to the Gulicks, which later came to those with whom Carton was angling and from whom Eichengreen purchased. The rest of the story is mostly told by Eichengreen's lawyer, Charles Jones, of Newark. Jones says he too was of the opinion that Carton owned the property, and that it was upon his suggestion that Eichengreen approached Carton to buy it; and that when Eichengreen reported Carton's discrepancy in the party's addresses he dispatched him to a

searcher in Freehold for an examination of the records, and upon learning the result, and receiving the telephonic call from his client, he went to Philadelphia and met Miss McNulty and Ronon at her home. A week later Jones called Ronon on the phone and they closed the deal. Jones says he learned of Lawrence independently of Eichengreen, and he explains how, and negotiated with him and purchased. Upon the issue of fact, whether Carton divulged to Eichengreen the names and addresses of the lawyers and owners, with direction to see them in his behalf, and that he took advantage of the confidence, all that need be said is, that Carton's affirmation is met by Eichengreen's denial, and that the burden of proof is on the complainant, which he has not sustained. It may not be amiss, however, to observe, that in the race to the swift, Eichengreen was not disqualified, though Carton manipulated the stake and jockied into position to capture it himself.

The point made by the defendant, that Carton was not entitled to be heard to complain of the defendant's conduct because of his own alleged unconscionable dealings with the owners of the equity of redemption, towards whom it is claimed he still bore the confidential relation of attorney and client, is not well founded. The relation was with their predecessors and had long since ceased, and he dealt with them at arm's length, and with their attorneys. Although the criticism of his methods with them reflects upon his integrity as a witness it is not justly addressed to professional relationship.

Bill dismissed.

Final Decree.

FINAL DECREE.

Filed December 7, 1926.

IN CHANCERY OF NEW JERSEY.

Between

JAMES D. CARTON,
Complainant,

and

MORRIS EICHENGREEN and EICHENGREEN LAND CO., INC., a corporation,
Defendants.

On Bill, &c.

Final Decree.

The above-entitled cause coming on to be heard before the Chancellor in the presence of Robert H. McCarter, of counsel with the complainant, and Merritt Lane, of counsel with the defendant and the evidence offered by the respective parties having been submitted and the cause having been argued and the Court having considered the pleadings, proofs and argument of counsel and being of the opinion that the complainant is not entitled to the relief prayed for in his pleadings;

It is, on this 7th day of December, 1926, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED and the said Chancellor doth, by virtue of the power and authority of this Court, hereby ORDER, ADJUDGE AND DECREE that the complainant's bill be and the same is dismissed with costs to the defendants against the complainant in which said costs shall be included a counsel fee of $1,000; and

Final Decree.

It is further ORDERED that the *lis pendens* filed herein be cancelled of record.

E. R. WALKER,
C.

Respectfully advised,

JOHN H. BACKES,
V.-C.

Service of a copy of the within notice and decree is acknowledged this 3rd day of Dec. 1926.

McCARTER & ENGLISH.

Notice of Appeal.

NOTICE OF APPEAL.

Filed December 16, 1926.

IN CHANCERY OF NEW JERSEY.

Between	
JAMES D. CARTON, *Complainant,*	*On Bill, &c.*
and	*Notice of Appeal.*
MORRIS EICHENGREEN and EICHENGREEN LAND COMPANY, INC., a corporation, *Defendants.*	Sat Below BACKES, *V.-C.*

James D. Carton, the above-named complainant, hereby appeals from the decree filed in this cause and dated December 7, 1926, and from every part thereof to the Court of Errors and Appeals, in the last resort in all causes.

Dated December 14, 1926.

McCARTER & ENGLISH,
Solicitors for Complainant.

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

ROBERT H. McCARTER,
Of Counsel.

Service of the within notice of appeal is hereby acknowledged this 24th day of December, 1926.

MERRITT LANE,
Solicitor for Defendants.

PETITION OF APPEAL.

New Jersey Court of Errors and Appeals

Between JAMES D. CARTON, *Complainant-Appellant,* *and* MORRIS EICHENGREEN and EICHENGREEN LAND CO., INC., a corporation, *Defendants-Respondents.*	*On Appeal from Chancery.* *Petition of Appeal.*

The petition of James D. Carton, appellant, 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 the State of New Jersey, on the 7th day of December, 1926, in that said decree recites and adjudges that your petitioner is not entitled to the relief therein prayed; and doth decree that your petitioner's said bill be dismissed with costs, including a counsel fee.

And your petitioner appeals from said decree, and from every part thereof, on the ground that no such decree should have been entered, but rather the said Court should have directed that the property described in the bill of complaint is held in trust for the complainant, and that a deed therefor should be ordered to be made by the defendant to the complainant as prayed for in the bill of complaint.

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

McCARTER & ENGLISH,
Solicitors for and of Counsel with Appellant.

ROBERT H. MCCARTER,
Of Counsel.

Service of the within petition of appeal is hereby acknowledged this 22nd day of December, 1926.

MERRITT LANE,
Solicitor Respondents.

A true copy.

JOSEPH B. FITZPATRICK,
Clerk.

ANSWER TO PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between JAMES D. CARTON, *Complainant-Appellant,* *and* MORRIS EICHENGREEN and EICHENGREEN LAND CO., INC., a corporation, *Defendants-Respondents.*	*On Appeal from Chancery.* *Answer to Petition of Appeal.*

The answer of the above-named respondents to the petition of appeal of the above-named appellant.

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit, that a decree was, on the 7th day of December, 1926, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe, that the said decree is agreeable to equity, and they pray that the same may be affirmed, with costs to be adjudged to these respondents.

MERRITT LANE,
Solicitor for and of Counsel with Respondents.

In Chancery of New Jersey

December 9, 1925.

Between

JAMES D. CARTON,
Complainant,

and

MORRIS EICHENGREEN and EICHENGREEN LAND COMPANY, INC., a corporation,
Defendants.

Transcript of shorthand notes of testimony taken in the above-entitled matter before his Honor, John H. Backes, Vice-Chancellor, at the Chancery Chambers, in the City of Newark, New Jersey, in the presence of Messrs. McCarter & English for complainant, and Mr. Merritt Lane, for defendant.

Mr. McCarter: By agreement between counsel instead of bringing the deeds here, it has been stipulated that we may offer searches. I have a Monmouth Title Company search of this tract.

The Court: Offer them.

(Papers marked Exhibits C. 1 and C. 2.)

JAMES D. CARTON, sworn for complainant.

Direct examination by Mr. McCarter.

Q Mr. Carton, will you just roughly locate this property? The Vice-Chancellor is not familiar with the situation down there. Tell him

where it is. A Generally, Mr. McCarter, it is at what they call West Avon, taking the overhead bridge from Main street in Avon over the railroad, as one would to enter Scotty's, continue about a quarter of a mile on West Sylvania avenue about half a mile from the bridge—quarter or half mile.

Q And the tract consists of about how much land? A Eighteen and a quarter acres, I think.

Q What is its general characteristics? A It is vacant land, runs from Sylvania avenue to the river—Shark River; about ten acres is open field, was grown up one time, but cleaned up. In the center of that field is, as referred to, a pond, under water a good portion of the year; the portion from there on to the river is high and woodland. It is cleared of the wood—(interrupted).

Q West of your house? A No, it is east of my house. It is between my house and Scotty's.

Q How long have you lived in the vicinity of that place? A Well, I lived there for the summer months over twenty years.

Q And this Mr. Eichengreen, the defendant, has he lived down there in that vicinity? A Yes, sir; I guess he has lived there as long during the summer months, of course, he has been there, but permanently the past two or three years.

Q How long have you known Mr. Eichengreen? A Upward of twenty years—fifteen years probably.

Q How intimate were your relations with him previous to this difficulty? A I was quite intimate with him. We lived close by in the summer time. We were neighbors. There weren't very many neighbors there on the river front.

He visited my house and I visited his, my wife and his wife. We talked very often on different real estate matters; I did some little legal business for him.

Q Now what was your first connection with this property? A My first connection. Peter J. McNulty, who was one of the executors of Henry M. Bennett, lived in my house in Asbury Park for the summer of 1903, and he introduced to me Mr. Richard M. Gulick, who was a beneficiary under the Henry M. Bennett will. The executors of the Bennett will were McNulty, Hawkins, and J. W. Piatt, a man from Pittsburgh. They had advertised, it seems, the real estate of Henry M. Bennett for sale—public sale.

Q Under power of sale? A Yes, sir; and Mr. Gulick employed me to attend that sale and gave me a rate of prices that he would bid on the various pieces; that I was to see it brought that, or if not, to bid it in for him. I attended the sale and bought in several tracts. Some tracts went for a higher figure than he had given me and I did not buy those. Thereafter, representing Mr. Gulick, I caused a certificate of incorporation to be filed for a company known as the Lynore Land Company.

Q That is the company appearing as a grantee in the chain of title which has been introduced? A That is. I afterwards turned over to this company the property that Mr. Gulick had bought at the executors' sale including this eighteen acres in question. After Mr. Hawkins died in 1904 or 1905, Laura Bigger started the first litigation against the Bennett executors in the Monmouth County Orphans' Court. I think Mr. Edmund Wilson represented the executors then.

Q Well, was the Laura Bigger contest—did that involve this property at all? A Yes, sir. After the Orphans' Court litigation she then, in about the year 1910, filed two bills in the Court of Chancery attacking—questioning every executive act the executors had performed and also challenging their conduct in this particular piece of property.

Q Now how long did that Bigger litigation continue? A I think it wound up in 1917 or 1918.

Q Went to the Court of Appeals? A Went to the Court of Appeals. First tried before Vice-Chancellor Garrison. He heard it in 1912. He went in President Wilson's cabinet, there was a new reference, and it was brought before Vice-Chancellor Griffin and I think he decided it in 1914 or 1915. It then went to the Court of Errors and Appeals and was decided in 1916 or 1917. There was an accounting in Chancery that probably took a year after the Court of Errors and Appeals opinion.

Q Yes. So in the meantime had you had anything to do with the property by way of tax titles? A Yes, sir. I might add there, Mr. McCarter, that Mr. McNulty died, I think, about the year 1907. Mr. Richard M. Gulick died, as I recall, in 1911. Between those dates the Lynore Land Company caused title to be taken out of it and put in Richard M. Gulick, and Margaret McNulty, individually, Margaret McNulty being the widow of Peter J.

Q That all shows in the abstract, I suppose. A The property was in that condition when Mr. Gulick died.

Q Yes. A Some time, I think, about 1912, I saw that this property had been sold for taxes

by the municipality and Dr. Kinmouth had bought it in, and I immediately saw Mr. Kinmouth and arranged to take his title from him, and took a deed from him at that time—paid him what he paid for it. I think that was for the year 1910, and notified both the McNulty and Gulick interests who were then represented by attorneys in Pittsburgh; Mr. Frank B. Peterson representing the McNulty interest, and Mr. Cunningham representing the Gulick interest.

Q Go right on now and give your further connection with the property? A Mr. Gulick left this property as I recall—I think there is an abstract of the will there—a greater portion of it to his housekeeper, Florence Housewright. There was some litigation over the Gulick will which I believe resulted in an adjustment being made by Mrs. Housewright and Richard M. Gulick's heirs whereby she agreed to convey a half interest in all of the Richard M. Gulick property, which would include the half interest in the property in question, she taking this property.

Q That all appears by the abstract? A I saw Mrs. Housewright—she had some litigation over that—she came down and employed me. It seems this agreement was not carried out between she and the Gulicks and Mr. Samuel C. Cowart, of Freehold, filed a bill against her to compel the carrying out of that contract and effect the Gulick interest in this property. I represented her in this matter and it was finally adjusted where a deed was given by Mrs. Housewright to Gulick for a one-half interest in this property, which would be a one-quarter interest. As I recall—I do not know what the abstract shows—as I recall, that deed was given to John D. Gulick who was a brother of Richard M.

Gulick and who was a New York lawyer. James Gulick was the heir of Richard M. Gulick, and he had made this contract, but I think when the conveyance was made by Mrs. Housewright it was made to John C. Gulick.

Q Now after that conveyance was made that left the Gulick interest subdivided into two halves? A Two halves.

Q And the McNulty interest—(interrupted). A Still remained in Margaret McNulty, the original Gulick interest one-half by Mrs Housewright and one-half by the Gulick heirs.

Q Now, having become acquainted with Mrs. Housewright in that matter and that trouble between her and the son of Mr. Gulick being adjusted, did you enter into any arrangement with Mrs. Housewright with reference to the acquisition of this property and if so what? A Yes, sir. I informed them about this property having been sold and that I had taken care of the matter, asking them to reimburse me. They did not do so—and the property was in litigation then—this title was being questioned by the Bennett will and was sold for two or three years thereafter, and I bought it each of those years, my purpose being then—thinking when the Bennett litigation was settled, that they would want to take the propery over.

Q Your tax certificates are all set out in the search? A Yes, sir. I think I have tax deeds from 1910 to 1922. Mrs. Housewright in some of our talks—some of her talks with me—I met her on many occasions at my office and had a great deal of correspondence with her and dealings with her, and she wanted me to buy this property and had spoken to Mr. McNulty about it—at least so she said.

Mr. Lane: I object to conversations between Mrs. Housewright and Mr. McNulty.

Q Leave that out. A She wanted to sell it at any rate, and I was not interested in buying it at that time. We had considerable correspondence and considerable negotiations at meetings. The proposition came along then that somebody else was going to buy this property—wanted to buy it, as I understood, to start a Jewish settlement there, which I didn't want just at that time, and after considerable negotiations it was agreed between Mrs. Housewright and myself that I would buy the property at a valuation of eight thousand dollars less what my taxes amounted to and what expenses I had in the property at that time.

Q Was that put in writing? A That was put in writing. A draft of that agreement was made by Mr. Cunningham, Mrs. Housewright's Pittsburgh attorney.

Q Have you a copy of that? A I have a copy of his draft. This was not executed, however, Mr. McCarter. I prepared a draft which was signed.

Q Signed by whom? A Signed by Mrs. Housewright and myself, the parties to the contract being Margaret J. McNulty, Florence Housewright and James D. Carton. The contract, however, was not signed by Mrs. McNulty.

Q What became of it after you and Mrs. Housewright had signed it? A Mrs. Housewright either took it to Mr. Cunningham in Pittsburgh, or sent it to him. I do not recall. I know he got it because I had an acknowledgment from him later on.

Q This paper I am now handing to Mr. Lane is the draft that Cunningham sent you? A

Yes, sir. That was not entirely satisfactory, and a new draft was entered into and signed by Mrs. Housewright and myself, sent to Pittsburgh for the signature of Mrs. McNulty—(interrupted).

Q It never came back? A It never came back.

Q What next occurred? A Of course during that period this litigation was under way and of course there was no one in possession that could give title to that property at that time and that is the reason—(interrupted).

The Court: What time was that?

Witness: 1914, when this contract was entered into.

Q The Bigger litigation attacking this whole thing lasted until about—(interrupted). A About 1917; and a recital of that fact was noted in the contract, that the matter could not be closed until after the Bennett litigation was out of the way.

Q Did you keep any copy of the contract that you drafted and signed, and that Mrs. Housewright signed? A I did not; only two copies made—two originals made, and signed and sent away.

Q Now did you learn later where Mrs. McNulty's whereabouts were? A Mrs. McNulty at that time lived in Pittsburgh and Mrs. Housewright also lived in Pittsburgh. After this time I lost track of her and did not hear from her again until, I think, 1916 when she wrote me from Philadelphia and I then took up and renewed negotiations for the sale of this property. I had considerable negotiations with Mrs. McNulty at that time and with a Mr. Mooreshead.

Q He was a Philadelphia lawyer? A Philadelphia lawyer, and considerable correspondence referring to the old eight thousand dollar contract.

Mr. Lane: I object to the statement as to what is in the correspondence. It is in writing.

Q Have you the correspondence here which you allude to? A Yes, sir.

Q Produce that which you are now about to refer to with Mr. Mooreshead. Have you all the letters that passed between you and Mooreshead? A As far as I can find them, Mr. McCarter. We had a notice to produce and I have gathered together every letter and copy that I can find.

Q They include what dates? A Well, this file we have, Mr. McCarter, starts November 3, 1915.

Q And extends down to— A Extends down to—Mr. Mooreshead dropped out of the situation and another attorney came in, and then finally a Mr. Ronon, a Philadelphia lawyer.

Q The office of Senator Pepper, was it not? A Yes, sir; and this correspondence comes down to 1924.

Q Your copies of your letters and their original letters to you? A Yes, sir.

Mr. McCarter: I offer them in evidence.
(Papers marked Exhibit C. 3.)

Q Now this was with reference to the McNulty interest? A Yes, sir.

Q Go on. A Outside of my correspondence and dealings with Mrs. Housewright, represent-

ing what we will call the Gulick interest, I also had dealings and correspondence and very many interviews with an attorney in New York representing the Gulick interest, Mr. John J. Lawrence.

Q Have you that correspondence? A I have that correspondence.

Q Between what dates? A This correspondence started in 1921.

Q And extends to— A 1923.

Mr. McCarter: I offer that in evidence.

(Papers marked Exhibit C. 4.)

Q Now have you any other correspondence? A Yes, sir; I have a third file which contains correspondence with Mrs. Housewright starting in 1912 and with her attorney, Mr. Cunningham, and some of the Samuel Cowart correspondence is in it, coming down to 1916—1912 to 1916.

Mr. McCarter: I offer that in evidence.

(Papers marked Exhibit C. 5.)

Q Now that covers all your correspondence? A Covers all my correspondence, yes, sir.

Q With the exception of Mrs. Housewright did you ever come into personal contact with any of the interested parties, I mean by meeting them personally? A I was very well acquainted with Mrs. McNulty and met her.

Q Yes. A And Mrs. McNulty turned this title over before she died, to her daughter, I think, Inez McNulty. I was acquainted with her, but never talked with her personally about the matter.

Q Now in addition to this correspondence that has been offered frankly in evidence did you

have any telephone conversation or any personal visits upon any of these attorneys? A I had very many conferences with Mr. John J. Lawrence in his New York office.

Q He representing— A He representing the Gulick and Housewright end of it. And he came to my office and went over the property with me, and had very many telephonic communications with him; and that is true also with Mr. Ronon, representing the McNulty interest. He came down and went over the property and I went over the property with him and had him get figures on the valuation and so forth.

Q Was any arrangement finally, verbally fixed between you and these attorneys representing these parties with reference to your acquisition of their interests? A Yes, sir, I had.

Mr. Lane: I object on the statute of frauds.

The Court: Objection overruled. Go on.

Witness: I had arrangements with both Mr. Lawrence representing the Gulick interest and Mr. Ronon representing the McNulty interest, that I would pay them each twenty-five hundred dollars for their interests, quitclaim deed for their interests, basing—going back to the original contract of eight thousand dollars. In all our correspondence that original contract and agreement entered into by Mrs. Housewright and myself was referred to. At that time I had probably over three thousand dollars—probably some thirty-five hundred dollars in this property by way of taxes, outside of other improvements I had made to it.

Q What other expenses had you incurred on this property—in connection with this property, over and above the taxes that you bought from year to year? A I had the field part of it, after I had this contract with Mrs. Housewright, cleaned up. It had originally been a field, but it had grown up in pine and scrup oak and I had that cleaned up. That is about the only expense I had to it.

Q Had you manifested any other act of possession on your part than this cleaning of the field? A Oh, yes; I examined the property—I took care of it, from time to time had my man cut the brush on it each year, and was in possession of it and possibly was supposed to be the owner of it.

Q Now, what acquaintance had Mr. Eichengreen with your relations to this property? A In my talks with Eichengreen we often referred to this property, he always bringing it up, asking me when I was going to clean it up and why I didn't develop it. He owned a piece of property on the east of it which he was developing or about to develop, and was very anxious to have me develop this. I told him I wasn't yet in position to develop it, that I had not acquired the title yet. I suppose I talked with him, or he talked with me, probably half a dozen times about this property before he finally came to me and we made the agreement referred to.

Q Now, what conversations—or won't you detail as far as you can and as accurately as you can all the conversations you had with Mr. Eichengreen leading up to the agreement on his part to purchase.

Mr. Lane: I object to it on the ground that it is attempting to establish an oral contract within the statute of frauds.

The Court: Go on.

Witness: Outside of these conversations that I have referred to and which were mere casual conversations, Mr. Eichengreen came to my office, as I recall, in March, 1922, and made me a definite proposal to buy this property, offered me $20,000 cash for it. I told him in the first place that I could not sell the property, that I had not yet completed my title, and if I could sell I would not sell for $20,000. He then offered either—I am not sure whether that day or a few days thereafter, offered me $22,500 for it, and I made the same response. He wanted to know what I would sell the property for. I told him when I had completed my title, that the least I would sell it for would be $25,000 less a piece in the corner that I had wanted to reserve.

Q Piece of two acres? A Two hundred feet on the corner; yes, sir.

The Court: What?

Mr. McCarter: A piece of 200 feet he wanted to reserve.

The Court: On what?

Witness: At the southeast corner of the property, piece 200 to 200. He agreed to pay me this sum. I told him that I couldn't enter into any written agreement with him at that time and it could only be a conditional agreement, depending on my either foreclosing my tax title or getting the deed

from the two interests that I was then negotiating for. He insisted that would be all right, wanted to pay me $500 right there. I told him that he could not pay me anything, nor would I enter into any written contract with him, that I hoped at that time to soon be able to get these two interests which I had been negotiating for and if I did not I would foreclose my tax title that I had been carrying then for some ten or twelve years and upon getting title he would have it for $25,000, less this 200 feet. He was to pay $10,000 cash at the time, and mortgage with release clauses in for $15,000. He wanted to know if he could bank on that and I told him he could. He wanted to shake hands on it and we did shake hands on it.

Q Where was this? A In my office.

Q What time, now? A My best recollection is that was the latter part of March, 1922—in March sometime.

Q Anything said about his taking possession? A Yes, sir; the understanding was—he was very anxious for me to close it up—the understanding was that he would take possession, that he wanted to have a survey made at once, and he did have a survey made; that he wanted to get it cut up, trim up the brush on it and make some arrangements for draining, because a lot of work had to be done in draining and he did take possession in having a survey made and doing some trimming.

Q Do you know who made the survey? A Mr. Naughright Rogers made a lead pencil sketch for him showing the layout. I know that certainly. Mr. Eichengreen came to me with

this sketch sometime during that summer of 1922 to get my consent to change—he was laying out a street—he was laying out a street at right angles to the main road—the borough was then about putting down a sidewalk and curb in front of it on the main road and I remember meeting him there one day with this sketch—he had this sketch prepared by Rogers showing where a street went and asked me if that would be agreeable—and the street was laid showing that opening, and it is there yet, of a proposed street in this field.

Q You didn't hire Rogers? A No.

Q And you didn't pay him? A No.

Q When do you say this conversation was when he undertook to have a survey made and so forth? A That was—he started to have his survey made immediately after our agreement in March, 1922, because he saw me several times thereafter during that summer, importuning me all the time to hurry the matter up, that he wanted to start the development going.

Q Yes; now I show you a letter dated March 5, 1923, signed "Eichengreen." Did you receive that letter from him? A Yes, sir.

Q Letterhead of Morris Eichengreen, New York City, March 5th, to Mr. James D. Carton, Asbury Park, New Jersey. "My dear friend: Spring is coming on now and I wish you would get that property ready for me if possible as I would like to get in there and have a lot of work done. With kindest regards to your family and yourself, I am as ever." Had the map or sketch made by the surveyor to whom reference has been made at the time this letter was written? A Yes, sir; it was made the summer prior, and the sidewalks—

Q The map had been made the summer prior to March 5, 1923? A Yes, sir.

Q About what sidewalks—what did you do about that? A The sidewalks—the occasion of taking me there was to show where the streets were on the map and where it would physically come out on the sidewalk. That sidewalk had been laid.

Q By who? A By the borough.

Q Who took you there? A Someone got me there. I met the engineer—the borough engineer, Mr. Love, and Mr. Eichengreen—and how I got there I don't know.

Q I mean Eichengreen met you there? A Yes, sir; my recollection is Mr. Cooly, the borough policeman, asked me to meet there to fix on the point where this road would go through.

Q And Eichengreen was there? A Yes, sir.

Q And what was the object and what occurred? A The object was to get my consent to the layout that Mr. Eichengreen had of this map which showed a street at right angles to the main road. They were done putting the sidewalk down—to have my consent if where they showed this on the paper would be agreeable to me, and, of course, I told them it was.

Q And what was the nature of the trimming that Mr. Eichengreen had done there on this property after your agreement with him? A He trimmed up all the trees along on the east side of it adjoining his own land—it adjoined him on the east.

Q Did you have any interviews with him with reference to your following up the securing of the deed or the title to the property? A From the time we had the original agreement in March, 1922, until August, 1923, I suppose

Mr. Eichengreen came to my place twenty times during that year and a half to see how I was getting along—to see what I had heard from the people I was corresponding with and when I was going to be able to take care of the matter.

The Court: Came to press you?

Witness: Came to press me, and criticized me on two or three occasions for waiting for these people and suggesting that I do what we originally suggested, foreclose the tax title and have done with it, which I hesitated doing.

Q Well, finally what conversation occurred? A Finally he came to my office in—I think about the middle or latter part of August, 1923, and he came there for a show-down, apparently. He says I must close this up within a month or the thing would be off, and I was—didn't want to be hurried on the matter. I told him if he wanted the thing off, it could be off right then. I wasn't anxious to sell. He insisted he wanted to carry out his arrangement by his contract with me and I had to carry it out. I had to do something. The land had gotten valuable then. He was developing next door and he wanted it for part of his development. He first threatened me and then importuned me to get the matter closed up within a month. I had then about completed my arrangements with both the other interests and I told him I thought I could clean it up within a month. At that time I told him what I was doing; told him of the efforts I had been making, and when he criticized me for being slow, said he had waited a year and a half. I told him that if he could do any better he could

go on and see if he couldn't hurry the thing up for me, and on that—I had a letter on my desk at that time from some of these attorneys, Mr. Mooreshead and Mr. Lawrence, telling me what he was doing—the difficulty he was having in getting his parties together, and told him that Mr. Lawrence was representing one interest, the Gulick interest, and Mr. Ronon was representing the McNulty interest and told him exactly what I was doing.

Q Perhaps that is the letter (handing witness paper). A Yes, sir; that is the letter.

Q Now, have you before you a letter which it is your recollection you showed him on this occasion? A Yes, sir.

Q You are referring to the letter from whom to whom and in what package of exhibits—package of Exhibits C. 4? A It is a letter dated August 16, 1923, from John J. Lawrence to James D. Carton, and it has relation to the title to this property.

Q And that letter contains the names of the people? A The names of those interested—the names of those holding the Gulick interest.

Q Well, what occurred? A He stated that he might hurry the matter. He took the name of Mr. Lawrence and his address and the name of Mr. Ronon and his address—I told him that. He suggested he might see them. I told him it wasn't necessary to go see them, that I had about concluded the matter, but I did tell him during the conversation if he could do any better, if he could hurry the thing faster, go on and hurry it up himself, and it turned out after that that is exactly what he did.

Q The letter you have alluded to is this letter from John J. Lawrence to James D. Carton,

dated 342 Madison avenue, New York City, August 16, 1923? A Yes, sir.

Q And in the package of Exhibits C. 4, is that right? A Yes, sir.

Q Now, what is the next thing you heard after you told him if he could do it quicker to go ahead and do it? A I continued my negotiations with these people, and I had a matter up in Massachusetts which took me up there a week or two that fall, and the first thing I heard in about two months thereafter, I think it was probably along in September or October—I guess it was October—someone told me that Eichengreen had told them that he had bought this property in his own name. I immediately—Eichengreen had an office in the Building at that time in Asbury Park. I immediately went out for him and met him on the street just in front of my office and asked him if it was true. He said it was, he had gotten tired of fooling with me. I felt rather warm about the matter and took him up in my office. We went up in my office. I took occasion to tell him what I thought about his conduct and he told me that he had been waiting a year and a half for me and took some pleasure in stating that he had done in one month what I didn't do in a year and a half; he had gone to see those parties, and he had cleaned the whole title up inside of a month and that he had paid them exactly the same sum I had agreed to pay them—$2,500 each. I told him it made no difference what he did, that he had a contract with me—he got this information from me; he knew this was my matter, that I was dealing with it, and that was my property. I told him whatever he paid for it I would return to him, but he should turn

that deed over to me, that that was my property and I was going to have it. He was very cocky about the matter at first; then finally he said, well, he would pay me my taxes. Of course, I laughed at that. Then he suggested that I had had some trouble with the thing and had gone to some expenses with the thing and he would make some adjustment with me, which, of course, I did not listen to, and finally threw him out of the office.

Q How did you happen to see Mr. Boggs? A Sometime thereafter, Mr. McCarter, I started then investigating the title, what had been done, and sometime thereafter, I think perhaps Mr. Boggs' letter is probably in my file—I don't know—I think in November or December I got a letter from Mr. Boggs at any rate, stating, as I recall, he represented Mr. Eichengreen.

Q Is this the letter you refer to? A Yes, sir. I got a letter from Mr. Boggs on November 30, 1923. I do not recall the contents now, but to the effect that he represented Mr. Eichengreen and I think asked me to come to see him, that he wanted to get rid of my tax title, or words to that effect.

Mr. McCarter: I offer the letter.

(Paper marked Exhibit C. 7.)

Q Did you, in fact, see Mr. Boggs? A Yes, sir. I made an appointment with Mr. Boggs and came to Newark and saw him.

Q How soon after that letter, do you suppose? A I would saw within a very few days—and came here to Mr. Boggs and told him just about the story I have told now, probably not as much detail, and he said, in view of that, that

he thought the way to take care of it would be for them to file a bill to redeem and to cancel my tax certificates, and I could come in and file a counter-claim—I think he said first cross-bill—it was under the new practice—I remember his words now, a counter-claim, I think he said, and he was to see Mr. Eichengreen and let me hear from him. I didn't hear from Mr. Boggs, as I recall, for quite some weeks, and either again wrote or saw him—I think I did both.

Q And did he finally write you that letter (handing witness paper)? A Yes, sir.

Q April 23rd? A I got a letter from him April 23, 1924, in this matter.

Mr. McCarter: I offer that in evidence.

(Paper marked Exhibit C. 8.)

Q Well, what next occurred? A I then saw Eichengreen.

Q I beg pardon? A I then saw Eichengreen, after that letter, and inquired if Mr. Boggs did not represent him who did and what he was going to do about carrying out the suggestion of bringing suit to cancel these tax titles. He said that he had seen some other attorney and the attorney had advised him to file a bill to cancel these tax titles. I think I saw Mr. Eichengreen on two or three other occasions during that spring or summer about this matter. I didn't feel very kindly towards him and I think I talked to him in rather a strong way every time I did meet him. I know I made a demand for my property and told him what he had done—the advantage he had taken of the information I gave him and that he was not to go to any expense, that that was my property, and he should do nothing with it.

Q Now, did you notice early in June some sign on the property? A Yes, sir; going home one night—the first evidence of taking possession or any act under it—I saw a sign on this property, "Lots for Sale." I think it said—the sign was, "I own the Earth."

The Court: There are a lot of those signs down there.

Witness: That "I own the Earth" and he will sell portions of it for consideration. I saw this sign about 6:00 o'clock on my way home. I immediately went back to my office, and I think I prepared that notice myself on the typewriter.

Q Have you the original notice or shall I put a copy in?

Mr. Lane: Put the copy in.

Q Did you serve him with a notice of which that is a duplicate? A I served him personally about 8:00 o'clock that night.

Q What date? A June 10, 1924.

The Court: Did he have a sign, "I Own the Earth" on your property?

Witness: I think it was, your Honor. I think the sign was "This Property for Sale. I Own the Earth." I have seen that very often. I do not just recall the wording.

Mr. McCarter: I offer this notice in evidence.

(Paper marked Exhibit C. 9.)

Q Any attention paid by him to your notice? A No.

Q What did he say when you served him, anything? A I do not think he said anything, Mr. McCarter, because I think I probably did most of the saying at that time. I know I took occasion to lash him out very properly.

Q Did you as soon as you could thereafter consult counsel, Mr. Carton? A Yes, sir.

Q And the result was the filing of this bill? A Yes, sir.

Cross examination by Mr. Lane.

Q Mr. Carton, did you agree to pay the McNulty interest or Mrs. Housewright twenty-five hundred dollars? A Yes, sir.

Q During the course of your negotiations in 1922 and 1923? A You mean was that the time I agreed to pay that?

Q Yes. A During that time, yes, sir.

Q I show you a copy of a letter—what purports to be a copy of the letter in Exhibit C. 3, August 23, 1923, and ask you whether, by reference to that letter, you cannot refresh your recollection as to what you offered? A Yes, sir; I can. This letter refers to an offer of two thousand dollars for the half interest.

Q That isn't twenty-five hundred. A No, and that isn't the offer I am referring to.

The Court: What date is that letter?

Witness: August 23, 1923.

Q That was about the end of the negotiations, wasn't it? A Yes, sir. You will find other correspondence where I had telephonic conversations with Mr. Ronon.

The Court: Just answer these questions.

Q Will you refer to the correspondence that you have offered in evidence, that I have not yet had opportunity to look over in detail, under Exhibit C. 3 and show me any place where you offered to pay her twenty-five hundred dollars? A No; I do not think there is any other offer, any copy of letter, except that two thousand.

Q And, as a matter of fact, throughout the entire course of that correspondence, beginning back in 1914 or 1915, there is no offer to pay her anything, excepting the offer contained in that letter, where in August, 1923, you offered to pay her two thousand dollars. That is so? A No; I had agreed to pay her mother as far back as 1916, Mr. Lane, on the basis of four thousand dollars.

Q Is there anything in the correspondence to indicate that, is what I am trying to get at? A I think so. Either the letters from Mrs. McNulty and Mr. Mooreshead and myself show that.

Q Let me ask you this, was any such offer accepted? A Yes, sir.

The Court: Such offer of what amount?

Mr. Lane: Four thousand dollars, now, he says.

Witness: Do not get confused.

The Court: Was there any such offer as what?

Q Was there any acceptance of any such offer of four thousand dollars or on the basis of eight thousand dollars? A Yes, sir.

Q Will you refer to that in the correspondence? A June 15, 1916, Mr. Mooreshead to me, representing—

The Court: Just answer the question.

Witness: There is reference in this letter to four thousand dollars less the tax, interest, and so forth.

Q The letter is June 16, 1916, and that letter is a letter from her counsel to you in which he states that she will sell her interest on the basis of four thousand dollars, is it not? A Yes, sir.

Q Now, will you point out any correspondence in which you accepted that offer? A I don't know whether there is any correspondence or not. I will look at this file. At that time the Bennett litigation had not concluded.

Q Was that letter in response to one that you had written? A Yes, sir, it refers to my letter of the 10th.

Q The letter you wrote did not offer to pay four thousand dollars, did it? A I can't tell that. I think it did, because I offered to pay that to her personally at one of our meetings at my office.

Q Have you a copy of your letter to which the letter of June 15, 1916, is a reply? A I have not.

The Court: Do you keep complete copies of all your letters in your office?

Witness: I do, your Honor. Since this matter has come up I have been endeavoring to locate all these letters and copies.

The Court: It is the practice in your office to keep all outgoing letters?

Witness: Yes, sir. Our copy book was put in the basement—old books, and some are there and some are not. I have gotten

some books and some books I haven't got, therefore I haven't got every letter.

Q I note there is a letter of June 21, 1916, from Mr. Mooreshead to you in which he says that he is in receipt of your letter of the 20th. Have you a copy of your letter of the 20th? A If it is in that file, I have; if it is not there, I haven't.

Q If this file is arranged in order it is not here. A I do not think it is.

Q I note that by the letter of June 21, 1916, Mr. Mooreshead said to you, "and note that you will take up the purchase of her interest therein when the litigation with regard to the Bennett estate is disposed of." A Yes, sir.

Q Now the next that you heard from Mr. Mooreshead was on June 24, 1916, in this letter that I show you, is it not so? A I think so.

Q And in that letter he says, "Will you kindly advise me when you think the litigation will be finally wound up in which the Bennett estate is involved, and also if you are still interested in purchasing the McNulty interest in the Avon property on a basis of four thousand dollars less taxes, interest and so forth. I would appreciate your advice concerning this at the earliest possible moment." Have you any copy of any letter in reply to that communication? A Not unless it is attached to the file.

Q The next communication that I find in the file is April 20, 1922. As a matter of fact, you never did, after June 24, 1916, and the writing of this letter, agree to pay Mrs. McNulty upon the basis indicated in letter of June 24, 1916, did you? A Never after that time.

Q Never after that time? A I think Mrs. McNulty died.

Q Or her heirs or anybody representing her? A Never anybody representing her until my arrangement with Mr. Ronon, the attorney for the daughter.

Q So that the negotiations, or whatever they may have been, stopped in 1916 and were not resumed until April, 1922, is that right? A Oh, no. A young man, a Mr. Bailey, I think, from Mooreshead's office came to see me in about the year 1919, and came down and made some investigation about this property. I had some dealings with him. Then nothing further was done until Mr. Ronon came on the situation and represented the daughter in 1921, I think.

Q And the only offer that there is contained in these letters and the only offer that was made after negotiations were resumed is the offer that is contained in the letter of August 23, 1923, of two thousand dollars; is it not? A I think that is the only offer there is in any letter. I did make a definite offer of twenty-five hundred dollars, which was accepted.

Q After August 23, 1923? A Within a week I talked with Mr. Ronon on the telephone. We were just about closing the matter at that time.

The Court: Within a week of what?

Witness: Within a week from the date of the letter, I think it was August 23, 1923.

The Court: What did you do then?

Witness: I talked with Mr. Ronon on two or three occasions over the telephone.

The Court: And was it then you made the offer of twenty-five hundred?

Witness: Then he said the offer would have to be twenty-five hundred dollars in order for him to take care of it, then I made

the offer of twenty-five hundred dollars instead of the written offer of two thousand dollars.

Q Did you confirm that by letter or in any way make any—(interrupted). A I don't think so. I am quite sure. I don't know whether Mr. Ronon is here or not. Mr. Ronon came to my office as well as talking to me over the telephone. I am quite sure on that occasion he was at my office, very shortly after the date of that letter.

The Court: The date of which letter?

Witness: August, 1923, letter.

Mr. McCarter: What was the date of it?

Mr. Lane: The date of the August letter is August 23, 1923.

Q Now do you say that Mr. Ronon over the telephone accepted the offer of twenty-five hundred dollars? A He said he could get his client to take care of the matter for twenty-five hundred dollars. I supposed—I don't suppose it could be an acceptance, because all he could do would be to take it up with his client, but he could not take care of it for two thousand dollars, but could take care of it for twenty-five hundred dollars.

The Court: What did you say to that?

Witness: Agreed to it.

The Court: What did you say to that?

Witness: I agreed to it, that I will give that.

The Court: What did you say to that?

Witness: Told him that I would pay the twenty-five hundred dollars.

Q And what did he say he was going to do? A Take it up with Mrs. McNulty to close the matter out.

Q You received a letter of September 11, 1923, did you not? A Yes, sir.

Q From Mr. Ronon to yourself, in which he advised you that Miss McNulty has sold to someone else? A Yes, sir.

Q For a considerably larger price for her interest in the property than you offered? A Yes, sir.

Q Did you reply to that? A I think I did, over the telephone, Mr. Lane. In fact, I know I did.

Q Nothing in writing? A I may have replied to it in writing. I don't know whether I did, but I know I immediately called Ronon up.

Q I show you a letter of September 12, 1923, which does not appear to be—copy of which does not appear to be in this file, and ask you whether you sent that letter to Mr. Ronon? A Yes, sir.

Mr. Lane: I offer it.

(Paper marked Exhibit D. 1.)

Q That is the reply to his letter of the 11th? A I imagine it is.

Q Now, does that refresh your recollection that you replied to Mr. Ronon by mail and not by telephone? A No, sir. I know that—when I first learned of this I called Ronon on the 'phone and I tried to get Lawrence on the 'phone. I know—I may have written—I may have called him before or after this, but I know of calling Ronon on the 'phone and having a very strenuous talk with him.

Q I am wondering why in this letter of September 12, 1923, if you had the agreement with Mr. Ronon at least that he was to get the property for you for twenty-five hundred dollars, why you did not, in this reply of September 12, 1923, say anything about that? A I don't know what I said. I know what I said over the telephone and I know what Mr. Ronon told me.

Q Why didn't you in your letter of September 12th, written a day after the receipt of his letter of the 11th, when the matter was fresh —why didn't you refer to the agreement you had had with respect to the twenty-five hundred dollars? A I think everything is referred to except the price. I don't know of any particular reason why I should mention the price in there. He had permitted his client to sell to somebody else at the time.

The Court: What?

Witness: He had permitted his client to sell to somebody else at the time.

Q Is there anything in this letter which you can point to which would indicate any definite agreement between you and Ronon or you and the McNulty interest? A I don't know that there is except by inference. I don't know why there should be.

Q Did you consider that you had a definite agreement or not? A I certainly did.

Q Then why didn't you in that letter, instead of referring to your temporary agreement that you had—(interrupted). A I don't see why it was necessary, Mr. Lane. The agreement could have been voided if anyone wanted to—it was a verbal agreement between ourselves, it wasn't anything binding, if one wanted to violate it.

Q What did you mean, Mr. Carton, in this letter, Exhibit D. 1, of September 12th, when you said, "They were all, however, made (that is your negotiations) without prejudice to my rights in the matter and I assume that you, representing Miss McNulty, informed the purchaser of same that I hold title to the premises by a deed in fee." A Tax title. In all my negotiations, and in the contract with Mrs. Housewright I did not waive any rights that I had to the property under the tax title.

Q No; and your rights under the property—under the tax title was in repayment of the taxes. A I could foreclose it any time within ten years.

Q And if you foreclosed of course they could redeem? A Yes, sir; but they were not redeeming.

Q I understand you have your tax title to which you referred in this letter. Did this letter apply to the deed in fee? A Yes, sir.

Q You meant by that your tax title? A Yes, sir; which I had a half dozen tax deeds in fee; that is what I had reference to.

Q Now is there anything in this correspondence contained in Exhibit C. 3 in which you assert any interest in this property by reason of any legal services or anything of that kind? A I do not think so. I do not know that there is.

Q You did, in a letter set forth what your claim against this property was, May 9, 1922. That is the letter, is it not? A That is a letter written by me to Mr. Ronon.

Q And a copy of that letter is included in C. 3, but the copy of the statement is not. Is that the statement that was enclosed in that letter (showing witness paper)? A Yes, sir; I

am quite sure it is, because when Mr. Ronon was down on one of the occasions he wanted me to send a complete statement of exactly what I had in the property at that time, so that he could take it up with his client about the valuation. This statement shows some three thousand and six hundred and eighty-one dollars. I take it that is the statement sent him.

Mr. Lane: I offer the letter and statement together.

(Papers marked Exhibit D. 2.)

Q I show you letter of August 3, 1923, copy of which does not appear to be in your file, and ask you whether you sent that letter to Mr. Ronon? A Yes, sir.

Mr. Lane: I offer it.

(Paper marked Exhibit D. 3.)

Q Up to that time, at least, there was no definite agreement with respect to the sale of the McNulty interest, was there? A I don't know whether any definite agreement had been entered into with Mr. Ronon at that time or not. I think that was after I sent him the statement and we were still negotiating; I was urging an agreement and told him the property had again been sold for taxes and threatened to foreclose my tax title apparently.

Q Now is there anything in your correspondence with Mr. Lawrence, Exhibit C. 4, which indicates any offer or any agreement on the part of Mr. Lawrence to sell this property for twenty-five hundred dollars or any other sum? A I think so.

Q Will you point it out? A This correspondence started in 1921.

The Court: Point it out, please.

Witness: There is mention made by Mr. Lawrence in the letter of August 16, 1923, to me, which indicates that we had been talking about—(interrupted).

The Court: Just point that out, please.

Witness: There it is.

Mr. McCarter: Read it.

Witness: (Reading.)

Q Now, where is your acceptance? A Right here is the letter, copy of the letter from me the next day, August 17th. I take it that is—(interrupted).

Q Is it the next day? Isn't it the next year? A Is it? I don't know. I thought I saw 1922.

Q No, 1923. A I beg your pardon. Shall I read the whole letter?

Q No. That is the letter to which you refer? A Yes, sir.

The Court: Is there an acceptance?

Witness: Yes, sir—well, probably put it the other way. It seems to be my offer back to him.

The Court: In substance?

Witness: Yes, sir, in substance it is an acceptance.

Q I show you letter of April 18, 1922, addressed to Mooreshead & Johnson, copy of which is not in your file, Exhibit C. 4, and ask you whether you sent that letter to Mr. Mooreshead? A Yes, sir.

Q In that letter you say "Our particular anxiety is that a good portion of that property is under water. The borough recently made some change in the streets, which had the effect of adding to the size of the pond or portion under water. I have been hoping that the property would come in the market for development purposes. Up to date I have been unable to make any disposition of same." Now that was in April, 1922, at a time when you had, as you say now, your agreement with Eichengreen to dispose of this property for something in excess—or twenty-five thousand dollars? A Yes, sir.

Q Well, will you tell me why, if you had, as you now say, a definite agreement with Eichengreen to take this property at twenty-five thousand dollars, in this letter addressed to counsel for the interest of one of the parties state that you have had—been unable to make any disposition of it? A Yes. There was no disposition of it had been made definitely at that time, or could be made. This is a letter received from—or written to Mr. Mooreshead evidently after a period of no correspondence for six years —1916, since I heard from him before, when I had an arrangement with him and his client to close on the four thousand dollar valuation, accepted by him and his client, and I didn't consider that—they had refused to carry out that arrangement—and I didn't consider that I owed him any obligation.

The Court: You did not tell him that you had sold to Eichengreen?

Witness: No, I did not.

The Court: You had, in fact, sold to Eichengreen, hadn't you?

Witness: This was in the next month. I had, in fact, had this agreement with Eichengreen.

The Court: Then what you said there was not true?

Witness: I don't know as that is so, your Honor.

The Court: You do say you have not made any sale, do you not? What is the explanation of that?

Witness: I said—I do say that—"up to date I have been unable to make any disposition of the same." I do say that.

The Court: But you had made disposition of it?

Witness: I had this tentative disposition of it made at that time.

The Court: Absolute disposition at that time.

Witness: It was an absolute disposition, subject to my getting my title, either by foreclosure on the tax title or getting this other interest which I agreed to buy years before which I was still willing to buy at the amount I had agreed to buy years before. Their interest was worth very much less, because my interest was very much greater. I had close onto $4,000 in it at that time, I believe, moneys advanced for taxes.

Q Now in 1916 the correspondence ends with the letter, as I understand it, of June 24, 1916, asking you to advise them as to whether you

would agree to pay four thousand dollars to each. There was no reply, or if there is any correspondence or any answer to that letter where you accepted any such proposition to pay four thousand dollars, I would like to have it? A If it isn't there—or it might or might not have been sent. The reason why it was not closed out at that time—I expect it wasn't closed out at that time—was because nobody could give title at that time. I wouldn't take the title under any circumstances other than my own tax title, because the thing was under attack at that time.

Q So that you did not accept that four thousand dollar proposition at that time; whatever the reason may have been you did not, in fact, agree at that time to pay four thousand dollars? A I did agree when they were in position to give title, but not before then.

Q Well, when the Bennett estate was closed and that matter was cleaned up, why didn't you resume your negotiations? A I endeavored to. Couldn't get in communication with Mrs. McNulty. It was two or three years before I got in touch with someone from Ronon's office stating that she had died, and that her daughter, Inez McNulty, was then the owner.

The Court: You have been speaking about Mrs. McNulty. Have you both been referring to Inez McNulty?

Witness: Unintentionally, your Honor.

The Court: I think the record will show that, because you have been speaking of a Mrs. McNulty at a period after her death. If you did speak of Mrs. McNulty as of that time, you meant Miss McNulty?

Witness: Yes, sir. When I referred to Mrs. McNulty, I referred to Margaret McNulty, the widow of Peter McNulty.

The Court: She died when?

Witness: She died some time after 1916. I don't know just when.

The Court: 1917, I thought.

Witness: Possibly so, and Inez McNulty—(interrupted).

The Court: Whatever negotiations occurred after that with the McNulties was with Miss McNulty?

Witness: Yes, your Honor.

Q In any event, so far as the correspondence indicates, there was a lapse from 1916 until 1922, and your letter of April 18, 1922, which has been last referred to, is the letter, with which you reopened negotiations; is that true? A I think so.

Mr. Lane: I offer that in evidence.

(Paper marked Exhibit D. 4.)

Q I show you letter of June 12, 1922, a copy of which does not seem to be in your files, and ask you whether you sent that to Mr. Ronon? A No, I don't think so.

Q I beg your pardon. It is a letter from your office on another matter. Will you turn to your file in the Lawrence matter and show me the letter with which you reopened negotiations with the Gulick interest? A Well, the first letter I find is March 17, 1921, but it is apparent from that, that it refers to other—I haven't any copy of any letters prior to that time—that is March 17, 1921.

Q Can you turn to the first letter that you wrote, after the alleged contract with Eichengreen? A I don't know whether that is the letter of March 15, 1922—I don't know whether that is before or after.

Q Well, in view of the fact that your last letter preceding that was June 21, 1921, from Mr. Lawrence to you, in which he states that he wants you—in which he advises you that she will enter into a disposition of her interest also, most reasonably and in which he refers to the fact that he is not familiar with the exact boundaries and so forth and so on—that is dated June 21, 1921, and your next letter is March 15, 1922—now reading that letter of March 15, 1922, and keeping those dates in mind, you would say that was after the alleged agreement, wouldn't you? A I wouldn't say so. It may be, for the reason I called on Mr. Lawrence very often when I was in New York.

The Court: You said your agreement was in February?

Witness: March. I think Mr. McCarter's opening was February, but I think the agreement was in March, and I think the latter part of March. It may have been before that time. I wouldn't say. I refer to an intended call I expected to make on him, because I called on Mr. Lawrence many times.

Q And have you no independent recollection as to whether at the time you wrote this letter in which you asked Mr. Lawrence to advise you as to the lowest amount that they would take for their one-half interest, so that you might take

it up with the others interested and see if you couldn't complete same and get the matter out of the way, and that the property is standing idle, doing no one any good and running up a big tax bill which puts it in bad shape, can't you tell whether at the time you wrote that letter, you had your agreement to sell this property to Mr. Eichengreen for twenty-five thousand dollars? A I cannot. It might be so.

Q You intended at the time you wrote the letter of March 22nd to Mr. Lawrence and also the letter of April 22nd to Mr. Ronon or Mr. Mooreshead—whatever that concern's name is—Mooreshead & Johnson, to bear the property? A To do what?

Q To bear the property. You know what I mean. A No, I don't know what you mean.

Q To indicate that it was of little value. A No; I don't know that I did. I did know what I had in mind in writing to them was my interest in the property and what I considered their interest worth. They had practically abandoned this property, they never made any effort to reimburse me for my taxes or take care of it. I had the agreement with them in 1916; I wanted to carry that agreement out for the benefit of the heirs, or I was going to foreclose my tax title. I didn't intend to pay any more than that.

Q Well, why was it, if you were so anxious to carry that agreement out, you waited from 1916, as I understand it, the litigation of the Bennett estate ended in 1917? A I think so.

Q All right. You waited from 1916 until 1922, after you had this agreement with Eichengreen, before you took any steps to carry out the agreement—why? A No, there is corre-

spondence shown here with Mr. Lawrence—I have it before me—on March 17, 1921.

Q Mr. Lawrence or you wrote in 1921, and then nothing is done from March, 1921, until 1922? A Yes, sir; but more was done. Mr. Lawrence was corresponding with some of these people in California—told me the difficulties he was having in getting in touch with them. John C. Gulick had left some of this property to people in California and a whole lot of negotiations were under way before Mr. Eichengreen came in on the thing. It is true that I didn't do—I wasn't hurrying to close this thing out. It was my own matter and I probably neglected it, and it was Mr. Eichengreen coming in on the matter and wanting me to close it out that probably made me take it up again at that time, but I had had the matter under way prior to that time.

Q Mr. Gulick, or one of the Gulicks in fact, after this discussion as to the purchase or sale of their interest, paid you part of the taxes, didn't he? A John C. Gulick took an assignment for one-half of the fourteen taxes, I think —paid me.

Q Do you know when that was? A I think it was in—it was when we had the settlement between him and Mrs. Housewright on the Richard M. Gulick bill, when she turned the title over to him.

Q Is this the bill that you refer to as the Gulick-Housewright litigation? A Yes, sir; that is the bill.

Q That is suit brought by James C. Gulick against Mrs. Housewright, bill for relief, filed November 9, 1914, subpoena issued, returned *non est* and nothing further done in the suit,

was there, docket No. 38-748—and nothing else done in the suit? A Settlement of the things they claimed or agreed to, and Mrs. Housewright made a conveyance as they demanded—she conveyed to John C. Gulick, the uncle of the James, who was the son of Richard, a one-half interest in this Avon property, in fact in all the Gulick property, and at that time John C. Gulick said that he would pay me for half the taxes I had paid that year. Here is an assignment from James D. Carton to John C. Gulick, November 22, 1915.

Q Dated November 22, 1915, recorded November 24, 1915. At that time you had no agreement to purchase the property, had you? A Yes, sir; we had. At that time I had the original agreement with Mrs. Housewright, whose interest Gulick succeeded to, and I had negotiations with Mr. John C. Gulick and Mr. Cowart to complete that contract with John C. Gulick, when he died.

Q Do you now claim that you are entitled to any interest in this property by reason of any legal fees rendered or anything of that kind as stated in the bill? A I haven't made that claim, Mr. Lane. The situation is this: I filed answers for these people, Mrs. Housewright, the Handley interest, I think Mr. Wilson and myself did, represented them in the Bennett litigation—I haven't been paid for it. I think probably I had a kind of reservation of that when I was holding the property, that some day I would recover that. I make no claim for it. If they received the property, I would expect them to pay that.

Q As I read your bill of complaint, you set forth that it was in consideration of those legal

services rendered that these people agreed to sell you this property for this small price. A Oh, no. That is wrong if that was in the bill. It wasn't so.

Q I understand that to be the prayer of the bill? A That was not our agreement at all.

Q Complainant never was paid by the Lynore Land Company or Gulick, or the McNulty interest succeeding to the interest of the Lynore Land Company, and that fact was taken into account in the proceedings hereinafter alluded to, and the proceedings thereafter stated in the bill are the agreements made by these people to sell to you? A I would like to state, for the purpose of the record, that that statement that I was not paid by the McNulty interest is incorrect. I was not paid by Gulick. We represented the McNulty interest in the Bennett litigation and an allowance was made in that case which would cover that. I want that corrected.

Q And in paragraph 13 of your bill you say "the legal matters in connection with the interest of Gulick and McNulty—in connection with said lands and said corporation, including the litigation in the Court of Chancery and Court of Errors, commenced by said Laura Bigger were attended to by the complainant, but without the payment by the interested parties of complainant's charges * * *. The complainant's interest in the property was therefore kept alive." A From the period after this Lynore Land Company was incorporated in 1903—I think Mr. Gulick died in 1911—I did various acts of service. I think it was in default for non-payment of taxes and proceedings had been taken; I not only took care of that, but paid the Secretary of State or the Attorney General's office, and I was never reimbursed for those fees.

Q In paragraph 16 of your bill you say correspondence ensued and that you informed counsel by correspondence of the fact that you had purchased at the tax sale and asked reimbursement? A Yes, sir.

Q "As well as compensation for his legal services," but that you couldn't get any satisfaction and that beyond the expression of desire on their part to pay, but that it finally culminated in the making of these agreements. Now, where in the correspondence is there any statement of a request for compensation for legal services in any of these—(interrupted). A I don't know whether there is or not. That would be back in 1912, 1913 or 1914. I don't know whether it is in that Housewright file—it may be—that third file.

The Court: In connection with the purchase?

Witness: Yes, sir.

The Court: I say, did you make demand on them for compensation in connection with the purchase—your purchase?

Witness: Not a demand, if your Honor please, but when I was dealing with Mrs. Housewright and her attorney and Mr. Paterson in Pittsburgh, representing Mrs. McNulty, I made known to them that they owed me for these tax services, never being taken care of after Mr. Peter Gulick died. I represented Peter Gulick and was interested, in fact, and I took care of these matters for some years.

Q How did you in your correspondence associated the amount due with your purchase, if

you did? A I can't answer that, other than to say that when we agreed on the eight thousand dollar figure, less my expenses and what taxes I had paid that that was taken into consideration at that time. Whether I intended to do that to the extent of my services or what I disbursed for them I do not know.

Q Then the eight thousand dollars was not looked upon or treated as a fair value of the land, but the eight thousand dollars, plus your services was looked upon as a fair value of the land, is that what you mean? A No; eight thousand was fixed as the fair value of the land, but when I should pay them the eight thousand dollars, when the Bennett litigation would cease I would deduct from that, according to my agreement, for the taxes, and what amount was due me at that time.

Q Well, did you regard yourself as entitled to being favored? A No.

Q At the price of eight thousand dollars, because the estate owed you for your services? A No; that was—(interrupted).

Q It was a separate and distinct consideration? A Yes, sir; that would come out of any amount that I paid them.

Q I did not mean that—whether it was not a separate and distinct consideration—whether what they owed you and the price you agreed upon were not separate and distinct and independent? A They were.

Q So far as the Housewright matter is concerned, you were retained to represent them, as I gathered from a letter there, at a fixed amount. Do you remember it? A Yes, sir. I don't know who fixed the amount. They fixed the amount evidently—Mr. Cunningham fixed the

amount of the retainer to me of one hundred dollars that she should pay me and that the trust company in Pittsburgh who was the executor of Richard M. Gulick to pay a similar retaining fee.

Q Were those paid? A No, sir; not to my knowledge. I don't think any money was ever paid to me by Mrs. Housewright or anyone representing the Gulick interest. I was paid by the McNulty interest.

RECESS.

Q Mr. Carton, I notice that in the bill of complaint in the 15th paragraph the assertion is made "With the exception of this last assignment (referring to the assignment of the taxes or title which you gave to James C. Gulick) the complainant still owns all the said tax certificates for the years prior to the proceedings hereinafter related and was in possession of the said premises holding said tax titles, as well as occupying said premises, for the benefit of the owners of said lands whose predecessors had been his clients and whose exact whereabouts were unknown to the complainant." Is it a fact that you were holding possession of that land for the benefit of the actual owners of the land? A Oh, no; it is not. When I was first moved to take care of the tax matter in 1910 or 1912, it was my idea then to protect it for those owners, because I knew Mr. McNulty had died and Mr. Gulick had died and I bought it in the first instance for them to take care of it for them so that nobody could get any outstanding interest, but in 1914, when I had this agreement, I did not consider it that I was holding it for them longer than that.

Q Well, do you know how it is that that allegation got in your bill of complaint? A I do not, other than I sent Mr. McCarter a history of this thing and I suppose Mr. McCarter has—in going over this history—has used that expression.

The Court: You read the bill before it was filed?

Witness: I think I did.

Q Now, as I understand it, Mr. Eichengreen communicated with you in the spring of 1922, February or March? A That is right; yes, sir.

Q You had made no effort to sell the property? A To sell the property?

Q Up to that time? A This property? No; I had made no effort.

Q He approached you? A Yes, sir; he came to my office.

Q And will you tell us what was said as nearly as you can recollect? A He had prior to that time spoken to me on several occasions casually about the property, asking me why I didn't develop it and clean up my title so that the property could be developed, and it would help the community there—help him. Then he came in on this occasion, which I think was late in March, 1922, and wanted to buy it and I recalled the situation, which he knew, that I couldn't sell it, that I had never foreclosed my tax title, that there were these two outstanding interests that I hadn't taken over yet, and that I didn't want to foreclose the tax title. I wanted to get rid of those interests in some way; I didn't think they had much in it, but I wanted to give something to them, and he then made

this offer. He said, "That will be all right." He said I could give him a deed and it would look better—he would start to develop it. I told him how utterly foolish that would be to give him a deed or for him to act under it, because it would be six months or a year or two years, if I didn't get the title, before I could get my tax title closed out.

Q How did the conversation come about, about giving a deed at that time; who suggested that? A Mr. Eichengreen suggested that, and suggested in every conversation after that to give him a deed for the property.

Q Did you tell him that you didn't have any right to give a deed under any circumstances? A I certainly did. I told him I didn't have any right any more than the tax right which wouldn't mean anything in taking title to develop a piece of property.

Q Did you tell him that you had nothing but a tax lien upon that property? A I told him I had a tax lien, which he well knew from prior conversation I had with him, and I told him I was under negotiations with both ends of the families that owned the fee, to get title from them.

Q Did you tell him that that was the only interest you had in that property?

Mr. McCarter: What?

Mr. Lane: A tax lien.

Witness: I told him that I had the tax lien; I said I was in possession of the property and had been for some ten or eleven years at that time and that I had negotiations under way to take care of the two outstanding interests; I told him there were two

outstanding interests. I don't know if I told him who the interests were at that time. I did later on. He insisted that I should give him a deed. He says, "You can clean that thing up." He says, "If you want to get the deed that way you can foreclose your tax title" and called me a fool for not doing it years before. His first offer was twenty thousand dollars cash. I said, "There is no use of talking about twenty thousand dollars; I can't do anything at this time and won't deal with you until I get this thing cleaned up." He then made the offer there that day or the next day.

The Court: We had all this. Do you want it again?

Mr. Lane: No.

Q Did you tell him that the interest you had in that property was solely that of holder of the tax sale? A I told him that I had—(interrupted).

The Court: Answer it, please.

Witness: I do not think a yes or no answer would answer it, your Honor. I told him I had that and told him I had these other two interests I just suggested to you, the interest of these other two that I was negotiating with them.

Q Did you tell him that you had that interest or a contract to purchase those interests? A No, sir; I did not tell him anything of the kind.

Q Then so far as anything was said between you two at that time the communication to

Eichengreen was that you had nothing in this property and no right in that property except that of the tax title, so far as your right was concerned? A I don't think he could get that impression from my conversation, because I had had prior to that time, the old 1914 contract which we were trying to renew after various parties died. He knew I had that and he knew from my negotiations at that time that I could close this title up and get these two interests.

Q Well, the fourteen contract to which you refer is the contract which you had drawn and sent to counsel and never was consummated? A Had been signed by Mrs. Housewright and myself.

Q Never delivered? A It was delivered so far as we were concerned, but never signed by the third party.

Q And never became an operating contract? A As between us two it became an operating contract and was so understood, as the correspondence shows, by both Mrs. Housewright and her attorney.

The Court: Between us two, who do you mean?

Witness: As between Mrs. Housewright and myself.

Q You were generally reputed to be the owner of that property, were you not? A Oh, possibly so. I imagine the people around there—they never saw any of the McNulties and Gulicks—who lived around there, I assume they probably thought I was the owner of it.

Q And Eichengreen understood you to be the owner of that property? A He understood

me to be the owner in just the manner in which I have told you, which he knew many months, two or three years before March, 1922.

Q Is that what you meant when in the 18th paragraph of your bill you say that the defendant came to you expressing his desire to buy the property and "complainant at that time was in possession and had been in such possession for the past ten years and was generally reputed to be, and understood by the said Eichengreen to be the owner of the property?" A It was generally understood that I was the owner in that way without people going into the detail as to what my ownership consisted of.

Q Did you tell Eichengreen as a matter of fact you were not the owner of that property, that you had no right in that property except the tax title, so far as legal right was concerned, and all that had preceded were negotiations by which you were hoping to acquire the property at some time? A I told him exactly what the situation was, just as I have told you, that I had the legal right to be in possession of it. I think I told him that, which I did, under my tax titles, and was in possession of it, but told him I could not sell it; I could not give title, that there were two outstanding interests of owners that I was negotiating with and I would either have to get that interest or if I couldn't get it by negotiation I would have to foreclose my tax title, before I could sell to him or anybody else.

Q Did you tell him that the outstanding interest was the ownership of another fee? A Yes, sir; I told him the McNulty and Gulick interests—(interrupted).

Q Did you tell him as to what you were going to pay for the outstanding interest or what your contract was? A I did not.

Q Did he ask you? A He did not.

Q And he made the offer to you of twenty thousand dollars without regard to what you might have to pay to the outstanding owners of the fee and without making any inquiry as to what your negotiations were? A He evidently did.

Q And you told him that you wouldn't sell for less than twenty-five thousand dollars? A Yes, sir.

Q You acted to him as if you had the control of the sale of that property, didn't you? A No, I did not. And did not tell him so. I told him I wouldn't. He wanted me to put this in writing—wanted to give me five hundred right there; and he must have known when I wouldn't put it in writing or wouldn't take his money what the situation was. I told him I couldn't do that, because I hadn't the title yet in shape where I could do that, that I had to get—either foreclose that tax title or I had to buy the two outstanding interests.

Q Notwithstanding the fact that you declined to make a contract which would be enforceable, nevertheless you had a contract; is that right? A I wouldn't make any written contract with him as he wanted, but the understanding was and the agreement was, and he wanted to shake hands to it and did. I was his friend, and when I got them in shape where I could sell, I would sell it to him for twenty-five thousand dollars, and that was the agreement, and I did shake with him on it, and all my efforts thereafter was to get it in shape so I could carry out the agreement with him.

Q If that is so and he made this offer of twenty-five thousand dollars, why didn't you

put that contract in writing so it would be enforceable as between you two? A I wouldn't put any contract in writing with anyone to sell them something I didn't have complete title to yet—something might happen—I might never be able to do it. Something might happen that I couldn't take care of the tax foreclosure—I wouldn't do such a thing. He knew about it and we talked about it.

Q Where did you get your information as to who were interested in the property? A I had it for years, Mr. Lane.

Q Then there was never a time that you couldn't, if you desired, get in touch with those people who were interested in the property, is that right? A I should qualify when I say I had it for years. After, when these parties kept dying off—(interrupted).

The Court: Won't you just answer the question?

Witness: I try to do so the best I can, your Honor. After these parties died off there were times then when I wasn't in communication with them and didn't know where to get in communication with them. I was in touch with John C. Gulick and he died; I was in touch with Margaret McNulty, and she died, and it took some time thereafter to pick up the people again.

Q You immediately wrote to the counsel representing each interest, did you not, immediately after you had made your agreement with Eichengreen? A I don't know. I don't know the exact date of this agreement with Eichengreen. I know I had written before and I know I wrote

afterwards. As to how near any of those letters shape up with the time Mr. Eichengreen was in my office I don't know.

Q My question is directed to this. You didn't get any other information after your contact with Eichengreen than you already had as to who represented these people. You immediately communicated with counsel with whom you had previously been in communication? A Yes, sir; I kept on writing to Mr. Lawrence, and Ronon.

Q Eichengreen, you say, on several occasions came to your office and objected to the lack of speed with which this thing was being put through? A I would say the first year—(interrupted).

The Court: Please answer the question.

Witness: Your Honor, I can't—(interrupted).

The Court: Yes, you can now. You can't make a speech each time.

Witness: I don't want to.

The Court: Or go into the whole history of it again. You have told me your whole story.

Witness: At first he did not. In the summer of 1923, he did criticize me for the speed I was making or not making.

Q No objection until the summer of 1923? A No objection 'till the summer of 1923, late in August.

The Court: You have answered.

Q Then he came to you in August, 1923, and was very much excited over the delay? A

He said I would have to close the thing out. He said that there was no reason why it shouldn't be closed out in a month. I had been promising from time to time and I told him in my judgment the thing could be closed out in about a month, I had my arrangements then—about a month.

Q You also said it would be off it you didn't close it? A I didn't say anything of the kind.

Q I thought you so testified this morning? A I did not.

Q I thought you testified—if I am wrong correct me—"he said it would be off unless you closed it in a month" and you said it would be off then? A I don't think I ever testified to anything of that kind in the record, because nothing of that kind—(interrupted).

Q Don't you remember you said in your examination this morning "off"? A I do not. I may have said that, sir.

Q In what connection did you use it, and wasn't it in connection with that August episode? A I don't know that I said it in that regard.

The Court: My recollection is you said that after he had criticized you, you said that it could go off now, you were not anxious to sell.

Witness: Yes.

The Court: Or words to that effect.

Witness: I think that is so, your Honor.

The Court: I think that is what you said, you resented the criticism.

Witness: I did.

The Court: And in substance said that it could be off now, that you were not anxious

to sell. Isn't that it? Do you recollect that?

Witness: Yes, sir; I think that is so.

The Court: That is what Mr. Lane is speaking of.

Witness: And then the understanding was—(interrupted).

Q Before we go to that, what he said was that you were delaying it and he was tired of the delay and there was no reason for the delay and unless it would be closed at once it would be off? A No, he said—never said anything about there was no reason for the delay.

Q What did he say? A He came in and said to me that I had been carrying this thing along about a year and a half now and he was in doubt as to whether he was going to get this property or not, and he wanted this thing closed up; I had promised him from time to time that I would have it closed up and was there any reason why it shouldn't be closed up in a month. I at that time took up in detail with him what my troubles were—what my difficulties were—and told him if he could make these people work any faster he could see them himself and gave him—told him who the people were and gave him their names and addresses of these two attorneys, not thinking that he would do so, even to help me, but I did tell him that because I didn't want him to think I was fooling him. I told him what I was doing.

Q What was it about "off"? A I don't know whether it was at that occasion or not. Likely it was. I know on two or three occasions when he would talk to me about these things I would tell him I didn't want to be bothered with

it, I was busy with other things, if he didn't want to carry out his agreement we would abandon the thing; I would take my own time to fix it up. I may have said something on that occasion if he didn't want to carry out his agreement the thing would be off as far as he was concerned, but he never wanted it off.

Q As I understand it you told him that you were doing as much as you could and if he could get them to speed up it would be—he might do it, as I understand you? A Yes, sir; I did.

Q Now, as a matter of fact, Mr. Carton, the correspondence shows, and did you not know at the time, that you never made any definite offer with respect to the McNulty heirs until August, 1923, when you offered two thousand dollars? That is after negotiations were resumed in 1922? A I had had an arrangement with him in 1916, Mr. Lane.

Q I am now talking about after the negotiations were resumed in 1922, you never made any—although you opened negotiations in March, 1922—you made no offer until August, 1923, of two thousand dollars? A I don't know what the correspondence shows. I know I talked with Mr. Ronon on the 'phone and had Mr. Ronon down there on the property and made this offer long before that.

The Court: After your arrangements with Eichengreen?

Witness: Eichengreen.

Q Can you tell me what the offer you made prior to August, 1923, was? A I think my offer was two thousand dollars. I think that was my offer all along.

Q I know, but doesn't the correspondence indicate that the first time you made your offer of two thousand dollars was August of 1923? A Maybe it does, Mr. Lane.

Q I direct your attention to the letter of August 23, 1923, and to the words, "However, and without prejudice, I am willing to make your client an offer of two thousand dollars for her one-half interest in the property, which I consider, under the circumstances is a very fair one," whether in view of that letter you will say that you made an offer on this property after the resumption of negotiations in 1922 before that offer? A Yes, sir; I talked with Mr. Ronon several times and I think that is only a follow-up of the verbal talk we had about this very same proposal.

The Court: Confirmation of the prior offer?

Witness: Confirmation; putting it in writing.

Q And you say that in view of Mr. Ronan's letter of August 22, 1923, to which this letter of August 23rd was a reply in which he says, "Will you kindly advise me what sum you will be willing to pay Miss McNulty for quitclaim deed, and also the price which you will be willing to transfer the property to Inez H. McNulty?" A This letter of Mr. Ronon's that you refer to is subsequent to my offer. He already had my offer. Am I right about that?

Q No, sir. That letter is August 22nd and your offer is August 23rd. A The only explanation I have of that is that he hadn't any written offer of mine and sends this communication to me to get my offer in writing, I assume.

Q What is the significance when he asks what sum you will be willing to pay and what sum you will be willing to take? That doesn't indicate an offer by you before, but indicates negotiations between you of a give and take proposition. In view of that will you say before that you had made the offer of two thousand dollars? A Yes, sir.

Q Isn't it a fact, according to your present recollection that from August, or from April, 1922, down to August, 1923, you were negotiating upon a basis as to what you would take for your interest, or what you would give her—what you would take for the tax title, or what you would give for her interest? A I do not think that is so during that period. Long prior to that time I know on many occasions I asked them to pay me back and take the property back—pay what interest I had in it—I do not think that took place after 1921, though.

Q Now, I show you letter of August 10, 1922—copy, rather—from you to Mr. Ronon—that is 1922, now, "Something must be done to clear up the situation one way or the other, and if your clients are not in a position to pay, I wish you would let me know exactly the interest your client holds and immediately upon receipt of your reply I will make you an offer for that interest and if your client isn't in position to pay"—that indicates you had been talking about having your interest paid off by the McNulties, doesn't it? A No, I don't think it necessarily implies that. That statement was made there. I don't think there was any talk by Mr. Ronon about his client paying, because there was never any willingness expressed on behalf of these parties to pay or do anything else but sell.

Q Does it indicate— Refresh your recollection now from this letter. Will you say that prior to that time, August, 1922, now, there had been an offer on your part to buy at a certain price? A I don't know whether any certain price had been set prior to that time.

The Court: August, 1923?

Mr. Lane: That is 1922, Vice-Chancellor.

Q Now, between August 10, 1922, your letter to Mr. Ronon, and the letter of April 10, 1923, your letter to Mr. Ronon, there is no correspondence at all, is there? A Well, the strange thing in this is, there is no correspondence that I have here. There is a lot of this correspondence I am very sure took place that I have not been able to find, but according to my books this is all I have.

Q Your letter of April 10, 1923, "I have been expecting to hear from you concerning the McNulty matter about which I communicate with you some months ago." That would indicate there had been no correspondence, wouldn't it? A Not in some months, yes, sir.

Q Now, at this talk that you had with Mr. Eichengreen in August of 1923, or whenever it was, that he expressed dissatisfaction, what information did you give him? A With regard to the interest in this property?

Q Yes. A I gave him the names and addresses of the two attorneys with whom I was dealing, the names of Mr. Ronon and Mr. Lawrence.

Q Did he tell you that he knew Mr. Ronon at the time you gave him his address? A He did not.

Q Did he tell you in 1921 he had received a letter from Mr. Ronon? A He did not.

Q Did he express any thought that he knew Mr. Ronon in connection with the McNulty heirs? A Didn't indicate that he knew him at all.

Q Did you tell him what your arrangement with the McNulty heirs was? A I did not.

Q Did you tell him what your arrangements with the Gulick heirs were? A No, sir.

Q But you did tell him that he could go on and negotiate if he thought proper to do so? A I told him if he could speed the matter up, get them to move any faster than I had been able to, he could go try himself.

Q What was the idea? A It was to answer his criticism that I was not acting fast enough, that I was taking care of my own business and not attending to this.

Q So far as you knew he had no idea as to who the parties with whom you were negotiating was; you knew that he had no idea what your previous negotiations had been, and yet he was to speed the negotiations of which he had no knowledge. Now how could he do that? A There was no agreement he was to do anything of the kind nor did he agree to do it. I simply suggested if he could speed this up and make these people move faster than I am "you can do it yourself."

Q Was any suggestion made as to how he could accomplish that thing? A That was the end of that incident. I think I did show him a letter that has been referred to here, showing him the difficulties, that some woman had left her husband, couldn't get a deed from him; someone else in California—I showed him those to justify the time I had been taking in getting this closed

up—letter from one of the attorneys. I forget which one.

Q What I am trying to get at is whether you expected he would leave that office to go out and do anything? A Certainly not.

Q So that the expression that if he could speed the matter up he might do so, meant nothing? A Meant nothing any more than to appease him or satisfy him.

Q Why did you give him the address of the lawyers? A He wanted to know. He pinned me down and wanted to know with whom I was dealing and about how long it was going to take me to clean this thing up.

Q Did he write down the addresses? A I do not recall. I remember getting a letter from Mr. Lawrence. And I think I had that letter on my desk at the time. I remember giving him the name of John J. Lawrence, Madison avenue, New York.

Q Did he make a note of it? A I couldn't say.

Q Was he to call on these people? A Oh, no, he was not to call on them. I showed him that to indicate to him that I was on the job and was trying to clean this thing up so I could carry out my agreement with him.

Q Didn't you tell him he might call on them? A No. I told him if he could speed the matter up he might go try it himself. I made that foolish remark.

Q What did you mean by that? A Simply to let him know I was doing the best I could and that he nor anybody else could make it any faster.

The Court: With asperity?

Witness: I think I did, your Honor.

Q What names did you give him? A I gave him the name of John J. Lawrence, 342 Madison avenue, New York; and Charles Ronon, Land Title Building, Philadelphia.

Q Did you give him any other names? A I don't think so. I gave him the names of the parties in interest on this letter with which Mr. Lawrence was dealing with and who he had to get deeds from, but the two names I gave him were the names of the two attorneys.

Q In the 19th paragraph of your bill, referring to this conference you say, "Eichengreen visited the complainant from time to time to inquire how the details of getting the title were progressing, and the complainant frankly explained the whole situation, naming the attorneys and the parties, so far as he knew them and expressing the hope and belief, from his correspondence with the attorneys, that title could be obtained and passed to said Eichengreen within a month; Eichengreen expressed the belief that he could accelerate the matter and the complainant thereupon told him that if he could hurry the matter up, he was at liberty to call upon the parties and speed the matter along." Now is that a true representation of what occurred at that conference? A No; my recital of it is nearer to what actually happened on the accelerating part of it.

Q So that there was no attempt so far as you knew of his going to see the parties and hurrying the matter up? A I had no intention that he would do anything of the kind or that there was any intention of doing it.

Q Do you know when that talk took place—can you place it? A To my best recollection it took place in the latter part of August, 1923, possibly between the 20th and 25th.

Q I believe you have already stated you did not tell him any of the details of your offer? A I did not.

Q And he did not ask how much you were paying for this property? A He did not.

Q What was the price of the property figured on—the value of the property? A Which price are you referring to now?

Q The twenty-five thousand dollars. A It was—first the valuation came up by his suggestion—his offer of twenty thousand and twenty-two thousand five hundred and then I made the suggestion of twenty-five thousand.

Q And you thought the property was worth twenty-five thousand dollars? A I thought if I could get it it was, yes.

Q What was your thought as to the value of that property? A It was impossible, Mr. Lane, at that time, to tell what value the property had. The property up to that time had not been active in that vicinity. It was worth very little. Since then it has become very valuable.

Q At any rate that price, the twenty-five thousand dollars was fixed not by figuring any interest you might have in the property particularly, but upon the value of the property as such? A It was fixed—it was suggested by him, because of his notion of the value contained in his offer of twenty thousand dollars.

Q There wasn't any talk with respect to your interest in the property, was there? A At that time?

Q Yes. A Only the talk that I had not yet complete title in myself.

Q Well, did he give any explanation then as to why it was he was willing to pay you the full value of that property, knowing, as he did, that

the only interest you had in that property was the tax lien against the property? A He knew that I was going to get the full interest before I could carry out my contract with him and give him full title—tax title and everything else.

Q You were not going to act with respect to that as his agent or attorney, were you? A Certainly not; as my own—representing myself.

Q And he agreed to pay you that twenty thousand dollars—agreed first to pay twenty thousand dollars and then twenty-five thousand dollars without any consideration of how much you were to pay to get the property? A Yes, sir.

Q Although he knew that the people who really owned that property and could give the fee were the McNulties and the Gulicks? A I don't know whether he knew that at the time we made this contract or not. He may have known it. He did know it later on in our negotiations, when I told him.

Q Did you know that he had, in 1911, an option to purchase this property? A I didn't know he had an option, but I knew—I did not learn—I heard afterwards that someone had made an offer for this property and wanted to buy it. That is what I had reference to in my direct examination—I understood they were going to start a community there.

The Court: What?

Witness: Start what I understood a Jewish community there.

Q I show you paper dated February 14, 1911, and ask you whether you ever saw that paper before? A I do not recall ever having seen it before.

Q Do you know Mr. Gulick's signature? A Yes, sir.

Q Is that his signature? A I should say it was.

Q Mrs. McNulty's signature? A That is Mrs. McNulty—Margaret A. McNulty.

Q Do you know her signature? A That looks—I think that is her signature.

Q And do you know Mr. Eichengreen's signature? A I believe that to be his signature.

Q Now, do you say you did not see that—you never saw that? A I never have any recollection of having seen that paper before.

Q Didn't Eichengreen talk to you about that? A Never in his life.

Q Didn't you know about the institution of a suit by him to enforce specific performance of that contract? A I heard something about it, yes, sir.

The Court: You have heard or had heard?

Witness: I had heard, your Honor, 1911 or 1912, there was a suit that was brought and abandoned.

Q You say you heard that or knew of it in 1911 or 1912? You knew that in 1911 or 1912? A I knew it at the time it happened, whenever it was. My recollection—at that time it was brought to me by some of the Gulicks or the McNulties.

Q You were representing at the time the McNulties, were you not?

Mr. McCarter: What time?

Q 1911 or 1912. A Yes, sir; the Bennett litigation was on at that time.

Q Then you knew. I show you a transcript of the record in the case of Morris Eichengreen against Margaret Gulick and others—you knew of the institution of that suit, didn't you? A I knew of it, yes, sir.

Q At the time? A I don't know whether at the time or not, but someone brought it to my attention—some of the Gulicks or McNulties told me after the thing was abandoned, and it was in the carrying out of the eight thousand dollar option he had—that was the figure that was fixed with me as the valuation of this property.

The Court: Who "they"?

Witness: Mrs. Housewright and—well, Mrs. Housewright.

Q As I understand it, it was the cause of the Eichengreen contract to purchase, made on the 14th day of February, 1911, for eight thousand dollars was made that the figure of eight thousand dollars was considered in your subsequent negotiations between the parties for the purchase of this property; is that right? A They told me they had an offer of eight thousand dollars for it that had been abandoned, and that is how that figure was suggested. I am quite sure you are right about that.

Q Now, when the negotiations were taken up by Mr. Eichengreen in 1923, was anything said about this old option which he had held on this property? A Never a word.

Q Wasn't mentioned by you and was not mentioned by him? A No, sir; never.

Q He didn't suggest that he was not being called upon to pay twenty thousand dollars or

twenty-five thousand dollars for property that he at one time had a contract to purchase for eight thousand dollars? A He did not, because the offer was his own, what he was to pay for it.

Q Now, after you talked with Mr. Eichengreen in August, 1923, what did you do with respect to procuring this title? A Continued the same negotiations I had under way at that time with these two attorneys.

Q Now, where are the letters which were sent subsequent to that date? A I imagine they are here. I have but one file here, letters to John J. Lawrence, August 17, 1923.

Q Was that after or before? A I don't know.

The Court: After or before what?

Q After or before you talked with Eichengreen? A I think it is before. That is my best recollection. Letter from Mr. Lawrence, August 24, 1923, another letter from him, August 29, 1923, saying he is away on his vacation, writing from Long Island; letter of mine to him on September 4, 1923, one November 8, 1923—that is all.

Q And there is nothing between September 4th and November 8, 1923? A Apparently not, in the file.

Q Now where is your correspondence with the McNulty people? A I think you have it over there.

Q The letter of August 23, 1923, is one that you think you had received at the time of the conference—or had sent, rather, at the time of the conference in which you made the offer of two thousand dollars? A No, I think that was

after the conference, and letter back from him on August 29th was after. I might state, Mr. Lane, that that memorandum there is a note I took of my telephone conversation with Mr. Ronon when we agreed upon the twenty-five hundred dollars.

The Court: What is the memorandum you refer to?

Witness: That memorandum I made there in lead pencil.

Mr. McCarter: That don't mean anything, "memorandum in pencil"; on what letter?

Witness: On the letter from Ronon to me under date of August 29, 1923.

Mr. McCarter: What does he say?

Witness: He gives me the telephone number, and simply says twenty-five hundred dollars.

Then you have a letter dated November 8, 1923, and here is one out of order, September 11, 1923.

Q The next one after the letter of August 29th, is the letter September 11, 1923, is it not? A Yes, sir; it refers to mine of the 6th which I do not seem to have.

Q Have you a copy of your letter of the 6th? A Not unless it is here. Maybe you have it.

Q We have no letter September 6th and you have no copy of it. A I haven't any copy here. He referred to mine of September 6th in his of September 11th, and that is the last until January 16th.

Q Have you any recollection now what this is about "I regret that you were not in town

when I telephoned you on Friday, August 31st, for the reason that Miss McNulty was offered a considerably larger price for her interest in the property than you offered." Now apparently he tried to reach you on the telephone on Friday, August 31st, and did not reach you. A Yes, sir; I know what that means. Not from that letter, but from my talk with Ronon after. When Mr. Eichengreen went there and saw Miss McNulty, before he let her close he tried to get in touch with me on the telephone and I was up in Massachusetts and he couldn't do so, and this man offered the money and she took the money and gave him a deed for it.

Q Now, Mr. Carton, in the letter of Ronon to you on August 29th he states, "I shall be obliged if you will call me on the telephone when you return to the office on Friday, so that we may come to some definite arrangement." That is the 29th? A Yes, sir.

Q On September 11, 1923, he writes you, "I regret that you were not in town when I telephoned you on Friday, August 31st, for the reason that Miss McNulty was offered a considerably larger price for her interest in the property than you offered?" Yes, sir.

Q Now, in view of that, will you say that you had another telephone conversation or a telephone conversation—(interrupted). A I had.

Q Wait—with Mr. Ronon some time between August 29th and August 31st, at which time by letter he directed you to call him up? A I would say I had a telephone conversation with him making this proposition—agreement upon this twenty-five hundred dollar sum. Whether it was before or after that date I don't know, but—(interrupted).

Q It couldn't be after the 31st, Mr. Carton, because by the letter of September the 11th—well, I will withdraw that. You say—rather, he says he regrets you were not in town "when I telephoned you on Friday, August 31st, for the reason that Miss McNulty" and so forth—now you also testified as I understand it that the reason why he wanted to reach you by 'phone on that day was that Eichengreen was attempting to buy the property, is that right? A That is what he told me afterwards. I don't know whether it was that day or not, but when he was there buying the property—when he did get the deed for it—when he was there and got the deed from Miss McNulty for her interest on that day, he tried to telephone to me.

Q He says, "On Friday, August 31st." A It may have been that day.

Q Then the conversation which you had had by telephone with Mr. Ronon at which the price of twenty-five hundred dollars was offered and accepted must have been between the 29th and 31st, is that so? A It may have been; I don't know.

Q And in his letter to you of the 29th he tells you to call him on Friday, the 31st, and in his letter of September the 11th, he says he is sorry that he missed connections on Friday, August 31st? A Yes, sir.

Q Now, in view of that, will you say that there was still some other telephone message between those times at which the price of twenty-five hundred dollars was offered and accepted? A Yes, sir; I talked with Mr. Ronon on the telephone many, many times on this. I talked to him on an occasion about this time agreeing to pay his client twenty-five hundred dollars for a deed for her interest.

Q I am not interested in anything except this time. On August 29th—or August 23rd, rather, you offered the twenty-three hundred dollars or the two thousand dollars. Now, it must have been after that that you offered the twenty-five hundred dollars, and I am asking you whether in view of that correspondence in which he talks of the telephone message which was to be made but did not connect, whether you still say there was a telephone message that did connect, that you offered twenty-five hundred dollars at that time? A Yes, sir. I don't know just what date, but along about that time.

Q Now, "Your favor of the 6th instant received on my return" he refers to in the letter of September 11, 1923. Do you know how it is that that letter is missing from the files? A I do not. I would be glad to have the letter.

The Court: You do not. That is all.

Witness: Several of these letters are missing.

Q Now, you had no talk with Eichengreen after your conference in August that you have referred to until after he purchased the property, did you? A That is right.

Q And when was it that you first ascertained that he had purchased the property? A I knew —I think the first time I knew that he was the fellow who bought it was in October or November, 1923. I understood before that time that it had been sold, but I think the first time—the McNulty interest had been sold—but I think I did not know Eichengreen was the one who bought it until October or November. That is my best recollection.

Q How did you find that out? A Harold Snyder—young real estate man at Avon, I think it was—told me, or told one of the boys in the office that he understood Eichengreen had bought this property and when I learned that I went post haste after Eichengreen.

Q Did you go to Eichengreen's office? A Yes, sir; I went into his office, and met him on the street in front of my building and took him in my office.

Q Wasn't the first time you knew that Eichengreen had anything to do with the purchase of that property when Eichengreen came down to your office and tendered you the taxes? A No; that was months after.

Q When was that? A That was either in December or January, 1924. Never. He never came to my office to tender me any money—any tax money in his life. What did happen in that regard—(interrupted).

The Court: Answer the question.

Witness: No; he did not.

Q Were you ever tendered any money for taxes? A I may tell you what happened—(interrupted).

The Court: Won't you answer the question?

Witness: My answer would be no, although I think they intended to make the tender.

Q What did happen? A Frank Bennett, the collector of taxes, told me that Mr. Eichengreen was paying off the taxes and had made a de-

posit for the amount that he claimed was due to me and wanted to know if I would accept it and I told him I wouldn't. That is what happened in regard to it.

Q And subsequent to that didn't Mr. Eichengreen come directly to you and tender you the taxes? A No, sir.

Q Did you see him with respect to that at all? A No, sir; nor did he see me.

Re-direct examination by Mr. McCarter.

Q Do you recall when the visit of Bennett the tax collector was, at your office? A I do not definitely. I would say it was around the first of the year 1924, or late December, 1923.

Q And do you remember the amount of money he said he had or wanted to give you or whatever occurred? A My recollection is that he told me that he had brought twenty-eight hundred dollars—either twenty-eight or twenty-nine hundred dollars.

Q And was the amount he spoke of the equivalent of the amount of money you had already invested? A No, sir; my taxes and interest at that time amounted to considerably more than that.

EMELIUS M. BENTELL, sworn for complainant.

Direct examination by Mr. McCarter.

Q Mr. Bentell, you live in Avon? A I live in Neptune City, what they call West Avon.

Emelius M. Bentell, cross.

Q Did you formerly occupy any official position there? A Yes, sir; I have been councilman there and collector.

Q Do you know Morris Eichengreen? A I do.

Q Did you ever have any conversation with him in which he spoke of having purchased this property in this suit? A Well, it wasn't a conversation, but he offered me information about it.

Q What did he say and when was it and where? About when was the talk and where did it occur? A Why, it occurred on Steiner street or Steiner avenue where I lived, in front of my house. He was in a machine.

Q And about when was it, do you remember? A Why, it is a little less than a year and a half ago. I think it was in the fall or early fall of 1924—yes, I think 1924 is the year.

Q What did he say about it? A Why, he said that he bought that property that Mr. Carton had been holding, and he said Mr. Carton had agreed to sell him that property for twenty-two thousand five hundred dollars, but Mr. Carton had been long in carrying out the agreement, and he had become dissatisfied, he hunted up the heirs himself and bought it from the heirs and it cost him about five thousand dollars.

Cross examination by Mr. Lane.

Q How did this conversation come to take place? A He oftentimes stopped there and talked to me.

DANIEL GOULDY, sworn for complainant.

Direct examination by Mr. McCarter.

Q Where do you live? A Neptune City.

Q And do you hold any official position down there? A Yes, sir; I am road superintendent and officer, policeman.

Q Do you know Morris Eichengreen? A Yes, sir.

Q Did you ever have any chat with him in which he mentioned the purchase of this property in dispute in this suit? A Well, he just told me the same as he told Mr. Bentell.

Q Never mind what he told Mr. Bentell, what did he tell you? A Well, he told me that he had. He said, "I just got that property that Mr. Carton claimed to own," and he says, "I got it a great deal cheaper," he says, "I got it for five thousand dollars." He said he had offered him twenty thousand and he had got it for five thousand.

Q Did he mention the final figure that he had offered Carton? A Twenty thousand dollars, that is what he told me.

Q And that he had gotten it for five? A Gotten it for five.

Q Did he say from whom he had gotten it? A He said the heirs; they were all over; some in Pittsburgh, and different places.

Cross examination by Mr. Lane.

Q Tell us all he said about Carton claiming to own the property. You said he said Carton claimed to own it. What did he say about that? A He was just talking, he had got it cheaper. He said he had offered Mr. Carton twenty thou-

sand dollars for the property and he got it for five.

Q You used the expression "he got that property that Carton claimed to own." What did he say about that? Is that all he said or did he just say, "Claimed to own?" A That is about all.

Mr. McCarter: I offer in evidence the agreement drafted by Mr. Cunningham and referred to by Mr. Carton in his evidence.

(Paper marked Exhibit C. 10.)

Mr. McCarter: Now, I do not want to encumber the record. The search shows these tax certificates. We have them here. Some of them are in fee simple and some are for terms of years. I offer the batch, one from H. S. Kinmouth to James C. Carton, and the rest from the collector of taxes for the taxing district of Neptune City.

(Papers marked Exhibit C. 11.)

JAMES D. CARTON, recalled for further

Cross examination by Mr. Lane.

Q These papers that have been offered in evidence and marked Exhibit C. 11, which appear to be certificates of sale of real estate, are those the instruments which you referred to in your various communications when you referred to deeds, and deeds in fee—are those the certificates you referred to? A These are the deeds. I might say that all of them do not seem to be here. A few years missing, but they are on the search—but these are the ones.

James D. Carton, further cross.

Q Whatever they are, they are the certificates, are they not? A They are the ones I had reference to.

Q Now I show you a deed from Mr. H. S. Kinmouth to James D. Carton and ask you whether you prepared that deed? A I think I did.

Q And was it at your suggestion that the interest of Kinmouth was gotten out of him and into you by deed? A Yes, sir; that is the way we do it in my practice, by quitclaim deed, showing what it is for.

Q That is usually so where the person who is taking the quitclaim deed is the owner in fee of the property, isn't it? A I do not think so. I think that is the way to take care of it, because I hadn't been paid and I wanted to continue his rights. I was not cancelling his certificate. He had already served notice under that to redeem, and so forth.

Q And the interest of Mr. Kinmouth was the interest as the holder of a certificate of sale for the sale of two years taxes, wasn't it? A I don't know whether it was two years or not. I thought it was one.

Q Did you give a deed for this property to the City of Neptune City? A Give a deed?

Q Yes. A No.

Q Didn't you give a deed for a piece of this property as a street? A Yes, I think I did.

Q Have you that deed here? A No, sir.

Mr. Lane: I offer in evidence deed given by James D. Carton and wife to the Borough of Neptune City dated November 21, 1921.

(Paper marked Exhibit D. 5.)

James D. Carton, re-direct.

Re-direct examination by Mr. McCarter.

Q Did you ever follow up your other tax titles with notices to the owners? A For the first two or three years I did, Mr. McCarter, and after that—

The Court: You mean the present tax title outside of the Kinmouth title?

Witness: For two or three years I served notices under the statute and then abandoned it. I didn't even record some of my certificates.

COMPLAINANT RESTS.

(Adjourned until tomorrow morning at 10 o'clock.)

IN CHANCERY OF NEW JERSEY.

December 10, 1925.

Between

JAMES D. CARTON,
Plaintiff,

and

MORRIS EICHENGREEN and EICHENGREEN LAND COMPANY, INC., a corporation,
Defendants.

Transcript of shorthand notes of testimony taken before his Honor, John H. Backes, Vice-Chancellor, in the Chancery Chambers, Newark, New Jersey, at 10:00 o'clock A. M., in the presence of Robert H. McCarter (McCarter & English) for the plaintiff, and Merritt Lane, Esq., for the defendant.

Mr. McCarter: I just want to recall Mr. Carton a moment. We found some of those letters.

JAMES D. CARTON, recalled.

Examination by Mr. McCarter.

Q Since adjournment yesterday have you caused another search of your letter books to be made? A Yes, I have, Mr. McCarter, when I found— (interrupted).

The Court: You have?

Witness: I have; yes.

Q And have you found a copy of the three letters that were marked respectively Exhibit D. 1, D. 3 and D. 4, being the letters of September 12, 1923, from you to Ronon; of August 3, 1923, from yourself to Ronon; October 18, 1922, from yourself to Mooreshead & Johnson? A Yes, sir.

Q Are they in the book here? A Yes, sir.

Q Now, have you also found that letter of September 6th, to which allusion was made yesterday? A Yes, sir.

Q From yourself to Ronon? A Yes.

Q We did not have it in our files yesterday? A Yes.

Q Yes. Will you produce those copies, including the one of September 6th? A Might I be permitted to explain about these letters, your Honor?

The Court: Answer your counsel. Your counsel is conducting your case.

Q Who made the earlier examination for you on your behalf? A A young man in the office named Mr. Hampton, who made this examination about six or eight months ago.

Q Yes. A There has been no examination made since.

Q No. You did not personally do it. A I did not; no.

Q After the examination yesterday you caused, under your personal supervision, another examination of the books to be made. A I did. I went home last night to find out—see

if those letters had been copied in my book. Those two Mr. Lane referred to and one that he did not produce. I found they were there.

Q Now, in the first place, look at the letter of September 6, 1923, from Carton to Ronon, being the letter that is referred to. Do you find that? A Yes; I found that.

Q Read it. A It is, "September 6th, 1923. Gerald Ronon—" (interrupted).

Q Do not speak so fast. A "Gerald Ronon, 23-31 Land Title Building, Philadelphia, Pa. Dear Sir: I duly received yours of the 29th ultimo in the McNulty matter, and am sorry I was not in when you called me on the phone last Friday. I tried to reach you by phone yesterday and today, but found you were out of the office. As I am very anxious to get this matter closed—" (interrupted).

Q "Closed out"? A (Continuing.) "closed out so that I can arrange for funds to adjust the taxes and outstanding assessment liens. I wish you would—" (interrupted).

The Court: Have you the— (interrupted).

Witness: I have made a copy.

The Court: Let the copies go in. Don't need to read that. Have you copies of it?

Mr. McCarter: Yes.

The Court: Hand them over to the reporter.

Mr. McCarter: I think he has finished.

Witness: "I am very anxious to get this matter closed out so that I can arrange for funds to adjust taxes and outstanding assessments."

Q You did not read it all. Read it all, Jim. A I had read up to that point.

Q "I wish you would get your deed"? A "I wish you would get your deed in shape and have it executed at your earliest opportunity and arrange an appointment with me for closing."

Q Yes.

Mr. McCarter: I offer that letter in evidence.

The Court: This is a copy?

Mr. McCarter: Yes, sir.

Witness: I found a copy of that letter with the other two letters offered here yesterday in my book.

(Letter entered in evidence and marked Exhibit P. 12 of this date.)

Mr. McCarter: That is all. Any questions?

Mr. Lane: No.

The Court: The other two letters the witness referred to are already in.

Mr. McCarter: They are already in, your Honor. That is all, sir. Now we are through.

HERBERT BOGGS, sworn on behalf of defendant.

Direct examination by Mr. Lane.

Q Mr. Boggs, you are a lawyer? A Yes, sir.

Q With offices in Newark? A Yes.

Q Do you know Mr. Carton? A I think I saw Mr. Carton once. Perhaps more than that, but I have no intimate acquaintance with him.

Q Do you remember seeing him with reference to a matter involving a Mr. Eichengreen? A I think I wrote a letter to him and he came into my office.

Q You were at that time retained by Eichengreen with respect to the tax situation? A No; I hadn't been retained in any way.

Q What was your relationship to the transaction? A Why, my recollection now is—it is two years ago and I haven't charged my mind with it any—my recollection is he came into the office with a letter from Mr. Jones, and I talked the matter over with him, and afterwards Mr. Jones saw me.

The Court: No.

Witness: That is right. Mr. Jones. And we discussed the matter. Mr. Jones was really Mr. Eichengreen's—or whatever his name is—counsel. And then I wrote this first letter to Mr. Carton, and he came in to see me.

Q And did you subsequently receive a letter from Mr. Carton? A I received a letter from him afterwards; yes.

Q Have you it here? A Yes.

Q Produce it. A (Witness produces letter.)

Mr. McCarter: I offer it.

Witness: That is a letter came to me in the mail in the ordinary course.

Mr. Lane: What is the date, please?

Witness: Beg your pardon?

Mr. Lane: What is the date?

Witness: April 22nd.

Mr. Lane: Yes.

Q I note in that letter—

(Letter received in evidence and marked Exhibit D. 6.)

The Court: Letter from whom?

Mr. McCarter: From Mr. Carton to Mr. Boggs.

The Court: Yes.

Q I note in that letter, Mr. Boggs, Mr. Carton says, after referring to the fact that you wrote him, "You will recall that shortly thereafter I called upon you in Newark and stated to you briefly my contention concerning Mr. Eichengreen's efforts to defraud me out of this property after having entered into an agreement to purchase it from me. You were then to take the matter up with Mr. Eichengreen, informing him of my claim and if he was not satisfied you were to proceed to bring a suit, in which event, as I stated to you, I would at once file counter suit, etc. I have not heard from you from that time. I wish you would let me know if you have taken this matter up with Mr. Eichengreen, and what his position is concerning the same." In the talk, Mr. Boggs, that you had with Mr. Carton, did you state that Mr. Eichengreen—that you would take the matter up with Mr. Eichengreen and inform him of the claim and that if he was not satisfied you would bring a suit and that Mr. Carton will then file a cross-bill? A No. I did say to him that I would take the matter up with my client, and would discuss

with him the advisability of bringing a bill, and then that would give him an opportunity, if he wished to file a cross-bill, in case such a suit was brought, to file a cross-bill and set up any defense he might have. That is my recollection of the situation and what was said.

Q And did you put that in the form of a letter and send it to Mr. Carton on April 23, 1924? That letter, I think, is in evidence.

Mr. McCarter: Yes; that is here.

A Yes. I have a copy here, from my files.

The Court: The answer is "Yes."

Mr. Lane: That is all.

Cross examination by Mr. McCarter.

Q Mr. Boggs, I show you a letter from you to Mr. Carton dated November 30, 1923, which is marked Exhibit C. 7 in this case. Have you that letter or have you refreshed your recollection? A I looked for that letter, but I could not find any copy of it.

Q Read it and see if you are not mistaken as to how this matter started. A That, I think, is the letter to which I referred.

Q Yes. A And after consultation with Mr. Jones, and I think Mr. Jones was present when I drafted that letter.

Q You had not seen Mr. Carton previous to writing Exhibit C. 7, had you? A No; and it was in answer to that letter, I think, that he came into the office.

Q Yes. A That is, he never answered the letter, but came into the office.

Morris Eichengreen, direct.

Q Came into the office personally? A How long afterwards I would not pretend to say. I would not pretend to fix the date of that interveiw.

Mr. McCarter: That is all.

MORRIS EICHENGREEN, recalled.

Direct examination by Mr. Lane.

Q Mr. Eichengreen, where do you live? A Neptune City, New Jersey.

Q How long have you lived in Neptune City? A Well, about seventeen or eighteen years in summer.

Q Do you know Mr. Carton? A Yes, sir.

Q How long have you known him? A About the same time.

Q Have you been at all intimate with Mr. Carton? A Well, friendly, always friendly. Mr. Carton—"Mr. Eichengreen," he has always called me, and I called him "Mr. Carton."

Q Was there any relationship of visiting one another's houses or anything of that kind? A Never was in my house. He has been on my lawn. I don't think I was ever in his house except when he was remodeling it, but I have been on his lawn.

Q How long have you been familiar with the property which is the subject matter of this suit? A Seventeen or eighteen years.

Q Did you at one time have an option to purchase that property? A Yes, sir.

Q I show you a paper and ask you whether that is the option that you had? A Yes, sir.

Mr. Lane: I offer it.

(Paper offered in evidence and marked Exhibit D. 7.)

Q That option was never carried out. And did you thereafter institute suit in the Court of Chancery to carry it out? A Yes, sir.

Mr. Lane: I offer transcript of the proceedings in that suit, certified copy.

Mr. McCarter: What is the date of the option, please?

Mr. Lane: Date of the option is February 14, 1911.

(Transcript entered in evidence and marked Exhibit D. 8.)

Mr. Lane: I offer the *lis pendens.*

(*Lis pendens* entered in evidence and marked Exhibit D. 9.)

The Court: What is the title?

Mr. Lane: Morris Eichengreen against Margaret McNulty, Docket 34-262.

The Court: What became of this suit? What does the record show?

Mr. Lane: The record shows a subpoena was returned *non est.*

The Court: What does the record show as to the disposition?

Mr. Lane: There is no disposition. The subpoena was returned *non est,* and the amendment to the bill was filed November 21, 1911, and that was the end of the suit.

Q Did you subsequently take up with anyone the purchase of this property? A Yes, sir.

Q Can you tell me about when, for the first time? I am not referring now to Mr. Carton, but with anyone else? A Took it up with Johnson & Morehouse, I believe was the attorneys after that, several years after that option, who represented Mrs. McNulty.

Q I show you letter dated October 28, 1921, addressed by you to Mr. Ronon and ask you whether, by reference to that, whether you did send that letter to Mr. Ronon? A Yes, sir.

Q By reference to that letter, can you tell me about when it was that you had any talk with Mr. Ronon as to this property?

The Court: Will that letter become a part of the evidence?

Mr. Lane: I am going to offer it.

A About seven or eight months before.

Q Where was your conversation with Mr. Ronon? And what was your talk?

Mr. McCarter: Is that competent, your Honor, the talk with Ronon? I object to it.

The Court: It may be qualified.

A I went over to see Mrs. McNulty, who, I was informed, was working for Senator Pepper of Philadelphia, and Mrs. McNulty also introduced me to her attorney, Mr. Ronon, and I spoke to her and him, and they were both sitting together, about this property in "Avon," as we call it. It is in Neptune City, and he said, "Well, I will tell you, Mr. Eichengreen: I am in no position to deal with you today, as I don't know whether my client has really any interest there now or not. I am going down to Freehold in a short

time and I am going to see just how the property stands and I will get in touch with you as soon as I do.''

Q Did you hear from him subsequent to that? A No; never heard from him, and then one day I wrote him this letter.

Mr. Lane: I offer the letter.

Mr. McCarter: May I see it?

The Court: That will be marked.

(Letter entered in evidence and marked Exhibit D. 10.)

Q Did you receive any reply to that letter? A No, sir.

Q Now, when did you first have any conversation—about when was it that you first had any conversation with Mr. Carton as to this property? A The latter part of February, 1922.

Q And how did you come to go to Mr. Carton with respect to it? A I told— (interrupted).

Q How did you come to go? I do not want any telling. Why did you go to Carton? A I heard, or, in fact, I knew, that Mr. Carton had given a deed for twenty-five feet front by twelve hundred and fifty feet deep, signed by himself and his wife, to the Borough of Neptune City in order to use it for a street. The other side, twenty-five feet, was given by the people on the other side of this plot of ground. I went to Mr. Jones, who was my attorney, and told him of this. He said to me— (interrupted).

Mr. McCarter: I do not think the conversation between this man and Jones is competent.

The Court: He told you what to do, did he?

Witness: Yes, sir.

The Court: He told you what to do?

Witness: Yes, sir.

The Court: What did he tell you?

Witness: Told me what I have told you, that Carton owned this property. "And you go up to see Carton and see if you can buy it from him."

Q And did you at the time you went to Mr. Carton believe that he was the owner of the property? A Yes, sir.

Q And where did you see Mr. Carton? A In his office.

Q And what was the conversation between you? A I asked Mr. Carton, "Do you own this property?" And he said, "Yes." I said, "Well, what do you want for it?" He said, "$25,000." I says, "I will give $20,000." He said, "I will tell you, Eichengreen; come in next week when you are down here." I said, "All right." Next week I came down. I went into his office. I said, "What have you got to say?" He said, "Well, I will tell you, Eichengreen: I will sell you this property, but I am not in a position now to give you title." He says that, "I have acquired all the interest except one very small interest, and I will have that within thirty days, and if you come in here in thirty days then we will make a deal and close it up." At the end of thirty days— (interrupted).

Q Let me ask you there: Did he tell you where that interest was located at that time? A No, sir.

Q What was the next time you saw him? A At the end of thirty days I went into the office, Mr. Carton's office, and asked him if he had acquired that interest and he told me no, but "I will have it in two weeks." He said, "Come in." I kept doing that for about eight or nine months.

Q Well, now, wait a moment. Let us go back first. Was there anytime at any one of these conversations, was anything said about the making of a contract and a deposit? A No, sir; no, sir. Never got to a contract. Never made any terms.

The Court: About depositing $500 as a down payment?

Witness: Yes, sir.

The Court: Was that so?

Witness: At that time; no, sir.

Q When was there a conversation about a down payment of $500? A About six months after that, Mr. Carton told me, he said, "There is a real small interest in that business that I have not acquired." I said, "Have you the McNulty interest?" He said, "Yes. I have had that long ago." So, "I will have it, Eichengreen, in a couple of weeks. The lawyer is out of town on a vacation. He has got the papers and everything and he does not get them signed." I said, "Well, let me give you $500 to bind the bargain," and he said, "No, I would not take any money."

Q Now, how often did you see Mr. Carton with respect to this transaction prior to August, 1923? A Every two to three weeks, either saw him or telephoned. (Answer repeated by the

stenographer.) Because he put me off from two weeks to two weeks.

Q Did you finally? Was there any conversation finally with him in which the location of this interest was referred to other than Massachusetts? A In the latter part of August, 1923. After going there for a year and a half—two years pretty near—he said, "Eichengreen, I haven't got that interest yet." He said, "They live in California."

Mr. McCarter: What is that?

A "They live in California." So I told Mr. Jones— (interrupted).

Mr. McCarter: I object.

Witness: All right. That's all.

Q Can you fix about the date that that occurred? A The latter part of August, 1923, just the date—away back to nearly the 1st of September.

Q After you received that information from Mr. Carton did you see counsel? A Yes, sir.

Q Whom? A Mr. Jones.

Q And what was said between you and Mr. Jones?

Mr. McCarter: I object to that.

The Court: All heard subject to being stricken out. If it speaks of the then present conduct it may be admissible.

A Excuse me.

The Court: Go on.

Witness: Mr. Jones told me that I should go to Freehold and have the title searched. That I should go to a man named Taylor, who has done work for him. I said, "you write me a letter and let me know just what I should do when I get there, so there will be no mistake." He wrote me a letter and the letter said— (interrupted).

Q I am not interested in that. You went and had it searched? A I went to Freehold and had the title searched by Mr. Taylor, and I stayed right there and he looked it all up and saw that there was no property—none of that property in the name of Mr. Carton, so he gave me the name that it was in and I told him that it must be a mistake that Carton owned that property or most of it. And he looked it up again, and he said, "There is nothing in his name. The only way he can own it is if he has the deeds and never filed them."

Q Did you then go back to Mr. Jones? A Yes.

Q Did you get a written search from Mr. Taylor? A Yes.

Q Indicating that situation? A Yes.

Q In any one of the conversations that you had with Mr. Carton did he tell you that his interest in the property was that of the holder of tax liens against the property? A No, sir.

Q At any one of the conversations did you tell him or suggest to him that he was foolish and that he should have foreclosed his tax liens sometime before, or words to that effect? A No, sir; I never knew anything of the tax leins, as to him—

Q Did you, as a matter of fact, know that Mr. Carton's interest in that property rose from

his holding of tax certificates on the property? A No, sir.

Q Did Mr. Carton in any one of his conversations with you show you a letter which had been received either from Mr. Lawrence or Mr. Ronon (I have forgotten which) or anyone else, interested in this property? A No, sir.

Q Did Mr. Carton at any time prior—at the time of any of these conversations with you, tell you who the persons interested in this property were or who their representatives were? A No, sir.

Q Was there a conversation between you and Mr. Carton in which you said that the matter was to be closed within thirty days or within some short space of time, or it was off, to which Mr. Carton replied that it could be off, and that if you could do any better or make it any quicker you could go out and do it, or words to that effect? A No, sir.

Q Did you say that you could go out and clean it up; you could do it quicker or any words to that effect? A When he told me at one time that he had everything but a very small interest in Massachusetts and he kept putting it off from month to month, I said to him, "Why don't you let me go down there, Carton; I will spend my own money; maybe I can get that fellow to get the signature." A He said, "No, keep out of it"; that is all that was ever said in regards to that.

Q At that time or any other time did he give you the name of that interest in Massachusetts? A No, sir.

Q Or who represented that interest in Massachusetts? A No, sir; he would not.

Q Did you get any information from Mr. Carton at any time? A No, sir.

Q As to the persons interested in this property or where they could be located? A No, sir.

The Court: Did you have the name of Lawrence the lawyer, or Johnson the lawyer, or their addresses?

Witness: I got the—(interrupted).

The Court: No, answer the question.

Witness: What was asked me?

The Court: Did he give you the names and addresses of Mr. Lawrence?

Witness: No, sir.

The Court: A lawyer for one of the interests; and Johnson—(interrupted).

Mr. Lane: Ronon.

The Court: Mr. Ronon?

Witness: No, sir.

The Court: The lawyer and his address?

Witness: No, sir.

The Court: Lawyer for the other interests?

Witness: No; I did have Ronon long before.

The Court: I am asking you whether he gave it to you.

Witness: No, sir.

The Court: At that time.

Witness: No, sir.

Q After you had this search made by Mr. Taylor, do you remember whether he gave you any written memorandum of that search or not? A At that time we put down—

Mr. McCarter: Answer the question, please.

Witness: Yes, sir; I put it down.

Q And did you go back to Mr. Jones? A Yes, sir.

Q And did you have a talk with Mr. Jones? A Yes, sir.

Q As the result of that talk with Mr. Jones what did you do? A I went the next morning to Philadelphia to see if I could find Miss McNulty. I looked up in the telephone book and I found her home address. I called up and some lady answered the 'phone. I asked if Miss McNulty is in, and she said, "No. She is down to business." I said, "When will she be home?" "She will be home at 6 o'clock at night." I asked, "Where does this Miss McNulty work?" I wanted to be sure it is the right one. She said, "She is down in Senator Pepper's office." That is all I said to her, and I called up Mr. Jones on the telephone in Newark.

Q And did you give him that information? A I told him where she lived, and that she would be home at 6 o'clock tonight, and that he should please get on the train and meet her at her home at 6 o'clock at night.

Q And you did not go with Mr. Jones to see Miss McNulty? A No, sir.

Q And therefore know nothing about what took place between them? A Don't know anything about it until he asked me—don't know a thing about it until he told me.

Q Do you know how there was located the other interest the Gulick interest in this property? A After Mr. Jones had acquired this Miss McNulty's I went to Mt. Vernon to look up Florence

Housewright, afterwards named Mrs. Johnson and I found her after considerable trouble.

Q First let me ask you: How did you come to attempt to locate that through Florence Housewright? A On one of the deeds—on the deed that Mrs. Housewright gave half of her interest over to the Gulicks, it said Florence Housewright, and I think the address was 810 Prospect avenue, Mt. Vernon. I may be wrong as to the address.

The Court: You found that on what deed?

Witness: She—(interrupted).

The Court: I say you found that on what deed?

Witness: In the search. She owned half of it, she owned half and gave one-quarter away—

The Court: A search of the record.

Witness: Yes, sir; in the search of the record it gave that address. I went out there and the lady said she didn't know her. I asked "How long have you lived here?" She said, "Twenty years." I said, "She must have lived here about ten years ago." The lady of the house was out, and I called up the husband in New York.

The Court: The husband of whom?

Witness: The man who lived at that house.

The Court: Oh.

Witness: And he told me her name was Johnson now, and gave me her address in Mt. Vernon, so I went right back to Mt. Vernon and met her in her home about 6 o'clock at night, and when she came in I

introduced myself to her and she said, "I don't want to talk to you about this property. If there is anything you want you go to my attorney, John Lawrence, the Canadian Pacific Building, New York." And gave me his telephone number. With that I went away. Next morning I called up Mr. Jones and told him what Mrs. Housewright had told me and I said to him, "I wish you would go over and see Mr. Lawrence for me."

Q Then Jones took it up from that time on with Lawrence and you do not know what happened between Lawrence and Jones except as they have been reported to you by Jones? A Yes, sir.

Q Is that right? A Never saw Lawrence but once in my life.

Q And that was during the course of this negotiation? A No, sir.

Q Or after. A After the deed had come back from California and Mr. Lawrence had called up Mr. Jones the deed was there. Jones called me up and asked me if I would go over to Mr. Lawrence and get the deed. I walked over to Mr. Lawrence and got the deed and that is the only time I ever saw him.

Q Do you know whether Mr. Jones acquired certain information as to those interested in the Gulick interest?

Mr. McCarter: That must be hearsay.

Q Do you know of anything except from hearsay, from what Mr. Jones told you? A No, sir; just what Mr. Jones told me.

Q Is that all the information or all you had to do with gathering information as to who the people were who were actually interested in this property? A That is all I did.

Q Did you refer to the will of Gulick? Pay any attention to that? A Yes, sir.

The Court: Did you refer to it?

Q Did you look up the will of Gulick? A Yes, sir; when we found—

The Court: You said "Yes, sir."

A Yes, sir; I did.

Q And did you give the information contained in the will of Gulick to Mr. Jones? A I did; who the property was left to.

Q How much did you pay for the acquiring the McNulty interest? A Gave Mr. Jones a check of twenty-five hundred dollars. That is what he asked for.

Q And how much did you pay for acquiring the interest of the Gulicks? A Gave Mr. Jones a check for thirty-five hundred dollars—not one check, two or three checks—thirty-five hundred dollars.

Q And did you subsequently receive—or did you receive these deeds?

The Court: Are they marked?

Mr. Lane: No, sir; I offered them. They are acknowledged.

The Court: What is your answer?

Witness: Yes, sir.

(Four deeds entered in evidence and marked Exhibits D. 11, D. 12, D. 13 and D. 14 respectively.)

Q Prior to the receipt of these deeds was there any work done upon this property under your direction? A No, sir; except one time when we first negotiated Mr. Carton said—

The Court: First negotiated with Mr. Carton?

Witness: Yes, sir; Mr. Carton said you can have Niat Rogers, the surveyor, if you want, look over the property and see what he can do, so I went to Niat Rogers and he brought in a little rough sketch, but it was never used. No map or anything like that. Just a rough sketch and it was never used. And finally when I laid out the property it was never laid out that way.

Q Did you do any trimming of trees? A Nothing.

Q Or anything of that kind? A Never went into the property until my deed was filed.

Q This sketch was made; do you know whether it was—do you know whether that sketch was made from actual survey? A No; he knows that property from years and years.

Q After you acquired your deed? A I put them on file.

Q Then what did you do?

The Court: When were they filed?

Mr. Lane: Different dates. Two of them on October 25, 1923; and two of them on November 7, 1923.

The Court: And recorded immediately?

Mr. Lane: Those are the record dates.

The Court: All right.

Mr. Lane: The dates of the deeds, if your Honor wants the dates—

The Court: No.

(Question repeated by the stenographer.)

A I put a man, a woodsman, as we call him, on to the place to cut down the brush which has never been touched, I don't believe, in a hundred years. And after he had worked there a little while Mr. Carton—someone told me Mr. Carton had stopped him.

Q And then what did you do? A Told him that he had no right to cut that brush—

Q No. A I told him to stop.

The Court: What?

A The man had stopped. And after I had paid Mr. Carton the taxes—

Q The next thing after the man stopped, what did you do? A I went down and told Mr. Jones that Mr. Carton had stopped the man from cutting down the brush. And he told me—that is the man told me—Mr. Carton had told him he has the tax liens on this property or he is paying the taxes, and we had no right to cut down the brush. And that he should stop work. And the man stopped without seeing me.

Q Then what did you do? A I told that to Mr. Carton and then we paid the taxes—

Q Mr. Jones, you mean? A Yes.

The Court: You told that to Mr. Jones?

A I told that to Mr. Jones; yes sir.

The Court: Then what?

A Then Mr. Jones told me to pay the taxes, the back taxes, to Carton. That I should go up there and see him and tender him the money.

The Court: See him, who?

A Mr. Carton. That I should go to Mr. Carton and pay the taxes. I went up to Mr. Carton and offered to pay the taxes. I said "Carton I want to pay you the taxes." He said, "I won't take any money from you."

Q Can you tell me when that was? A That was in December, 1923.

Q And then what did you do? A I went back to Mr. Jones, my attorney, and told him and then we—I paid the money to the collector as per instructions.

Q Have you a receipt from the collector or correspondence from the collector? A Oh, yes.

Q Where are they? A You have them.

Q I show you a copy of a letter—rather, I show you a paper which purports to be taxes. A That is just one of them. There is the other one.

Q I show you two letters, or two receipts and ask you whether you received these receipts from the collector? A Yes, sir.

Mr. Lane: I offer them.

Mr. McCarter: What is the date?

Mr. Lane: December 13th.

(Entered in evidence two sheets of paper, marked Exhibit D. 15.)

Q I show you copy of letter dated December 21, 1923, from the Eichengreen Land Company to the collector and ask you whether you sent

the original of that, which is a copy, to the collector? A Yes, sir.

Mr. Lane: I offer it.

Mr. McCarter: I object to the letter. It is a self-serving declaration, and we are not in any way bound by it.

The Court: Objection overruled.

(Letter of December 7th, marked Exhibit D. 16.)

Q I show you a copy of another letter dated December 27, 1923, and signed by Eichengreen Land Company to Mr. Bennett—addressed to Mr. Bennett and attached to which a receipt, and ask you whether that is a letter sent to Mr. Bennett and whether that is the receipt? A Yes, sir.

Mr. Lane: I offer it.

Mr. McCarter: Same objection.

The Court: Same ruling.

(Two sheets of paper marked Exhibit D. 17.)

Q Now after you had paid the taxes, what did you do? A I took this man and put him back in the place, this woods man, to clean out the woods, and worked there all winter. Cleaned all the brush.

Q And what else did you do with respect to the improvement of the property? A After that I gave a contract to put in—I had the surveyor there, a different man, and laid out the property in streets and lots.

The Court: When did you start?

Witness: 1923; in 1923—no, in 1924 I put the men in there.

The Court: When?

A About September.

Q Prior to your putting the men in for that purpose, what had you done with respect to the property besides having it cleaned up? A I put up my sign on the property advertising the property for sale, was selling the property on it.

The Court: Before you laid it out in building lots?

Witness: No, sir; I had a map of it.

The Court: When did you put up the sign?

Witness: Put up the sign?

The Court: Yes.

Witness: In June.

The Court: '24?

Witness: Yes, sir.

Q How long a time did you have this woods man in there cleaning it up?

The Court: All the winter, he said.

A He was in the winter before.

Q Before June, 1924, after you took title—after you had your talk with Mr. Carton about the taxes which you have testified to did you have any conversation with Mr. Carton about that? A No; not until June.

Q What happened in June? A After I had put up my signs, he came to my house and handed me a letter stating that I should take

down those signs and he said I was a crook and I didn't answer, he said if I had any manhood into me I would resent it. And I walked in the house. That is the only time I ever talked to him since—(interrupted).

The Court: That letter is in, isn't it?

Mr. Lane: Yes, sir.

Mr. McCarter: Yes, sir; it is.

Q Was there any reply made to that letter? A Yes, sir; I took it to my attorney and wrote him a letter.

Q Where is that?

Mr. McCarter: I have it here, I guess, if you want it.

The Court: Letter produced from the complainant dated what?

Mr. Lane: June 12, 1924.

The Court: Offered in evidence?

Mr. Lane: Both read in evidence. Addressed by—signed by Eichengreen Land Company and addressed to Mr. Carton.

(Letter entered in evidence and marked Exhibit D. 18.)

Q What did you next hear of this transaction? A Nothing more ever heard until I was served—until Mr. Jones rang me up and asked me if he could accept service.

Q Of the subpoena in this case? A Yes, sir; and I told him yes.

Q Did you take these signs down? A No, sir.

Q You went into possession of the property—when you started to improve the property

in September, 1924, what did you do? A I put in two streets, practically completed. One street I put in sewer pipes in order to drain the water, and the other two streets is partly finished. Not completed.

The Court: What do you mean, curbed and paved?

Witness: No sir; grading. They were in very bad condition and needed a good deal of draining.

The Court: Cross examine?

Mr. Lane: That is all.

Cross examination by Mr. McCarter.

Q Mr. Eichengreen, I understand you to say that you never reached any bargain whatever with Mr. Carton? A No, sir.

Q How far had you gotten in your negotiations? A We never got any further than he told me, when I offered him twenty thousand dollars. He said, "I can't do anything now."—"I have all this property but one very small interest, and I will have that in thirty days, and you come in here then and we will be able to do business."

Q And that was the extent— A "We may be able to do business."

Q What? A "We may be able then to do business."

Q Yes. That was the extent of the negotiations—that negotiations went between you and him? A At the first meeting; yes, sir; that was the extent; yes, sir.

Q Well, did it ever go any further? A No, sir.

Q What? A No, sir.

Q I do not want the first meeting now. I want your statement that there was never anything further said or done. A Right.

Q Between you and Mr. Carton, but what you have said? A Right.

Q And what did you talk to Niat Rogers about when you went to see him? A Niat?

Q Yes. A I told Niat Rogers I was talking to Carton about this property.

Q Yes. A And I wished he would give a tentative layout of it, which he did.

Q When was that? A That was about in February.

Q Of what year? A Well, I would say March, 1922.

Q '22? A Yes; latter part of March, 1922.

Q Is that all you told Rogers? A That is all I told him.

Q Just this tentative sketch? A That's all we wanted, yes.

Q What? A Yes.

Q That is all who wanted? A That is all Mr. Carton wanted. He told me not to spend any money.

Q He told you not to spend any money? A Yes, sir.

Q And you wanted to spend some money? A No, sir.

Q What? A No, sir.

Q And yet Mr. Carton told you not to spend any money, although you did not tell him you would spend any? A No.

Q How did he happen to tell you that? A Because he told me, "Go to Niat Rogers and get a tentative drawing of the land," but not to spend any money. And Niat Rogers drew

just a rough sketch; didn't lay it out; didn't do anything in that way.

Q Yes. A And that's all.

Q What report did you make to him, to Mr. Carton of what Rogers had said to you? A He took it up to Mr. Carton.

Q You took what up? A This tentative map.

Q And gave it to him? A Yes, sir.

Q When was that? A About a month after.

Q Who paid Rogers? A I don't know.

Q You don't know? A No, sir.

Q Have you given us the extent of your talk with Rogers? A Yes, sir.

Q Nothing more? A Nothing more.

Q No. And when was it Mr. Carton told you not to spend any money? A At the time he told me to go to Niat Rogers.

Q Had you suggested you might spend some money? A No, sir.

Q What? A No, sir.

Q Nothing of the kind? A No, sir.

Q No. Do I understand that Mr. Carton suggested that Niat Rogers should make a lay-out? A Yes, sir.

Q Did he say why he wanted it? A No, sir.

Q You had known the property had lain in the condition in which it then was for ten or twelve years to your knowledge? A Eighteen years.

Q Eighteen years? A Yes, sir.

Q And all of a sudden Mr. Carton wanted a layout? A I suppose so.

Q What? A I suppose so.

Q At any rate, at his suggestion you went to Rogers? A Yes, sir.

Q What? A Yes, sir.

The Court: Was it laid out in streets and lots?

Witness: No, sir; no.

The Court: What was it?

Witness: It was nothing.

The Court: It was something.

Q Your memory is quite clear about this? A Yes, sir.

Q There is not any doubt about it? A No doubt; no, sir.

Q No doubt. And no doubt you ever made any suggestion or a statement to Mr. Carton about the property or your interest in it? A Right.

Q I show you a letter dated March 28, 1922. Did you send that letter to Mr. Carton? Look at the signature. Never mind reading the letter. A Yes; I signed that letter.

Q That is your letter, isn't it? A Yes, sir.

Mr. McCarter: Have it marked, please.

(Letter marked in evidence P. 13.)

"Morris Eichengreen, 229 West 42d street, New York. March 28th, 1922. Mr. James D. Carton, Asbury Park, New Jersey. My dear friend: I saw Niat Rogers last Saturday and he promised to look over the property purchased from you last Saturday and promised to take the matter up immediately and let me know this coming weekend the best way to drain the water off the land, and also a sketch of the way to lay it out in lots for development. I told him he could call on you for any information that he might need. If you don't mind, I think the best way for us to handle this prop-

osition is for you to give a deed and take back a mortgage with release clauses, say, four hundred dollars for each fifty feet of land front, and one thousand dollars for each fifty feet of river front lots. This will be ample protection for you. You can also add any contract that you wish to it. I think by having a deed for the property will give the public more confidence in purchasing same, but if this is not agreeable to you, use your own judgment in the matter. I will be at your office next Saturday morning, so kindly have the papers ready so that I can go ahead and order the streets put in and also other things that must be done for the development of the property. April is the best selling month of the year so I want to get busy. Kindly date all papers April 1st. With kindest regards, I am, yours very truly, Eichengreen Land Company, Incorporated, Morris Eichengreen, President.'' Do you remember writing that letter, now? A Yes, sir.

Q Now, Mr. Eichengreen, that letter must have been written in March? A Yes, sir.

Q March 28, 1922, when you made your first call on the title searchers, Mr. Taylor— A About the last of August, 1924.

Q Get it right now; get it right. A In '23.

Q Your first call on Mr. Taylor, the title searcher? A '23.

Q Twenty-three? A Yes; excuse me.

Q Where did you see him? A In Freehold, in the tax searcher's office.

Q In the tax searcher's office? A Where they search the taxes. Where they search the records. In the record office, whatever you call it.

Q In the clerk's office? A Yes; where the records are.

Q You say he gave you a memorandum of the search? Where is that? A I wrote it on the back of a letterhead all those that—

Q Where is the memorandum of search? I would be glad to see it. A He has it, I say.

Q I would be glad to see it if you have it.

Mr. Jones: I have received it, but I have not preserved it.

The Court: What?

Mr. Jones: I have received it, but I have not got it. I subsequently got a whole search.

The Court: What?

Mr. Jones: I said in reply I received it, but that was destroyed because it was superseded by a typewritten search from Mr. Taylor.

Mr. Lane: The witness has not testified—

The Court: Do not interrupt the cross examination.

Q No. What was it that Mr. Taylor gave you that you gave your counsel? A He gave me on a little piece of paper the names of the owners of this property as he found them in the records.

Q Yes. A And that I took—

The Court: Wait a minute. Wait now. Well, go on.

Q How big a piece of paper was that? A Just a little piece of brown paper that they have there in the office.

Q Did you see Taylor more than once? A I saw Taylor twice.

Q How soon was the second visit after the first one? A After I got this—

Q What? A This piece of paper showing the different owners of the property, Mr. Jones told me to go there and get him to give a regular search, and I went there and told Mr. Taylor that Mr. Jones wants—

Q I do not care— A —to get a regular search.

Q To get a regular search? A And send it to Mr. Jones direct.

Q When was that visit? A That was in September, 1923.

Q September? A 1923.

Q September, 1923? A Yes, sir; early part of September, 1923.

Q Now, between March, 1922 and September, 1923, you had made what effort in connection with this property between March, 1922, the day of your letter to which I have just confronted you—with which I have just confronted you, and September, 1923, when you visited Mr. Taylor, what were you doing to this property? A Nothing—I went to Mr. Carton every—

Q Few days? A Not few days; two weeks or so.

Q Few weeks? A He would tell me to come in.

Q And you said he said something to you about an interest up in Massachusetts. Where in Massachusetts? A He didn't tell me.

Q Well, if he told you to go to Massachusetts to hunt it up, what part of Massachusetts did he tell you to go to?

Mr. Lane: I object to that.

A Never told me of any part of Massachusetts. I asked him to let me go to this lawyer and he said, "No. You keep out of it." He never told me to go to Massachusetts or any place where it was.

Q Didn't you testify on your direct examination that he did say to you if you want to go up to Massachusetts to get that any quicker than I can get it, or words to that effect, you can go? A No, sir; I didn't testify to that.

Q Nothing of that kind? A No, sir.

Q You did not testify? A No, sir.

Q A word about his saying to you to go somewhere? A No, sir.

Q And expedite matters? A No, sir.

Q If you could. A He wouldn't tell me where it was. I only asked once.

Q I am not asking you about what he said. I am asking you about what you said on your direct examination. A No, sir; I never made such a remark.

Q Is that deed of this tract that shows the streets in evidence? A I think it is. Will you let me see the exhibit?

Q When was your attention first directed to the deed of Mr. and Mrs. Carton to the Borough of Neptune City? A At council—at one of the council meetings.

Q When? A Oh, I would say around November—around November, 1921.

Q Nineteen twenty-one? A About that time, yes, sir; about that.

Q So that you knew of that deed which is in evidence, and seems to be dated the 21st of November, 1921, about the time it was given, didn't you? A Oh, yes.

Q And that was long before you had ever seen Mr. Carton about this matter? A Oh, yes.

Q What was the first thing that you did on your own hook towards searching out who were the owners of the title other than the tax title to this property? What is the first thing you did? A I went to Freehold and had Mr. Taylor look up the search.

Q What prompted your going to Freehold? A Mr. Jones told me to go to Freehold and to have the title searched—have the title looked up.

Q What had occurred? What had occurred? A Mr. Carton told me that the small outstanding interest which he has is in California—this was the last of August.

Q California? A Yes, sir.

Q Didn't you tell us on your—

Mr. Lane: Wait.

A This was the last of August. He had been telling me for a year and a half that the interest was in Massachusetts, and all of a sudden the last of August, 1922, he said to me, "Eichengreen, this small interest is in California"; so I didn't say a word to him, but I went down to see my attorney.

Q Yes. A I said, "Jones, what do you think—"

Q Never mind what you told Jones. A All right.

Q Then you went to see Taylor? A Mr. Jones told me—

Q Then you went to see Taylor? A And I went to see Taylor.

Q What memorandum was it Mr. Taylor gave you? A Taylor gave me the memorandum of the owners—

Q Of the property? A As he found it.

Q And he told you that Mr. Carton's name did not appear on the records at all? A I said to him—

Q Did he? A Yes, sir.

The Court: He said that did or did not?

Witness: Did not.

Q Did not appear. A And I had him look it up again.

Q And you had him look it up again a second time? A I said, "I can't believe it."

Q He looked it up a second time? A Yes, sir.

Q And again he said it did not appear? A While I was there.

Q What? A While I was there I had him go over the books again and I couldn't believe it.

Q You could not believe it? A Yes, sir.

Q Is this Mr. Taylor still alive? A Oh, yes; he is a regular searcher.

Q He is a regular searcher? A For the title company or somebody.

The Court: A lawyer?

Witness: That I don't know, sir.

Mr. Lane: He is not, Vice-Chancellor, he is not a lawyer.

Q You later got a regular search, you say? A Yes, sir.

Q Have you got that search?

The Court: Wasn't that put in the first day?

Mr. McCarter: Our search went in.

The Court: Yes, yours went in.

Q What did you tell Mr. Taylor you wanted? A I told him that I wanted to get a regular search now and send it to Mr. Jones.

Q A regular search now and send it to Mr. Jones? A Yes, sir.

Q Did you ever look at this search? A I don't think so.

Q What? A I don't think so.

Q And how soon did you get this search? A I really don't know when he sent it to Mr. Jones.

Q What? A I don't know when he sent it to Mr. Jones.

Q Did he tell you he changed his mind? A Who tell me?

Q Taylor. A That what? He didn't tell me anything.

Q You have told us he told you that Mr. Carton appeared to have no interest. A Yes, sir.

Q Did you ever look at this search? A Well, I— (interrupted).

Q Did you ever look at this search? A I never looked at this search.

Q You never looked at it? A I don't think so.

Q What? A I don't think I ever read that search; no, sir.

Q No? Well, I call—have your recollection refreshed. Do you find on this search which your counsel produced in response to my call, as being the search Mr. Taylor made— (At this point an answer was completely stricken off the record by the Vice-Chancellor.)

Q (Question repeated by the stenographer.) Do you find on it Mr. Carton's name? A This is not the search.

Q This is not the search? A That I referred to when I was telling you.

Q Just a moment. I would like to have this search marked.

(Search marked P. 14.)

Mr. McCarter: Counsel for the complainant states, this is the search that Mr. Lane handed to counsel on his call for the search that Mr. Taylor sent to Mr. Jones in response to his request for a regular search.

Q Was there another search? A There was a first search. This is the second search.

Q I understand that. A This is the second search. This is the second time I went to Taylor. This is what I got.

Q I understand that. You know, do you not, Mr. Carton's name appears several times on this search? A I have nothing to do with this search.

Q Do you or don't you? A Yes, sir; I see that.

Q When did you see it? A First saw it now.

Q Not before? A No, sir.

Q Never had the curiosity to find out? A Never looked over that search.

Q The only thing you wanted to find out was who was the owner of this property? A I did find this out.

Q But the only thing you wanted to find out was who was the owner of this property, wasn't it? A Yes, sir, but not— (interrupted).

Q That was the reason— One moment. A Yes.

Q That is the reason you went down twice to Freehold? A No, sir.

Q What? A No, sir; I found out the first time what I wanted to know in whose property—whose name the property was in.

Q Yes, you already knew that Mr. Carton had tax title, didn't you? A Yes, sir.

Q Yes. And what you were anxious to know was the name—was the names of the people whose interest Mr. Carton did not have; that is what you wanted to find out, wasn't it? That is what you wanted to find out? A No, sir.

Q One moment, please. A Yes.

Q Isn't it a fact what you were curious to know was the names, and if possible, the addresses of the persons whose title Mr. Carton did not have? A No.

Q No. What did you go to Freehold for? You knew the tax title— (interrupted).

The Court: Let him answer.

A I went to Freehold to find out who really owned this property.

Q Yes. A In whose name the title was invested.

Q Yes. A That is what Mr. Jones sent me down there for.

Q Look here: You are a regular real estate man, aren't you? A Well, I wouldn't call it that; no, sir.

Q What? A No, sir.

Q Well, you own property and exploit it.

The Court: "Own the earth."

Q Own the earth. A Well, that is why—that is because it is good advertising, that is why I used it.

Q You are no child in this business. A I am a child in this business.

Q You are a perfect child in this business? A Yes; I have only been it in about four years.

Q Yes? A That is all. Never had any experience in it. Never was in it. Never had but two titles in my life.

Q All right. Did you tell Niat Rogers to let you know the coming week-end the best way to drain water off the land? A Yes, sir.

Q You told me on your direct examination—on your cross examination that the only thing you told Rogers was that Mr. Carton wanted a sketch. A I— (interrupted).

Q Why did you tell me that; had you forgotten it? A I hadn't forgotten it. I just probably didn't think of it. It didn't amount to anything.

Q Oh, no. A We didn't have the land laid out. There was no maps to be made. There was nothing of that kind.

Q Did you tell him to call on Mr. Carton for any information? A Mr. Carton told me to tell him.

Q Did you tell Niat? A Niat?

Q Niat Rogers. A Yes; I told him.

Q You did not tell us that, did you? A I didn't think that was necessary.

Q And you were of the view on March 28th that the best way for us to handle this proposition is for you to give a deed—that is for Mr. Carton to give a deed—and take back a mortgage, weren't you? A There was nothing—(interrupted).

Q What? A Yes, sir.

Q Yes? A Yes, sir.

Q And you say that—in this letter—"that you told Niat Rogers last Saturady, you saw Niat Rogers last Saturday and he, Rogers, promised to look over the property"—what property—"purchased from you last Saturday." Was that false when you wrote Mr. Carton that you saw Niat Rogers last Saturday? And he, Rogers, promised to look over the property purchased from you, Carton, last Saturday? A No, Mr. Carton— (interrupted).

Q Was that false or true? A Why, it wasn't —(interrupted).

Q That you had purchased it from Carton last Saturday. A I didn't purchase it from Carton.

Q That was false, that statement? A I just wrote that, but I didn't purchase it.

Q You just wrote it? A It shows by the letter there was never any agreement as to the price or anything.

Q I am not asking you that. I am asking you now about that statement. A I never had purchased the property from him.

Q Why did you write that, "I saw Niat Rogers last Saturday and he promised to look over the property purchased from you last Saturday." Why did you write that? A Well, I wrote it. I thought maybe he would get the deeds and stuff and so forth, which he never got.

Q That is the best answer you can give to that question? A Well, now— (interrupted).

The Court: What is your answer?

Witness: I answered him— (interrupted).

The Court: Did you answer "Yes." Is that the best answer you can give?

Witness: Oh, yes.

Q Now, a year and a half passed by since September, 1923, and in the meantime I understand you had been seeing Mr. Carton, seeing Mr. Carton and seeing Mr. Carton, hadn't you? A Yes, sir.

Q Did Rogers ever give you that sketch? A Took it up to Mr. Carton.

Q He took it himself? A Yes, sir.

Q Did you ever see it in Carton's possession? A No, sir.

Q How do you know he did? A He told me he did.

Q Who did? Rogers? A Yes, sir.

Q Now, do I understand you to say that the impelling force in September, 1923, that induced you to go down and see Mr. Taylor and find out who the record owners of this property were, other than Mr. Carton's tax titles, was the fact that Carton had told you that some of them lived in California? A He said that the one interest was in California.

Q What? A Yes, sir; yes, sir.

Q And that he had previously told you that one lived in—that same interest lived in Massachusetts? A Yes, sir.

Q When had he told you that? A Been telling me that for a year and a half.

Q That there was one interest in Massachusetts? A Yes, sir.

Q And finally he told you it was in California? A Yes, sir.

Q Did he give you the address in California? A No, sir.

Q Now, did you look at any original records in the clerk's office in Freehold? A No, sir.

Q Mr. Taylor did the looking? A Yes, sir.

Q You did not know anything about the records? A No, sir.

Q Did not examine them? A No, sir.

Q Would not undertake to? A Would not undertake to.

Q What address do you say of Mrs. Housewright's appeared on the deed? A I think it was 810 Prospect avenue, although I wouldn't be sure as to that.

Q What is your best recollection? A I am telling— (interrupted.)

Q You told us? A I told you that was my best recollection, although I wasn't sure of the address now.

Q Yes. A But I had it on this piece of paper.

Q Who gave you that address? A Mr. Taylor.

Q Mr. Taylor. On this same little informal search? A Brown paper; yes, sir.

Q Gave you an address of Mrs. Eichengreen? A Mrs. Housewright.

Q Mrs. Housewright, I mean. I beg your pardon. As somewhere— (interrupted). A Mt. Vernon.

Q Mt. Vernon? A Mt. Vernon.

Q Had you gone to see her before you got the regular search? A No, sir—well, yes; you mean the second search?

Q Yes. The big search. A No—yes; sure.

Q You had seen her then before you had seen the—before you had acquired the full search, or official search. A It may not have reached Mr. Jones at that time yet. But I had gone to see her.

Q And where did you see her? A Mt. Vernon.

Q Where? A Mt. Vernon.

Q Whereabouts in Mt. Vernon? A I don't know the place. It was on a corner; a man gave me the house number and I went there. She was living with some people under the name of Johnson, which was her second—her marriage name. And I went out there and she came home at six o'clock. I waited there until she came.

Q Yes. A And I introduced myself to her and told her what I wanted, that I came to see her in regard to the property which I understand she owns in Avon. And she said, "Don't talk to me about it. Go down and see my lawyer, John Lawrence." Gave me his telephone number and address and that is the last I saw of her. Never saw her since.

Q You did not mention Mr. Carton's name to her? A No, sir.

Q What? A No, sir.

Q How long before you took this trip to Freehold followed by the trip to Mt. Vernon had you seen Mr. Carton? A Well, I hadn't seen him in about two weeks.

Q Two weeks. What occurred in your last interview? A Maybe less than that, maybe a week.

Q Well? A Maybe less than that, maybe a week.

Q I am not making it; you are doing the making. A A week.

Q A week? A Yes, sir.

Q What occurred at that interview? A Well, that was the time he told me that the interest was in California.

Q Yes? A That's the last time I saw him.

Q Did he tell you this interest was in California? A No, sir.

Q Now you stated on your direct examination that you saw the copy of the will of James C. Gulick, and learned from that who the devisees were? Did you? A Yes, sir.

Q Where did you see that? A At the Surrogate's office. I think that's what they call it; in New York.

Q In New York? A Yes, sir.

Q When did you see that? A I saw that on the very first part of September, 1923.

Q Who told you to go there? A Mr. Jones.

Q Oh, Mr. Jones? A Yes, sir.

Q Had you ever been to the Surrogate's office before? A Never in my life.

Q Did you go alone? A Went alone.

Q And innocent and young as you are? A Yes, sir.

Q And devoid of knowledge of records of things you were able to hunt up and find the will? A No, sir.

Q What? A I went to the man who was in charge. I said I would like to find this man's will. "Will you look it up for me? I will make it all right for you." He looked it up for me and he brought me the book and laid it before me and I handed him two dollars and I thanked him and he thanked me.

Q That was before you had been to Taylor? A No; after.

Q After you had been to Taylor? A Oh, yes. The first time.

Q What? A After I had been to Taylor; yes, sir.

Q After you had been to Taylor? A Yes, sir; I then knew his interest, then; see?

Q Oh, yes; oh, yes. And then you learned Mr. Gulick's interest? A Yes, sir. Well, he was dead.

Q What? A He was dead.

Q How did you know that? A Why I found out he was dead.

Q How did you learn that? A I don't remember.

Q You don't remember? A How I found out he was dead. I will tell you.

Q You sort of intuitively knew that? A No.

Q Who told you he was dead? A I will tell you. How I know he was dead?

Q What? A How—I will tell you how I know he was dead. Several years ago I was investigating that property, when Mrs. McNulty was alive, after she—after the first transaction was passed, and she told me that he was dead.

Q Now, just wait a minute. In 1911 you had an option, didn't you? A Yes, sir.

Q May I see that? A May I just correct that statement?

Q No. You answer my questions. A I will answer you any questions.

The Court: What did you want to correct?

Q Did you want to correct something? A Yes, sir; I would like to correct this statement I just made, this last statement. In addition to this here—

Q What "here"? A In addition to what Mrs. McNulty told me that one of the Gulicks was dead I afterwards—when I came to look this up, Mr. Jones told me to find Gulick. I knew Gulick was an attorney. I didn't know just where to go and I was looking for the

Gulicks in the telephone numbers for a lawyer and they told me that Mr.—(interrupted).

Q Who told you? A A man by the name of Gulick who I rang up on the telephone in New York City told me that the Gulick I was looking for had been dead ten years.

Q Yes. Now have you got it right? A Yes, sir.

Q Have you corrected what you wanted to correct? A Yes, sir.

The Court: Mrs. McNulty did not tell you?

Witness: Yes, sir; Mrs. McNulty told me also; yes, sir.

The Court: Supplementing that.

Q This option you had on this property, dated the 14th of February, 1911, Exhibit D. 7, seems to have been made by Richard M. Gulick and Margaret McNulty and Mrs. Eichengreen, wasn't it? A Mrs. Eichengreen?

Q And Morris Eichengreen? A Yes, sir; yes, sir.

Q At that time Gulick was alive, wasn't he? A That is a different Gulick; yes, sir. This Gulick was alive. This is a different Gulick we are speaking of. You understand that, don't you?

Q When was that that Mrs. McNulty told you that same Mr. Gulick was dead? A About several years after they didn't—after I didn't acquire the property on that option I heard that—(interrupted).

Q You what? A After I didn't acquire the property on that option I heard that Mrs. McNulty was living in Philadelphia instead of

Pittsburgh, where she used to live, and I went over there to see her and I was talking to her and she told me that Mr. McNulty—Mr. Gulick, one of those Gulicks had died in New York, a lawyer, because I had known him and she said he is dead.

Q That was not Richard Gulick? A Richard Gulick has been dead for years.

Q That was not Richard Gulick? A No, sir.

Q How did she happen to tell you the same Mr. Gulick was dead? A Because we were talking about the Gulicks. This man had—that is on that option, died during the life of that option.

Q I understand. I am wanting to inquire—(interrupted). A Yes.

Q —how she happened to tell you the same Mr. Gulick was dead? A We were talking about the Gulicks and she said that is Mr. Gulick's father. I said I knew Mr. Gulick the attorney in New York. His office was right next door to mine in Nassau street, and she said he is dead now.

Q When was that? A That was about ten or eleven years ago.

Q Why did you hunt him up in the telephone book if his office was right next to you and you had been told ten or eleven years ago he was dead? Why did you look him up in the telephone and seek information about his whereabouts? A Because I wanted to find out if there was any of those Gulicks. Maybe he had a son or somebody that could give me the information of where these people were.

Q You told us a little while ago you rang him up to see if you could see him and you learned from some Mr. Gulick he was dead? A Yes; I looked the Gulicks up in the book.

Q Which Gulick did you ring up? A I don't know which Gulick. Their name was in the telephone book. I rang up three or four.

Q Can you give us any other reason why, having been told by Mrs. McNulty this Gulick was dead, you looked in the telephone book to get his name and you rang up some Gulicks and was told that he was dead? A Not to see if he was dead; some of the heirs were there.

Q That is what you say now? A I did say that from the start, to find out where any of them were. I thought he may have had a son or brother.

Q When was this? A This was before I went to the Surrogate's office to look up his will.

The Court: When was that?

Witness: It was in September, 1923.

Q How long after the option was it you went over to see Mrs. McNulty in Philadelphia? A Well, maybe five years; something like that, five or six years.

Q Do you know when Mrs. McNulty died? A I don't.

Q What? A I really don't.

Q You knew she was dead? A You asked me when she died.

Q When did you learn she was dead? A I learned she was dead when I went over to Johnson & Morehouse's office in 1921, who I knew were her attorneys and they told me she was dead, but I could find the daughter over to Senator Pepper's office in New York—(interrupted).

Q Yes. A —in Philadelphia.

Q When was this visit to Philadelphia when you learned that Miss McNulty was working

somewhere and you gave Mr. Jones the information. When was that visit? A That was the first part of September.

Q What year? A 1923.

Q '23? A Yes, sir.

Q Well, you have introduced in evidence a letter dated October 28, 1921, in which you say, writing to Mr. Ronon, "Some time ago I spoke to you and Miss McNulty in regard to some property she was interested in at Avon, New Jersey." A Yes, sir.

Q You must have had information then as early as 1921 that Miss McNulty was interested in this property, didn't you? A Yes; you didn't ask me that. You asked—(interrupted). Yes, sure.

Q And you knew she was working in Mr. Pepper's office, didn't you? A Yes; yes, sir.

Q Then why did you have to learn where she was working in 1923? A She may not have been there any more.

Q Why didn't you go to Pepper's office and see if she was there? A Because I didn't want to go up to an attorney's office and talk to a lady. Last time I was up there I didn't get much satisfaction. And as a rule lawyers don't want people to come to their office to interview their help.

Q That is your best explanation? A Yes, sir.

Q You had talked to Mr. Ronon there? A I wouldn't go—(interrupted).

Q You had talked to Mr. Ronon there? A Yes, sir; first time.

Q 1921? A Yes.

Q And he brought in Miss McNulty? A No; I went to Miss McNulty and she brought him in.

Q The three of you had a talk? A Yes.

Q And you later wrote to Ronon about it? A Yes, sir.

Q That you wanted to take the matter up again with Miss McNulty? A With Miss McNulty.

Q Why didn't you tell Mr. Jones to write to Mr. Ronon? You had this letter? A Writing is a very poor way of doing business, I find. It is better to go.

Q Why was it necessary for you to go to Philadelphia and hunt up the residence of Miss McNulty, so that you could tell Mr. Jones whom to see when you had known as early as October 28, 1921, that Miss McNulty was employed by Ronon in the office of Senator Pepper in Philadelphia? Why? A There was two years difference between 1921 and 1923, and she may not have been in the same place any more. And besides Mr. Jones told me to try and find out where she lived, so that he could go to her house instead of going to her office.

Q You wanted to skip "Monon," is that it? A Ronon?

Q Yes. A No.

Q You wanted to get rid of Ronon? A Not me.

Q Perhaps Jones did? A I don't know about Mr. Jones.

Q Oh. Had you ever spoke to Mr. Jones about your dealings, whatever they were, with Mr. Carton? A Regular.

Q Had you told him you had written this letter of March 28, 1922, Exhibit P. 13? A No, sir.

Q No. Have you kept a copy of that letter? A Did I keep a copy?

Q Yes. A I don't remember.

Q What? A I don't remember whether I had a copy of it or not.

Q Why didn't you tell him that you had written him the other letter? You said you told him everything? A You asked me did I tell him with regard to Mr. Carton. Mr. Carton's transaction was after that letter.

Q I asked you if you kept Mr. Jones apprised of the transactions that you were having, whatever they were, and you said, "Everything." A Yes; with Mr. Carton.

Q I ask you therefore, didn't you tell him of this letter? A This letter had nothing to do with Mr. Carton. This was before I had any dealings with Mr. Carton.

Q Perhaps you do not understand? A Oh, you mean that letter. Excuse me. I thought you meant the other letter.

The Court: That letter is what?

Q Letter Exhibit P. 3, being the letter of March 28, 1922, from the witness? A Yes; I understand.

Q To Mr. Carton. A I thought you meant the other letter.

Q That is all right. Did you tell him of that letter? A I don't remember.

Q What? A I said I don't remember.

Q Is that the best answer you can make to that? A Yes, sir; I don't remember.

Q Don't you know you never told him of it? A I should say this: I don't remember if I ever told him of that letter or not.

The Court: Telling who that?

A Mr. Jones.

Q And how did you find out?

The Court: That is the "I purchased" letter?

Mr. McCarter: Yes, sir; "I purchased." And about the deeds and all that.

Q How did you find out, if you know, the addresses of those people who were in California? A I never found that out.

Q Who did? A I went to Mrs. Housewright and she referred me to her attorney. And her attorney and Mr. Jones closed the deal.

Q Did you send somebody to California? A No, sir.

Q Didn't some person go out to California for the purpose of procuring these deeds there? A Not to my knowledge.

Q Didn't you state that you had sent to California? A No, sir.

Q Did not? A No, sir.

Q Who is Irma Klaphouse? A She was in Mr. Jones' office. I don't think she is there now.

Q A clerk in his office? A Yes, sir.

Q Who suggested taking title from these people in her name? A Mr. Jones, I suppose.

Q Mr. Jones? A I suppose he did. We talked it over and took it over in her name.

Q I am asking you how it came about. A Mr. Jones suggested it.

Q Mr. Jones? A Yes.

Q Did it seem to you queer, if you were buying this property and paying five thousand dollars for it, title was taken in the name of some young lady? A She turned it over to us.

Q What? A He told me she does that for him often.

Q Any reason given? A No, sir.

Q Why the deeds were not taken in your name? A No, sir.

Q Haven't any idea why that was done? A No, sir.

Q It was not done, of course, to conceal from Mr. Carton that you were acquiring this title? That was not the object? A Not at all.

Q Never thought of such a thing. As a matter of fact all the interests were united in a deed to Irma Klaphouse? A Right.

Q Klaphouse? A Yes.

The Court: In a deed or deeds?

Witness: Deeds.

Q I was just going to give your Honor the information about that as it appears by the search in evidence? A I think there are three deeds, your Honor.

Q The search discloses, your Honor: That Edwin A. Bratlow, Millicent G. Krisman, and Frank Krisman to Irma Klaphouse, dated September 11, 1923, recorded November 7, 1923, consideration $1.00; some of the acknowledgments being in California and some in New York and one in New Jersey, apparently. The next deed is James I. Gulick and Marygold Gulick his wife to Irma Klaphouse, dated September 15, 1923, acknowledged September 15, 1923, in California. Then there is another deed Florence M. Johnson, widow, formerly Florence M. Housewright, to Irma Klaphouse, dated September 12, 1923, acknowledged the same day before a notary in New York County. And then there is a deed Inez H. McNulty to Irma Klaphouse, dated September 7, 1923, recorded October 25, 1923, and acknowledged in Philadelphia.

Morris Eichengreen, cross.

Q What day did you say you first went to see Taylor? A The very last of August.

Q Didn't you say September before? A No, sir.

Q What? A No, sir.

Q Sure of that? A Yes, sir.

Q The very last of August? A Yes, sir.

Q When did you see him the second time and order the search? A September.

Q What time in September? A Oh, I would say the middle.

Q Middle of September? A Well, maybe a little before that; yes, sir.

Q And do you know when the search— (interrupted). A No, sir.

Mr. McCarter: May I see when that search is dated?

Mr. Lane: September 7th.

Mr. McCarter: The search?

Mr. Jones: The 8th of September.

Mr. Lane: September 8th.

Q You had nothing to do with the obtaining of these deeds yourself, you say? That was all in Mr. Jones' work, is that right? A Yes, sir.

Q When was your visit to Philadelphia, the second visit, now, when you went to Miss Inez McNulty's residence and learned where she worked, down at Senator Pepper's office? A I didn't go to her residence; I telephoned.

Q When was that? A That was the first part of September.

Q Before you had the big search? A Before we had the big search.

Q Was her name on this little search? A Yes, sir.

Q Inez? A Inez McNulty; yes, sir.

Q On the little search? A On the little search; first search.

Q And that you got in August? A About the first of September, as I said.

Q What? A The real last of August; yes, sir. It may be the 30th, 31st, 1st of September. Something like that.

Q And was it from the information that was disclosed to you on this little search that you learned that Inez was the owner of this property? A Owner of half of it; yes, sir.

Q Half of it? A Yes, sir.

Q You are sure about that now? A Yes, sir.

Q Well, would it surprise you to learn that Inez, according to the search, does not get title at all?

Mr. Lane: March 14, 1916.

Mr. McCarter: Yes, I am wrong about that.

Q What was the name of the Mr. Gulick whose will you inspected at the Surrogate's office, the first name? A I think it was John. Now, I would not be positive, but I think so. I may be wrong.

Q Are you sure you did not see in Mr. Carton's office a copy of that will? A Why, I never saw anything in Mr. Carton's office.

Q What? A Yes, sir; I am positively sure I never saw it in Mr. Carton's office.

Q He told you something or other about California, didn't he? A Told me? Yes.

Q What? A Told me.

Q Did he say he lived in California? A No, sir.

Q Did you say you did not see this letter of August 16, 1923, contained in the batch marked Exhibit C. 4, being a letter from Mr. Lawrence to James D. Carton, dated August 16, 1923, just before your trip down to the clerk's office at Freehold? A Yes, sir.

Q Mr. Taylor's office? A Yes, sir.

Q You did not see that letter? A Never saw the letter.

Q In which the names of the people interested and the fact they live in California is mentioned? A No, sir.

Q What? A I never saw the letter.

Q Did not see the copy of the will of Richard M. Gulick and the copy of the will of John C. Gulick attached to that letter? A Never saw anything in Carton's office. He would not show me letters and wills in his office.

Q He would not? A You would not think so.

Q I am not asking you whether you would think so or not; I am asking you the fact. A No, sir.

Q He did not. No? A Never showed me anything.

Q No? A Or told me anything.

Q But it was shortly after August 16, 1923, that you started out on this journey of investigation, wasn't it? A After he told me that the interest was in California instead of Massachusetts, I told Mr. Jones that and he said— (interrupted).

Q I do not care to go into that long rigamarole again. You at once started off the last part of August to make this investigation for yourself? A Yes, sir.

Q You had not done any investigating for a year and a half, had you? A No, sir.

Q No. Had you had some trimming done on the property in the meantime? A No, sir.

Q Now, Mr. Eichengreen, after you got title, you did commence some grubbing or some trimming? A Yes, sir.

Q There are some woods on the property? A Yes, sir.

Q And that is what you did the grubbing and trimming on? A Took all the brush out.

Q Where are those woods with reference to the road going out? A Well, it is on the south side.

Q It is on the south side? A Toward the river; on the floor— (interrupted).

Q And you commenced on the grubbing on the rear end of that? A On the river front.

Q On the river front? A Yes.

Q And came backward? A Yes; I think that is the way—no. I think he started on the north end where the woods are.

Q Which is it? A I think on the north end.

The Court: And worked toward the river?

Witness: And worked toward the river.

Q And worked toward the river? A Yes, sir.

Q I thought you said the other. Which was it? A The man is here and he did the work. I didn't see him do the work for months. The man is right here that did the work.

Q When was it that you offered to put $500 up to bind the bargain? A The second time when Mr. Carton told me to come back next Saturday. That was the second time I was in his office in regard— (interrupted).

Q That must have been in March, wasn't it? A That would be about the 1st of March, or something like that.

Q And what were you offering to put up $500 for if you had no bargain? A Because Mr. Carton told me that he had all the interest in this property except one very small interest, and that when he got that he would consider selling it to me.

Q Consider selling it to you? A So I said, "Do you want a deposit of $500?" And he said, "No; not until I get the interest." And you come in here in thirty days and then we will make some kind of a deal.

Q You wanted to put up $500 before there was any deal at all? A Yes, sir.

Q What? A Yes, sir.

Q Just on general principles? A Yes, sir; I was anxious to get that property.

Q Very anxious? A Because it adjoined mine.

Q Were you telling the truth when you said in this letter of March 28, 1922, "I think by having a deed for the property will give the public more confidence in purchasing same." Did you say that? Was that accurate? A Yes.

Q What? A We hadn't come to any— (interrupted).

Q I did not ask you whether you had come to anything. A Yes, sir; yes, sir; I mean that.

Q Why, if there was no bargain, and no deal, did you in this same letter say, "I will be at your office next Saturday morning, so kindly have the papers ready so that I can go ahead and order the streets put in"? A Because Mr. Carton told me to come in that Saturday and that he would probably have this interest which

he told me he had to acquire. He told me he probably would have it by then.

Q You just said a little while ago he said thirty days. A Yes; about thirty days.

Q This was next Saturday. A What day is that letter?

Q This letter is dated March 28th. A That is thirty days. We were in there the 1st of February.

The Court: 1st of February?

Witness: Middle of February is when I made the deal with him. I was in there February, 1922.

The Court: What deal?

Witness: No; didn't make a deal. When I went to see him and talk over the property and he told me to come back in thirty days and he would then acquire that interest.

Q Now, on March 28th— (interrupted). A Yes, sir.

Q —he had not acquired the interest yet? A No, sir; I didn't know. I was in New York when I wrote that letter.

Q What? A I was in New York when I wrote that letter.

Q Yes. You say in this letter, "I think by having a deed for the property will give the public more confidence in purchasing the same." A Yes, sir.

Q "But if this is not agreeable to you, use your own judgment in the matter. I will be at your office next Saturday morning, so kindly have the papers ready." A Yes, sir.

Q "So that I can go ahead and order the streets put in." A Yes, sir.

Q No bargain? A No, sir.

Q Nothing done? A Nothing was done.

Q No agreement was reached at all? A It shows there there was no agreement.

Q You were prepared to put up $500? A Yes.

Q With Carton? A Yes; I took Mr. Carton's word he owned the property; he told me he owned the property except a small interest; and I was willing to give Mr. Carton five hundred or five thousand.

The Court: What was the purchase price?

Witness: Didn't come to any purchase price. I told him I would give him $20,000 for the property, and he said, "Well, I will let you know when you come in—come in next Saturday and see me." And I came in— (interrupted).

The Court: When was that? First visit?

Witness: Yes, sir; first visit. I asked him if he owned this property and he said yes.

The Court: It was the first visit?

Witness: Yes; it was the first visit.

The Court: It was not the second visit?

Witness: The second visit was next Saturday when he said he would tell me whether he would sell it to me for $20,000 or not. Then he told me, when I offered it to him the second Saturday, then he told me he owned all the interest in this property but a small interest.

The Court: You are through with that?

Witness: Yes.

The Court: When was it you purchased that property as you said?

Witness: I never purchased it from him really, except that he told me if he got it in thirty days he would then close the title and we would make a deal, in other words. We would make a deal then. It shows in my— (interrupted).

The Court: Your letter pre-supposes you had made a purchase?

Witness: I probably didn't write the letter legally. I wrote it myself.

The Court: You know what a "purchase" is?

Witness: Yes; but when you purchase anything there is terms to it. This shows that we had no terms. Agreed to nothing. When we purchase something there must be some terms.

The Court: If there were no terms why did you used the word "purchase"?

Witness: I probably used the wrong term.

The Court: "Purchased" and "buy" mean the same thing.

Witness: Yes.

The Court: Don't they?

Witness: "Purchase" and "buy" probably mean the same thing.

The Court: Why didn't you use the word "buy" then?

Witness: What is that?

Q "I saw Niat Rogers last Saturday and he promised to look over the property purchased from you last Saturday and promised to take

the matter up immediately.'' That is the language? A Yes.

The Court: Did you say that to tie Carton down?

Witness: I tried to tie Carton down—(interrupted).

The Court: I say did you use that—(interrupted).

Witness: I don't know, no I didn't tie Carton down, because he never gave me any letters or anything.

The Court: I am asking you whether you used the word ''purchase'' for the purpose of tying down Carton to something he never did.

Witness: Well, I wouldn't say that, no, sir.

The Court: What other explanation have you got then?

Witness: I haven't any explanation except that I probably used the wrong word in saying ''purchased.''

Q Yes. A That is all I can say.

Q Why did you say this then in the letter: ''If you don't mind I think the best way for us to handle this proposition is for you to give a deed and take back a mortgage with release clause, say, four hundred dollars for each fifty foot land front, and one thousand dollars for each fifty foot of riverfront lots. This will be ample protection for you. You can also add any contract that you wish to.'' Why did you say this? A When Mr. Carton told me after he got this property, after he got the other interest in the property then we would make a deal, so I

just suggested those terms as being the right terms if we—if he got that and we would make the deal.

Q And is this the time you suggested putting up the five hundred dollars also? A Around that time.

The Court: A mortgage for part.

Witness: Well, there was no mortgage. There was no price.

The Court: You suggested giving back a mortgage.

Witness: But there was no price, no terms.

The Court: How much?

Witness: There wasn't any agreement made as to terms, price, mortgage or anything. Didn't even—nothing. There was no such as mortgage, price or terms. We didn't get to any terms. He said "After I get this interest which I have in Massachusetts we will get together and make a deal."

Q Now, Mr. Eichengreen— A That is just what— (interrupted).

Q Now, Mr. Eichengreen, April is the best selling month down there, isn't it? A Well, I thought it was at that time.

Q It is a good selling month. A No answer.

Q That was your view then? A Well, I thought it was at that time. It is a good selling month.

Q That was your view then? A Yes.

Q So you added a last clause to this letter: "I think by having a deed for the property will give the public more confidence in purchasing the same." A Yes, sir.

Q "But if this is not agreeable to you, use your own judgment in the matter." "I will be at your office next Saturday morning, so kindly have the papers ready." A Yes, sir.

Q "So I can go ahead and order the streets put in and also other things which must be done for the development of the property." A Right.

Q "April is the best selling month in the year and I want to get busy." A Yes, sir.

Q And yet there was never anything reached? A Never; he never got that interest and he put it off from week to week.

Q And you waited, although you were anxious to get that property? A Yes, sir.

Q And willing to pay him twenty thousand dollars for it on the assumption he owned it? A Yes, sir.

Q You waited until the following August a year? A Yes, sir.

Q Before you did a thing? A Yes, sir.

Q Except pursue him? A Yes.

Q To get that interest? A Yes, sir.

Q Knowing all the time he had the tax titles? A I knew he was paying taxes on it, if that is what you mean.

Q And then you heard California from him? A Yes, sir.

Q And you started out on your own hook? A Yes, sir.

Q Did you say that you believed, when you approached Mr. Carton to buy this property, that he was the owner? A Yes, sir.

Q Where did you think he had gotten it? A When he gave a deed to the borough for twenty-five foot front and twelve hundred and fifty feet deep, signed by himself and wife. I thought he

had owned—he owned the property. I didn't know at that time what kind of a deed he had given.

Q Now on October 28th, 1921, you wrote Mr. Ronon? A Yes, sir.

Q Which is— (interrupted). A That deed was given after that letter.

Q Which is before the deed which is dated the 21st of November. And you say— (interrupted). A The deed was given after.

The Court: Wait.

Witness: Excuse me. I beg your pardon.

Q And you say in your letter of October 28, 1921, to Mr. Ronon: "Some time ago I spoke to you and Miss McNulty in reference to some property she was interested in at Avon, New Jersey." A Yes, sir.

Q Then you knew as early as October, 1921, that Mr. Carton did not own it all, didn't you? A No, sir.

Q What? A I didn't know whether he had acquired it or not. This was six or eight months before that I saw them.

Q I am asking you whether you did not know in October, 1921, Mr. Carton did not own the property. A Not in October, no, sir. In November, I did, after he had given a deed, then I thought he owned the property.

Q Then you supposed that between October and November, 1921, he had acquired the McNulty interest? A I say I saw them about nine months before that letter.

Q Nine months? A Seven or eight months.

Q Some time ago? A I have never heard from them. Some time ago and I never heard

from them. They never answered. He was to come to Avon and never came, though I didn't know what become of them, so I wrote them a letter. And right after that letter I was up in the council room and I heard he had given a deed.

Q All right.

The Court: You already stated that.

Q Well, you did not go and tell Mr. Carton that you had made these purchases, did you? A Not until after I had purchased them.

Q Well, after you had purchased them didn't he hunt you up? A No, sir.

Q What? A No, sir; I went in to Mr. Carton's office and Mr. Carton was busy. Three or four people in his office and then I went out. And I went back to New York and on the way to the railroad station—from the railroad station to my office, I met Mr. Carton on the street. I said, "Carton, I want to see you," and I went with him right up to his office.

Q When were you in before the time that you didn't see him? A Right after I got title to the property.

Q What do you mean by "I" got title to the property? Miss Klaphouse or you? A No; she turned them right over to me.

Q Handed the deed to you? A Yes, sir; I got title right away.

Q You went down— (interrupted). A I went down and filed papers and he knew— (interrupted).

Q I am not asking you what he knew. A All right. All right.

Q I am asking you when it was you claim you went into his office to see him? A Oh, it was about November, I think.

Q November? A Wait a minute now. Yes, early part of November.

Q Who did you see? A I met him on the street.

Q No. A First time?

Q Yes. A Girl at the telephone desk.

Q What? A Girl at the telephone desk.

Q And asked for Mr. Carton? A And asked for Mr. Carton who was very busy. Can't see him.

Q Yes. What did Mr. Carton say to you when you did see him? He says he took you up in his office and he started to go to your office. You had an office in Asbury Park, didn't you? A Right across the street from him.

Q Right across the street from him? A Yes, sir.

Q Do you know when it was you did see him? A Well, it was—yes, about November, right after I had the deeds.

Q Yes. And what occurred between you? A I told him that I wanted to pay the taxes on this property that he had paid. And he said that "I wouldn't accept any money."

Q Is that the whole conversation? A Yes, sir. Well, he went over— That was all.

Q What? A He said, "I didn't think—" "I don't think you did the right thing by buying that property."

Q Had you told him you bought it? A No —did I tell him I bought it?

Q Yes. A He knew I bought it. I don't think I told him.

Q Didn't he accost you about it? A No, sir.

Q What? A No, sir; I met him on the street and I said, "Hello, Carton, I want to see you."

Q Tell us what he said to you? A That is all occurred; I just told him.

Q Told him what? A Went up to his office and told him.

Q What? A That I acquired this property and that I wanted to pay him the taxes and he said, "I will not take the money."

Q Yes. Did you explain to him how you acquired this property? A No, sir.

Q Did you explain to him why you acquired it? A No, sir.

Q Did you tell him you had bought it for $15,000 less than you offered him for it? A No, sir.

Q Did you not tell him anything of these things? A No, sir.

Q He was pretty mad, wasn't he? A He—(interrupted).

Q Wasn't he? A Yes; if you want to say so.

Q Didn't he tell you on that occasion that you done—didn't you tell him on that occasion that you had done in a month and a half what he had been trying to do for a year and a half? A No, sir.

Q Nothing of the kind? A No, sir.

Mr. McCarter: That is all.

The Court Any more?

Re-direct examination by Mr. Lane.

Q Mr. Eichengreen, one question: When you saw Mr. Carton on March 28th—on Saturday

following March 28, 1922, did he in any way direct your attention to the fact that you had referred to his giving a deed for the property and having the papers ready on April 1st and say that he could not give a deed under any circumstances because he did not have any title to the property; he could not convey, or words to that effect?

Mr. McCarter: I object to the question as leading. I think in view of the circumstances of this case counsel should ask what occurred on that interview.

Mr. Lane: I will withdraw the question. That is all.

Mr. McCarter: Is that all?

Mr. Lane: That is all.

CHARLES JONES, sworn on behalf of the defendant.

Direct examination by Mr. Lane.

Q Mr. Jones, you are a lawyer and have been practicing your profession for how long? A About twenty-one years in Newark.

Q And do you know Mr. Carton? A Yes, sir.

The Court: Where were you before?

Witness: I was in Mr. Cabell's office for about three months.

Q How long have you known Mr. Carton? A I should say twelve or fifteen years.

Q Do you know this property that is subject matter of this controversy? A Very well. I have lived next door to it quite a while.

Q How long have you known the property itself? A Twelve years. I was counsel for Mrs. Kelly, and afterwards I became interested in the property myself. I should say about 1913, and continued it until Mr. Eichengreen bought it.

Q When did you first come in contact with Mr. Eichengreen? A Mr. Eichengreen?

Q Yes.

The Court: In reference to this property?

Q In reference to this property? A You mean this property or the Bell tract?

Q I am talking about the property you have referred to as being interested in which is the property adjoining this property, is it not? A Yes; I should say about 1918 or 1919. I may not be accurate.

Q With respect to Eichengreen? A Yes; the time he bought it.

Mr. McCarter: What are we speaking about?

The Court: I do not know.

Witness: Bell or—(interrupted).

The Court: I am not talking about any Bell property.

Q When did you first have anything to do with Eichengreen with respect to the particular property the subject matter of this dispute, of this suit now? A It was in the beginning of 1922.

The Court: Let me ask you. You speak of the Bell property. Did Eichengreen acquire that?

Witness: Yes; the Bell property is where Scotty's is.

The Court: You say Eichengreen was interested in it?

Witness: Eichengreen acquired that, but it has nothing to do with the property adjoining.

The Court: You were his attorney at that time?

Witness: Yes, sir; at the time he acquired it I met him in that transaction.

The Court: You were his attorney in that transaction?

Witness: I couldn't say that. I was interested on the other side.

Q And how did you become—what connection did you have with it at that time?

The Court: With what?

Q When you first met Eichengreen with respect to this particular property?

Mr. Lane: I am going back to my earlier question.

The Court: You mean the Bell property?

Mr. Lane: No, this property in dispute.

The Court: All right.

A Eichengreen had developed the Bell tract and the tract across the street, and was ready for another tract, and he asked me what I thought

of the Carton tract, which is the tract in question. I told him I thought it was a logical tract to acquire, and he then said, "do you know, years ago I had an option to buy that." He said, "I am willing to give twenty thousand dollars for it." He said Carton had given this to the borough. I said that I always supposed Carton owned it. I always did. So I told him to go to Carton for to buy it. And then he reported to me from time to time what had happened.

Q Now in August, 1923, did Eichengreen come to you with respect to something that had happened as to this negotiation? A Yes.

Q Tell me about when that was? A I should say the latter part of August, 1923. I can't charge myself with the exact date. But he had kept me in touch with this situation and there was an outstanding interest in Massachusetts. At that time he told me "I just came from Carton's office. What do you think? This outstanding interest is in California." I said, "I think Carton is stringing you along. He strung you along for two years. There is something wrong there. You jump on a train and see Ed. Taylor in Freehold," and I gave him a letter to Ed. Taylor and I think the same day or the next day he brought me back a report from Taylor as to who the record owners were.

Q And then what happened? A Well, I then told Carton I thought under the circumstances—(interrupted).

Q Told Eichengreen? A Told Eichengreen I thought under the circumstances, I thought Carton hadn't treated him right, and he ought to go down and see the people direct and he could locate where Inez McNulty was and also

the others. Next I heard from him was a telephone message from Philadelphia. Either that night or the following night pursuant to the telephone conversation I went down.

Q To Philadelphia? A To Philadelphia.

Q Who did you see? A I went to Inez McNulty's house and asked her whether she had an attorney and I waited there for her attorney.

Q And then what occurred? A I met Mr. Ronon at Inez McNulty's house. I recited to Mr. Ronon this entire transaction as it came to me, of course, from Mr. Eichengreen, and I said "under—are you in any way committed to Carton?"

Mr. McCarter: What is that?

Witness: "Are you in any way committed to Carton on this?" I recited the fact that Eichengreen had been attempting to purchase this property and as I expressed it I thought Carton had been stringing him along all this time, and I just learned that Carton—didn't think Carton had used him right, and I said, "Has Carton acquired this property from you or are you so committed to Carton that you can't honorably deal?" He said, "Absolutely not" that he had no agreement with Carton whatever. I said, "Under the circumstance then I think you ought to get in touch with Carton," and I said, "Of course I came down here without money, without a contract. I don't know a description of the property. You take a week or ten days, get in touch with Carton, and then I will get in touch with you again." I got in touch with him a week later on the telephone. I didn't go

down there again. Inez McNulty is Senator Pepper's secretary. Works in the same office.

Mr. McCarter: What is that?

Witness: Inez McNulty is Senator Pepper's office secretary and works in the same office as Ronon. I called him up and asked him about this property. I said, "How about this property?" I said, "We want to negotiate or are negotiating for the other half interest. Are you free to deal?" He said, "Yes." He said, "What do you offer for the property?" I said, "Twenty-five hundred dollars." He said, "Wait a minute, until I talk with Miss McNulty." There was a pause. In a few minutes he said, "Sold." I said, "Shall I come down?" He said, "No, it is all right. Send a clerk down." I did it and as the result the deed came in. My check paid for it. I took it in the name of the girl in the office.

Q What did you have to do with respect to ascertaining the whereabouts, if anything, of the other interests? A Well, from that point on Eichengreen worked under my direction.

Mr. McCarter: What is that?

Witness: From that point on Eichengreen, I believe, worked entirely under my direction. He told me the Gulicks were the other interested parties which conformed to the report which I got from Taylor. He said he knew this Gulick, but he was dead. I said, "Go and hunt up any Gulicks. Hunt up in a directory and do everything, and come back and report." He did that. Reported the

man was dead and that he had got in touch with somebody, and I sent him over to the Surrogate's office and I gave him such directions as I thought were necessary. He brought back some rough notes as to the will of Gulick, such as a layman would take off. In that will, much to my surprise, a client of mine, a friend of mine, was a sister, namely, Mary Ann Gulick Bratlow, and that came back to me, she was a Gulick. I investigated from my end while Eichengreen went off, as he said, to see Miss Housewright. I didn't have much faith in that because I thought he would not get it. But he started off investigating in his way, while I investigated from the Bratlow end. Young Bratlow is an attorney, and from the Bratlows I learned, independently of Eichengreen, that John Lawrence, Canadian Building in New York, was the attorney and then Eichengreen made his—

Q And what was said with respect to taking the matter up with Lawrence? A I went over to see Lawrence there and I told Lawrence almost the same as I had told Ronon, of course getting my information from Mr. Eichengreen. And I asked him what the situation was, and he said, "I have been writing letters and have been receiving letters and been writing letters; and I can't get anywhere with this man Carton." He said, "Do you know him?" Of course I knew Carton. I had known him well and favorably and I then told him the situation and if he felt free to deal that we were going to try to acquire the other half interest. I subsequently went back to him and told him that we had acquired the

other half interest and he said—he wanted to know how much I paid for it and I would not tell him and I had to give thirty-five hundred dollars for it, and it appears that this Lawrence represented all these Gulick heirs which were rather scattered.

Q Now, at the time Eichengreen first came to you in August, 1923, did he give you any information as to—and before you instructed him to go down to Freehold, did he give you any information as to having inquired from Carton as to the names of the people interested in this estate or the names of the lawyers interested in the property? A No; he did not. If he knew him he kept very silent about it.

Q Did he tell you he had seen a copy of that Gulick will in Carton's office or he had seen any letter in Carton's office from some lawyer indicating that Carton—that there were negotiations going on between Carton and Lawrence or whatnot? A No; he did not. He represented he supposed Carton owned it at that time. Even in August, 1923. So did I.

Q Did you acquire the name of Lawrence as a representative of the Gulick interest in any other way than as you have indicated it? A Absolutely not.

Q Now, after you took title in the name of Miss Klaphouse, did you have a deed drawn immediately from her to the Eichengreen Land Company? A Yes; and it was recorded simultaneously with all the others, with the other deeds.

Mr. Lane: Cross examine.

(The Court thereupon took a recess for lunch until this afternoon at 2:00 o'clock P. M.)

Charles Jones, cross.

TWO O'CLOCK P. M. SESSION.

CHARLES JONES, resumed.

Cross examination by Mr. McCarter.

Q Mr. Jones you have been, you say, a lawyer for about twenty-one years? You have devoted yourself principally to conveyancing, have you, and real estate work? A A large part of the time; yes.

Q And you do a great deal of searching not only in Essex County, but throughout the State? A I used to; I haven't for the last six or seven years; no.

Q Don't you do a great deal of work for Durand, Ivins & Carton? A Yes, sir.

Q Even down to the present time? A Yes.

Q So you had not given it up? A In the Supreme Court.

Q And you search at Trenton yourself? A Yes; myself? No. The indeces are right here.

Q What? A The indeces are right here.

Q You have indeces of the Supreme Court in your own office? A Yes.

Q You knew this man Baker very well, didn't you? At Freehold? A Who?

Q Taylor. A As a matter of fact I never met him personally, no.

Q How did you know about him? A Why, because he done searches for me.

Q For you? A Yes.

Q He does independent searching for people throughout the State in Freehold? A So I understand. I never met him. He has made searches for me before.

Q I don't suppose you ever met him, but you have had business with him a great deal? A Correct.

Q For a number of years? A I think I have.

Q What? A I think I have.

Q Haven't you? A I think I have.

Q Do you know, Mr. Lawyer of Twenty-One Years, whether you have had business relations with Mr. Taylor or not? A He has probably made no more than four searches for me.

Q How did you happen to send this Mr. Eichengreen to Taylor rather than Joe McDermott, the clerk? A Because Ed Taylor had made two or three searches for me before that time.

Q Oh, I see. Yes. Which would make about four in all? A Yes.

Q When you had gotten those previous searches did you send your client down to him? A To Taylor?

Q To get the searches, or did you write personally to Taylor? A Wrote to Taylor?

Q Wrote to Taylor. Why didn't you do that in this case? A Because I chose to do it otherwise.

Q I see. And when, after you say that Johnson brought you—Eichengreen brought you some memorandums—oh, by the way, I think you said you destroyed that memorandum. A Yes.

Q When did you destroy it? A I don't recall.

Q What? A I don't recall. Sometime after I got the information from Ed.

Q Is it customary for you, in looking after a client's interest, to destroy any papers affecting

the title? A Memorandum that is superseded by others, yes.

Q You do not know when you destroyed it? A Well, I should say sometime before I—or after I got the final search from Taylor.

Q Did you know anything about when it was? A I wouldn't want to swear to it; no.

Q Do you know you destroyed it? A I wouldn't want to go as far as that. I have no present recollection of the act of destroying that.

Q Have you destroyed it since this suit? A I have not.

Q No. Well, now, when you got the information from this memorandum, I understood you to say, and your client also to say, that again you sent Mr. Eichengreen to Freehold to get the search. A I wanted a complete search.

Q Why didn't you write about it? A Because I get it quicker by him going down there.

Q What? A I thought I could get it quicker by him going down there, because I know what searchers are.

Q You thought sending Mr. Eichengreen down there and ordering a search would have more promptness connected with it than it would if you either telephoned or wrote or telegraphed it? A I not only think so, but I know so.

Q There was a great need for haste, was there? A Yes.

Q What? A I thought so.

Q What was the need of haste? A Because he had brought me this memorandum indicating two owners different from whom I supposed and what Mr. Eichengreen supposed was the owner.

Q Yes. A And I wanted that followed up immediately.

Q Immediately? A Immediately.

Q Yes. I am asking you now what was the haste in view of the fact that even according to your information—your testimony—a year and a half had elapsed while this was going on. What was the immediate haste that required, you say, the expedition of sending Eichengreen down to see this man, Taylor? A So that Mr. Eichengreen could get at the bottom of things and acquire this tract so that he could go on developing.

Q I understood your testimony to be that down to the time Eichengreen came to you in August, both you and Eichengreen supposed Mr. Carton owned this property. A Up to the time in August?

The Court: 1923.

Q Nineteen twenty-three? A That is correct.

Q What? A That is correct.

Q Then Eichengreen never told you that during this long period in these daily reports that he made to you, as the work was going on, that this man Carton claimed there was an interest in Massachusetts? A Well, with the correction that he did not make daily reports.

Q You said you kept in touch with the progress of the thing. A I kept in touch.

Q We will leave out the "daily." A He had told me that Mr. Carton had represented to him that he owned the property and that there was a small outstanding interest in Massachusetts which he was attempting to get.

Q Now, you say he told you that? A I say so now and I said— (interrupted).

Q When did you say so before? A In my direct testimony.

Q What? A In my direct examination.

Q Do you think that is consistent with the statement you just made to me that you supposed and Eichengreen supposed, as you knew, down to August that Carton owned this thing? A Yes.

Q You think that is entirely consistent with that? A I do; I do.

Q At any rate, have you any way from your charges or your books or anything, whatnot, to fix the day in August when this matter first was brought to your attention when the change in policy was adopted? A I couldn't fix it down to the date, Mr. McCarter.

Q Have you no charge in your books to indicate it? A No; I haven't any memorandum that would fix the time exactly.

Q As near as you can. A Oh, I can fix it.

Q As near as you can. A Yes, I can fix it the last two weeks in August; somewhere in there.

Q Last two weeks in August. What makes you able to fix that? A I move up from the shore the day after Labor Day, and I can fix it from that.

Q Labor Day is the first Monday in September. A Yes; I appreciate that.

Q It was then within two weeks of Labor Day? A I should say so; that is my best memory at this time.

Q And your talks with Mr. Eichengreen about it were at the shore; not in Newark? A No; they were in Newark; I didn't live at Avon. I lived further down the shore.

Q What has your moving up got to do with the time? A You asked me what fixed it in my mind. That is a—that has a peculiar significance in my mind as fixing the time.

Q Yes? A Whether it does in yours or not.

Q And you told Mr. Eichengreen when he brought the matter to your attention there that you didn't think Carton treated him very well? A I told who?

Q Eichengreen. A I told Eichengreen? Yes, I did tell him so.

Q What made you think that? A Mr. Eichengreen was a developer; he had developed his other tracts. If what Eichengreen had told me was a fact.

Q Namely? A Namely, that Mr. Carton had represented that he owned this property and that he was getting this small outstanding interest and had strung him along for a year and a half and kept him out of this field of development, I don't think, and I still don't think he had used him right.

Q Yes? A And I told Eichengreen that.

Q You knew that he was keeping him off a year and a half because you have testified that Eichengreen reported everything to you? A Yes; correct.

Q What? A Correct. And when he came up in the latter end of August and told me that Mr. Carton—I merely have to rely on what Mr. Eichengreen told me—that this outstanding interest had suddenly shifted to California, I said there is something wrong.

Q How do you reconcile an outstanding interest with your statement Mr. Carton owned this property? A It might be a trivial interest.

Q I am not asking you what it might be. A That is what I supposed it was.

Q That is what you supposed it was? A Yes, possibly a quitclaim deed, possibly an outstanding dower; possibly a small interest of that sort.

Q Can you tell us anything more you thought of as a lawyer? We are interested to learn. A You asked me what I thought; I am telling you what I thought.

Q You thought it was time you had some action in this matter? A I thought it was time to find out the truth.

Q To find out the truth. And you thought that Carton had lied to Eichengreen? A Oh, I wouldn't want to say that.

Q What? A I wouldn't want to say that.

Q Is that what you mean by finding out the truth? A I thought that what Mr. Eichengreen had told me, reported to me, that the two things could not be true.

Q Yes. And what information did you tell Eichengreen to get at Freehold? A To find out who the record owners were of this eighteen-acre tract.

Q And I understand that Eichengreen brought back to you a memorandum which he copied from the record showing that Mrs. Housewright lived at number so and so, so and so, Mt. Vernon, New York; is that correct? A I don't recall whether that was on the memorandum or not.

Q What? A I don't recall that.

Q Did you hear him testify to that? A I heard him testify.

Q Do you recall any such information? A I recall that he brought back that she was one of the owners of the property.

Q Do you recall the fact that the information that Eichengreen brought back to you, after his first visit at Freehold was information that, as he expressed it, was gained from the records and deed to Miss Housewright, which gave her address by street and number in Mt. Vernon? A I don't recall that.

Q That is not so, is it? A I won't say that.

Q Now, Mr. Jones, how long a time elapsed between Mr. Eichengreen's first and second visits to Freehold to expedite this matter? A Oh, as I recall it now, about a week.

Q About a week? A I should say so now.

Q That would make his second trip about what time? A Early in September.

Q Early in September. Now, I understood you that you took a night trip to Philadelphia. A That is correct.

Q Am I right? A Well, it wasn't exactly a night trip. I arrived there shortly after 6:00 o'clock.

Q After office hours, eh? A Yes; after— (interrupted).

Q You heard me. A I heard you.

Q Any difficulty in hearing? A I left so as to arrive in Philadelphia shortly after 6:00 o'clock.

The Court: Please, please. Is there a little bit of ill feeling here?

Mr. McCarter: Pardon me?

The Court: Is there a little bit of ill feeling between the lawyers?

Mr. McCarter: Not the slightest.

Witness: No.

Q Who suggested you should go after office hours to see Miss McNulty? A Nobody suggested I should go after office hours. Mr. Eichengreen called up and gave me the address of Miss McNulty, which was what I sent him down to obtain.

Q You knew at that time, did you not, from your acquaintance with the affairs of Eichengreen, that Eichengreen had years before—two years before—conferred with Miss McNulty and Mr. Ronon, her lawyer, in the adjoining law office in Philadelphia? A I don't think I did.

Q You did not know that? A No.

Q Well, at any rate you knew that Mr. Ronon had been her attorney, did you not? A I learned so in that conversation.

Q What conversation? A Conversation with Mr. Eichengreen.

Q Yes. As an attorney, undertaking to deal with the young lady in reference to a property, did you seek to avoid conferring with her attorney? A On the contrary, I sought to have her attorney present.

Q Yes? A I didn't mention business until he arrived.

Q So you found her residence and Mr. McNulty—Mr. Ronon was sent for. A Yes.

Q Do I understand you to say that you suggested he be sent for? A Absolutely.

Q Yes. What day was that visit, that first visit? A What day?

Q What date? A I should say, as it occurred to me, the latter part of August.

Q Had you moved up from the shore yet? A No; I simply go down to the shore week-ends. I live away down at Seaside Park. I can only go week-ends.

Q You say it was the latter part of August? A That is my present memory; yes, sir.

Q Did you know whether Miss McNulty was on her vacation or not? A The telephone conversation with Mr. Eichengreen indicated she would arrive home at six o'clock that night.

Q Is that the same day Eichengreen had been to Philadelphia? A That is the same day I went down.

Q He telephones you from Philadelphia and the same day you went over after six o'clock? A The same day I arrived— (interrupted).

Q Still reason for great haste. A Arriving there about six o'clock.

Q Still reason for great haste? A No; not particularly.

Q What? A Not particularly. It was convenient for me to go that day and I went.

Q Yes? A Came back the same night.

Q You made no bargain that day? A I did not. I didn't go to make a bargain.

Q Pardon me? A I did not. I didn't go prepared to make a bargain.

Q You were not prepared to make a deal? A I was not.

Q What did you go for? A To further find out the truth.

Q Find out what? A Find out the facts.

Q What else? A Whether Miss McNulty owned the property and whether she was in a position to deal. Those facts I found out.

Q You did not think Mr. Eichengreen was competent to find out either of those facts? A

I thought possibly I could do it. And so did Mr. Eichengreen.

Q What? A I thought possibly I could do it better, and so did Mr. Eichengreen.

Q Yes. Notwithstanding the fact that Eichengreen two years before had seen her and talked with her about her interest, you and he both felt it was worth while for you to go over there specially to Philadelphia, reaching there after six o'clock, for the purpose of finding out if she owned the property. A You apparently have forgotten I didn't know these facts you are reciting.

Q Evidently Eichengreen thought so. A I don't know what he thought.

Q What? A I only know what he told me.

Q You having told us on your direct examination you were thoroughly conversant with everything he knew and I assumed you knew everything. A You are putting words in my mouth I have not told here.

Q All right. What was the conversation about between you and Mr. Lawrence and Miss McNulty? A Conversation between me and Mr. Ronon in Miss McNulty's presence. I told him I represented a client who had been attempting to make a deal on some property at Avon, who, if he had supposed that this property as represented—if the client had been telling the truth—(interrupted).

Q What? A I am repeating a conversation.

Q I am trying to hear what you say. A Pardon me. That he had been attempting to purchase some property from Mr. Carton, who, if the client was telling the truth, had owned this property, that he had strung the client along for some year and a half, and then he had sud-

denly found out that Mr. Carton, apparently, so far as the records were concerned, had no interest in the property, and I asked whether Miss McNulty still owned that property, and if so whether she was in a position to sell it. He said she did. I said, "I know Carton. I am friendly with him. I have known him for years. I know him favorably. He is well regarded and I want to know whether you can honorably deal with this; whether you can come—whether he has gone to such an extent or whether he has acquired this property such as he said he has."

Q Did you name this party? A Mr. Carton?

Q Yes. A Oh, yes.

Q Go on. A Oh, yes. He said, "No. I can't make anything out of Carton. We can never get anywhere with him."

Q This was the latter part of August? A Absolutely. The only visit that I made at that time.

Q Go on. A The other was by telephone.

Q Go on. A He said, "We can't arrive anywhere."

Q Yes? A So I said, "If you can't, then I have this client that is anxious to buy this property, the same man." So we talked. He said—or rather I said, "Possibly you better get in touch with Carton again."

Q You said that? A I beg your pardon?

Q You said that? A Yes.

Q Well, how did you— (interrupted). A So I said, "I will get in touch with you later, and if you can honorably sell this property then I have a client who will purchase it" and then I left.

Q How did you know Mr. Carton had had any relations with Mr. Ronon? A Because I told

him my client was dealing with a man named Carton, who had represented himself as the owner of the property, and I had come down there to find out the facts of it. And he said, "Yes, I have had some correspondence with a Mr. Carton, but I can't get anywhere with him."

Q Did he refer to any letters that he had received from Carton? A He did not; this was at Miss McNulty's house.

Q Did he tell you he was in correspondence with Mr. Carton? A He said he had received some letters from Mr. Carton at intervals—of long intervals.

Q Yes? A He wasn't getting anywhere.

Q Did he say he recently had received any letters from Mr. Carton? A I don't recall that he did.

Q What was the conversation? A I am telling you the entire conversation as I recall it.

Q Have you told us everything that had occurred? A I won't say so.

Q I am asking you to tell us. A I am telling you all that I can recall.

Q Have you told us all that you can recall? A I think it is; yes.

Q Where was the matter left when you went away? A He said he would get in touch with Carton and if I called him up or got in touch with him within the week then he would tell me how matters stood.

Q Yes. This was long before you had the search, wasn't it? The search. A Not the search—the memorandum I had.

Mr. McCarter: Read the question.

(Question repeated by the stenographer.)

A Yes, it was before I had the completed search; yes.

Q How long a time elapsed between that interview and the telephonic conversation? A I should say a week or ten days.

Q A week or ten days. That would make the telephonic conversation to have occurred when? A Possibly the 6th or 7th of September.

Q Yes. And you rang up Mr. Ronon at his office, did you not? A I did.

Q You did not deal further with Miss McNulty then? A I did at no time deal with Miss McNulty.

Q And you say either on the 6th or 7th you rang him up on the 'phone? A Right.

Q Wasn't it the 7th? A Either the 6th or 7th.

Q Wasn't it the 7th? A I can't charge my mind with a date like that. I don't know. It is the 6th or 7th.

Q It might have been the 5th? A Well, it might have been. I don't want to— (interrupted).

Q If the first interview was the latter part of August and a week elapsed it must have been pretty near the 7th, wasn't it? A If you will let me see the deed I will tell you.

Q I don't want you to see the deed. I want your recollection. A I should say it was the first week in September to my best recollection.

Q Yes?

Mr. Lane: Without referring, it would be the 6th of September.

Q At any rate whenever this telephonic conversation was—

Mr. Lane: After Mr. Jones gave— (interrupted).

Witness: It was the day before the deed was delivered, if you want to know. That will bring it back to my memory and if you will refer to the deed you will have the exact date.

Q Now, if I may be permitted to finish my question: At any rate, after the conversation over the telephone ended you and he had agreed, and he announced, "Sold," didn't he? A That is exactly the word.

Q And that you now say was the day before the deed was delivered. A Right.

Q Who prepared that deed? A I think I did.

Q What? A I wouldn't be sure of that.

Q What? A I think I did. I would not be sure.

Q Well, look at the deed and see if you do not recognize your baby. It seems to be on Crawford Brothers law deed blank. A Yes; I prepared the deed.

Q What? A Yes; I prepared the deed.

Q Had you any doubt about it before, Mr. Jones? A Yes; I don't charge my mind with those.

Q You had? A Yes; I don't charge my mind with those.

Q Didn't you prepare that day on the same blanks the other three deeds? A I knew I prepared the other deeds.

Q What doubt was there about your having prepared the McNulty deed when you knew you had prepared the other deeds? A The ordinary doubt of any lawyer who prepares a lot of deeds. It is something that took place long ago.

Q What time of day was it on the 6th that you had this conversation when the bargain was reached? What time was that? A Oh, in the middle of the day.

Q In the middle of the day. And you say it was—the middle of the day before the deed was delivered? A That is my best recollection.

Q Then you said—you see the deed which is an exhibit is dated and acknowledged the 7th so that deed was prepared that day and sent over by you to Philadelphia by mail or by messenger? A No; by messenger.

Q What was the hurry? Why not send it by mail? A Because I sent a certified check, and I did not want to give a certified check without receiving a duly executed deed.

Q Did you have the money from Jones—from Eichengreen? A No.

Q What? A I used my own money.

Q You used your own money? A On telephone authorization from Eichengreen.

Q Sure. Where was Eichengreen at the time? A Eichengreen I think was in New York.

Q Yes. What was the hurry? A Beg your pardon?

Q What was the hurry? A Wanted to close the transaction.

Q Close the transaction. And these other deeds that have been introduced in evidence, being respectively Exhibits D. 12, 11 and 14, had been prepared at that time? A I don't think they had, Mr. McCarter.

Q Have you in your files this letter Exhibit P. 12 dated September 6, 1923, from Mr. Carton to Mr. Ronon? You have, haven't you? A I don't recognize it by what you say.

Q Won't you look and see? A Mr. Lane would have it if I got it.

Q Go down and help Mr. Lane find it.

Mr. Lane: He does not need to. If it is here I will find it.

Q Letter of September 6, 1923, from Carton to Ronon. A Mr. Lane has the entire file.

Mr. Lane: We have not.

Q You obtained this letter file from Mr. Ronon? A I did in July, 1924, in preparation, when this case was coming up the first time.

Q And you were supposed to have the complete file? A Yes, sir, I took whatever Mr. Ronon gave me.

Q Did you go to Philadelphia for that purpose? A I went to Philadelphia and saw Mr. Ronon and subsequently he mailed me the file.

Q Will you say he did not mail you this letter of September 6, 1923, Exhibit P. 12 of which this taken from Mr. Carton's letter book is a copy? A If it is not in that file I didn't receive it.

Q That has not been destroyed like the memorandum of search? A No.

Mr. Lane: I think the date was in July, 1924, you stated you got that file. Was that July, 1924?

Witness: It should be this year.

Mr. Lane: 1925.

Witness: When this trial was to come up the first time.

Q Now, Mr. Jones, when was the price which you would pay Miss McNulty first mentioned to Mr. Ronon? A On the telephone.

Q Beg your pardon? A On the telephone.

Q And was that the first offer? A First offer.

Q How did you happen to hit on twenty-five hundred dollars. A He said, "What will you give me for it?" "Twenty-five hundred dollars," I said. He said, "Sold." After talking with Miss McNulty.

Q That does not seem to answer my question. How did you happen to hit on twenty-five hundred dollars? A Well, that is the sum merely suggested itself.

Q Merely suggested itself? A That's all.

Q You were not told by Mr. Ronon that he had had an offer of twenty-five hundred dollars? A No; I was not.

Q You were not told by Eichengreen that Mr. Carton was in negotiation with Ronon at the rate of twenty-five hundred dollars? A Absolutely no.

Q Just came like it might have been twenty-five thousand dollars? A No, not like that.

Q No? A When I was down there I had a conversation.

Q This is over the phone? A No; when I was down there in Philadelphia on the one time I was down there I felt out Ronon as far as I could assuming there might—assuming their interest might be less than he supposed it was and I said, "Is—" (interrupted).

Q Who said it might be less than he supposed it was? What do you mean by that? A Miss Inez McNulty's interest might be less than he supposed it was.

Q Might be what? A Might be less than he supposed it was on account— (interrupted).

Q Whom do you mean by "he" and "she"? A Ronon.

Q Go on. A On account of accumulation of taxes on the property.

Q Go on. A I therefore said, "I suppose it is some hundreds of dollars would acquire this." He said, "It won't be hundreds; it will be thousands." That is the only lead I had.

Q This is at the conversation at the house? A This is at the conversation at the house with Ronon.

Q Now you are adding more? A Yes.

Q I have already given you an opportunity twice to add to that. A Yes.

Q And you are now adding more. A Yes; and I may add more if I— (interrupted).

Q It is a good reservoir to have there. A I don't like that remark.

Q Again I will ask you to repeat the whole conversation between you and Mr. Ronon and Miss McNulty at Miss McNulty's residence. A I have already repeated it as far as it comes to my memory at this time.

Q Have you exhausted your memory? A I may not. If you give me a leading question it may bring something else out.

Q Again I ask you if you knew Mr. Eichengreen had offered, as he said, twenty thousand dollars for this property, a year and a half ago, as he said, didn't you? A Yes.

Q And you were getting, if you did get, from Miss McNulty a half interest? A Yes.

Q What was it lead you to suppose that twenty-five hundred might do the trick? A I tried twenty-five, prepared to go to five thousand, if necessary.

Q You just happened to hit on that figure? A Yes; I hit wrong with the next man.

Q We will come to that in a few minutes. Who was the messenger went over with the deed? A Rupert F. Howlett.

Q Now having gotten that out of the way, had you in the meantime met Mr. Lawrence? A I think that I had.

Q When did you first meet him? A Early September, early part of September.

Q But before the 7th? A I think so; yes.

Q At his New York office? A Yes, sir.

Q In the Pacific—(interrupted). A Canadian Pacific Building.

Q Canadian Pacific Railroad Building. And some information with regard to him had been brought to you also by Mr. Eichengreen, hadn't it? A He had brought me some; I had obtained some—(interrupted).

Q I did not ask you that. Just don't be quite so anxious. I say some information had been brought to you concerning Mr. Lawrence and his connection with the matter by Mr. Eichengreen? A Correct.

Q And you had your information before you went to see him? A Correct.

Q Where is Mr. Lawrence? A Where is he?

Q Yes. A At the present time?

Q Yes. A Los Angeles, California.

Q Have you been in correspondence with him? A I wrote to him asking him to send me the file.

Q And when did you make that offer to him? A I think it was after the 7th, immediately after.

Q Next day? A Oh, I don't know. I won't say that.

Q You said immediately. A Well—(interrupted).

Q What do you mean by that? A Well, within—it may have been the next day or it may have been two or three days.

Q Business in the office of Jones was evidently devoted principally to this Eichengreen matter? A No.

Q What? A No. I regard it as a very important matter though.

Q Yes. And how did the negotiations go on between you and Mr. Lawrence? Describe them. A I went to Lawrence and told him that I understood he represented the Gulick interest. Told him I was negotiating—I told him very much the same as I told Mr. Ronon.

Q No. no. I ask you now for the conversation. A All right. I told him I had a client who had been dealing with Mr. Carton of Asbury Park and who was attempting to purchase a piece of property along the Shark River, some eighteen acres, which the client supposed, if he told me correctly, belonged to Mr. John D. Carton.

The Court: Do you want all this?

Mr. McCarter: No.

The Court: Substantially the same?

Witness: Substantially the same conversation.

Q Did you finally make an offer? A Yes.

Q What did you do? A I made an offer of twenty-five hundred dollars.

Q Again your high spot? A Because I had bought the other half interest for that much.

Q Yes? A He wanted to know how much I paid for the other half interest and I would not tell him.

Q Did you tell him? A I did not.

Q And he told you that if the deal went through there had to be something in it for him, or words to that effect? A No; he did not.

Q What? A No, he did not. He told me that would not buy it.

Q Didn't he say that he expected to get his compensation for the trouble he had taken in the matter? A He didn't tell me—(interrupted).

Q One moment—out of the proceeds of sale and you would have to pay him more than you paid the other side, or words to that effect? A No; he did not.

Q What? A He did not.

Q Nothing of the kind? A Not of that sort.

Q What? A No.

Q Nothing of the kind? A No; he did not.

Q Do you wish to go on record in this case as saying that you did not know that Mr.— from what Mr. Lawrence said, that he expected to get his compensation from what he was able to prevail upon you to offer? A Oh, I knew that; yes, sir.

Q You knew that? How did you know that? A I knew he was going to be paid out of the proceeds.

Q How did you know that? A Because he told me that.

Q Because he told you that? A Yes.

Q And I ask you again, if that being so if that did not account for the fact that the final up-shot of your negotiations with him was that you paid him one thousand dollars more than you agreed to pay the other man? A I don't

know what the moving cause was. I know I tried twenty-five hundred; I tried three thousand, and finally for thirty-five hundred.

Q Closed out in one deal, in one day? A The agreement was reached, yes.

Q In writing? A No.

Q What? A No; I took his word on it.

Q You took his word on it. Did you ever see him before? A No; never.

Q And who prepared that deed? A Oh, I think I did.

Q What? A I think that I did.

Q Any doubt about it? A Show me the deed and I will tell you.

Q Haven't you told us a little while ago you knew you did the other three, but you were not sure about this one. Haven't you told us that? A I tell you, show me the deeds and I will tell you. The deeds you showed me were prepared by me.

Q Didn't you tell us a little while ago that your memory was distinct you prepared the other three? A Yes.

Q But you were not so sure about this one? A Yes; because I had those deeds in front of me, and I had the deed in front of me, and my memory was definite on it.

Q And it is distinct now, isn't it? A Yes.

Q It is the deed you handed to Mr. Lawrence? A Beg your pardon?

Q It is the Lawrence deed? A All these three.

Q It is the Lawrence deed? A Yes.

Q Those three deeds were prepared by you or your office when? A After I had come back.

Q They seem to be dated the 11th of September. Were they prepared later than the other

deeds? Or together? The other deed. A I think all of them were prepared at the same time.

Q Four? A No, I don't know just where the people live now. I have looked at the deed, but I don't know whether that was filled in by me or whether that was filled in by Mr. Lawrence.

Q Did you hand him the three deeds yourself? A I mailed them.

Q He agreed to have them executed? A Yes.

Q And the next thing you knew about them was that they were ready for delivery? A Yes; all except one that was in California.

Q Yes. A And there was some—he had a brother out in Los Angeles, a Bishop or something like that—he had correspondence with him.

Q A Bishop? A Or something like that.

Q What is there like a Bishop? What do you mean something like a Bishop? A Some high church functionary.

Q Well, go on. A And that it was to be obtained from California, and there would be a little delay in getting that back.

Q Did he attend to that or did you? A He attended to that.

Q That is what I asked you. A His brother was this high church functionary.

Q I can't see what the Bishop had to do with this thing except he had a brother out there. A Your mind and mine work different possibly, that is how I recall it.

Q Some of the parties lived out in California? A Yes; but Lawrence was able to get them because he could send it to his brother who

lived in same town and was friendly with this particular person in California.

Q Yes. And you knew from the time in August that some of these people lived in California, didn't you? Eichengreen told you that? A I only knew what Mr. Eichengreen told me.

Q I mean, you had that information, didn't you? A Yes.

Q Yes. And finally you got word that all three deeds were ready for delivery? A They were.

Q When was that? A Oh, that was some weeks later.

Q Have you any memorandum to tell us when it was? A No; I don't think I have, except the deeds themselves. My check would tell.

Q Yes, I think it would.

The Court: Won't the date of record tell you?

Witness: Yes; I put them on promptly. That must have been the middle of October before we finally got the last one.

Q Did you get them all at once? A That I don't recall, Mr. McCarter, my—I can only give you my impression I think it was that the two of them were taken up and then the one that came from California was taken up well into October.

The Court: You did not get the three until you paid for them, did you?

Witness: No.

Q When you say two of them were taken up what do you mean by that? A My impres-

sion is that part of the purchase price was paid and two of them were taken up, but I may be wrong in that.

Q Isn't it a fact there were three checks? A I wouldn't want to testify to that.

Q Can't you tell? A No; I can't; I can't remember it.

Q Were they your checks again? A Yes; my checks; all of them.

Q And your recollection is that you bought and paid for two of the three interests covered by those three deeds before you had the third interest? A It is not strong as a recollection. It is an impression.

Q Impression, all right. If this case, as I am afraid it will, goes over tonight, will you look up your checks and let us know about that? A Yes.

Q You have them home, haven't you? A Yes.

The Court: It will not go over tonight. We will finish today or it will have to go over until next spring.

Q Did you physically close with Lawrence for these three interests or did somebody in your office? A No, Mr. Eichengreen. I sent him for that.

Q Eichengreen did that? A Yes.

Q And his checks went then? A No; my checks went, Eichengreen, of course, giving me the money.

The Court: What?

(Answer repeated by the stenographer.)

Witness: Eichengreen of course reimbursing me.

Q What was the point of conveying your checks if Eichengreen was going to bring the deeds over? A Eichengreen brought me an uncertified check. I thought a certified check ought to be presented to a lawyer that I had only met a little while before.

Q Now, you apparently took quite an active part in this whole matter? A I did.

Q What? A I did.

Q A great deal more than Mr. Eichengreen? A No, not until September—not until the latter part of August, 1923. I had represented him. He had been a very active client of mine on the other two tracts.

Q Do you know Joseph R. McGill in Mr. Carton's office? A Yes.

Q Do you remember his having a talk with you a year or so ago with reference to this matter? A Yes; I won't—I think it was either after this suit was started or immediately before.

Q Where was that talk? A Right in my office.

Q He came to see you about it, didn't he? A Yes.

Q And do you remember his asking you about the matter and you said you had nothing whatever to do with it; that was a thing Eichengreen conducted throughout, and that while he was your—you were his lawyer generally, in this matter you practically had nothing to do with the matter? A No; I don't think I said that.

Q What? A I don't think that was the conversation.

Q You say you did not say that or words to that effect? A No; I would say I did not say that.

John D. Carton, further cross.

Q During the same conversation did you say—volunteer the information that you did not think, however, that Mr. Carton had a leg to stand on in this case, or words to that effect? A Probably told him that, to that effect. I told him I thought it was a matter of pride with Mr. Carton.

Q What? A I told him I thought it was a matter of pride with Mr. Carton.

Mr. McCarter: That is all.

Re-direct examination by Mr. Lane.

Q Mr. Jones, did you get these letters from Ronon we have produced here, or any letters from Ronon prior to August, 1923? A No.

Q Prior? A To July, 1925.

Q To July, 1925? A No; no.

Q Did you get the file of correspondence or any letters from Mr. Lawrence which you sent for? A I did not; he said he had destroyed them.

Mr. Lane: That is all.

JOHN D. CARTON, recalled for further

Cross examination by Mr. Lane.

Q I show you a letter of March 7, 1923, sent by you to Mr. Eichengreen and ask you if that letter was sent? A Yes, sir.

Q In response to one of his which has been offered in evidence? A It was sent to him and undoubtedly in response to one of his.

John D. Carton, further cross.

Mr. Lane: I offer it.

(Letter entered in evidence and marked Exhibit P. 15.)

Mr. McCarter: What is the letter to which this is a response?

Mr. Lane: It is the one you put in evidence which Mr. Eichengreen wrote urging Mr. Carton to hurry up.

Q In this letter I note that you say, "I have not yet completed my matter sufficiently to enable me to take up with you the negotiations for the property about which you spoke with me, but hope to within a very short time." I understand that at that date, and the date you wrote that letter you had a well defined complete agreement between Eichengreen and yourself; is that right? A Yes.

Mr. Lane: Well, that is all.

Examination by Mr. McCarter.

Q What negotiations are you referring to in that letter? A Negotiations for the preparation of deed and mortgage and release clauses and all that sort of business which we weren't in shape for yet.

Mr. McCarter: That is all.

Mr. Lane: The woodsman.

The Court: What do you want to prove by him?

Mr. Lane: Merely the date he went on that property, that is all; if he remembers it.

The Court: All right.

WILLIAM V. MORRIS, sworn on behalf of the defendant.

Direct examination by Mr. Lane.

Q Where do you live? A Neptune City.

The Court: Where?
Witness: Neptune City.

Q Do you know this property we have been talking about in court? A Well, I done some work on to it; that's about all.

Q When did you do any work on it? A Well, last, four years ago.

Q Do you know the date that you went on the job? Can you fix it by any holiday or whatnot? A The only way I can fix it, I didn't mark it down the day I went or anything, but it was shortly after Thanksgiving.

Q It was after Thanksgiving, was it? A Yes.

Mr. Lane: That is all.

Cross examination by Mr. McCarter.

Q What work did you do? A Cut the brush and trim trees and burned.

Q Who told you where to commence cutting? A Mr. Eichengreen.

Q And where did you commence cutting? A I commenced right up, right in front of the river drive, they call it, and then went east on to it. Out toward the Sylvania.

Q Out towards Sylvania avenue? A Yes.

William V. Morris, cross.

Q You commenced on the river side and worked out toward Sylvania avenue? A Towards.

Q Out towards Sylvania avenue? A Yes.

Mr. McCarter: That is all.

Mr. Lane: That is all. That is the case.

Q And Mr. Carton ordered you off? A Yes, sir.

Q And you stopped? A He come across there one day and I stopped.

Mr. McCarter: That is all.

Mr. Lane: That is the case.

Mr. McCarter: I am very much embarrassed in that I have one witness whom I would like to swear, but could not get here today, to contradict Mr. Jones as to that conversation.

The Court: Will you agree that he will so swear?

Mr. Lane: As to the conversation that Jones said he did not have anything to do with it?

The Court: Yes.

Mr. McCarter: Yes.

Mr. Lane: For the purpose of this record and for the purpose of this case solely I will agree he will so swear.

The Court: All right.

Mr. McCarter: That is satisfactory. Then we have nothing more.

Case closed. Briefs to be submitted.

Exhibit C. 1.

EXHIBIT C. 1.

Peter J. McNulty, James W. Piatt and John F. Hawkins, Executors of the Last Will and Testament of Henry M. Bennett, deceased.

Deed dated July 7th, 1903.
Recorded July 10th, 1903, in Book 714 of deeds, at pages 39, etc.
Cons. $17,050.

TO

Richard M. Gulick.

CONVEYS

ALL those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Township of Neptune, in the County of Monmouth and State of New Jersey, on the northerly side of Shark River.

FIRST TRACT. BEGINNING at a stake in the northerly edge or line of Shark River at the southwest corner of lands formerly belonging to Julius Lippman, deceased, said stake being about fifty feet from the top edge of the bank along said river, and from thence running according to a survey made by Niart Rogers, C. E., December, A. D. 1902, and shown on a map entitled "Estate of the late Henry M. Bennett, Neptune Township, Monmouth County, N. J." thence (1) by and along the westerly line of Lippmann's land, north forty-four degrees east four hundred and four and five-tenths feet to an iron stake in the middle line of an avenue sixty feet in width, known as Riverview Avenue; thence (2) along the middle line thereof south forty-six degrees and eleven minutes east one

Exhibit C. 1.

hundred and forty-seven feet; thence (3) continuing along the line of Lippmann's land aforesaid, north forty-three degrees and forty-five minutes east five hundred and seventy-four feet to the middle of the public road or highway leading from Hamilton to Avon; thence (4) along the middle line thereof north fifty-one degrees and forty-five minutes west seventeen feet; thence (5) north fifty-five degrees and thirteen minutes east along lands of Henry Fleming and John E. Slocum eight hundred and fifteen and two tenths feet to a stone at the southwest corner of lands belonging to Alexander Morris; thence (6) by and along the westerly line thereof north thirty-two degrees and fifty-eight minutes east six hundred and sixty-one and five-tenths feet to a stone; thence (7) north fifty-three degrees and fifty-six minutes west one thousand nine hundred and fifty-two and five-tenths feet to a stake and stone in the northeast corner of lands of the Mary Bennett estate; thence (8) by and along the easterly line thereof south seventeen degrees and thirteen minutes west fourteen hundred and sixty-three feet more or less to the middle line of the aforesaid public road or highway; thence (9) by and along said road north fifty-one degrees and forty-five minutes west one hundred and seventy-four feet more or less to the prolongation of the easterly line of an avenue forty-four feet in width extending southwardly from said public road to the northerly shore of Shark River, said avenue being the continuation of Neptune Avenue; thence (10) south twenty-six degrees and ten minutes west along the easterly line of said avenue seven hundred and sixty feet more or less to the edge or shore of Shark River; thence

Exhibit C. 1.

(11) along the shore the several courses thereof, about ten hundred and eighty feet to the place of beginning, and containing 78 12/100 acres of land. (Excepting and reserving thereout and therefrom however all those two certain building lots on which Thomas LeCompte now resides, 100 x 150 feet, situate on the westerly side of Union Avenue about midway between the aforementioned public road and the northerly line of the tract hereinbefore described.)

SECOND TRACT. BEGINNING at the low water mark at the southwest corner of lands formerly belonging to Mrs. E. M. Bell, now deceased, about fifty-five feet southwardly from a marble monument on the top of a bank along said Shark River, thence (1) by and along the westerly line of said land north forty-four degrees and twenty-three minutes east fourteen hundred and thirty-three feet more or less to the middle of the public road or highway leading from Hamilton to Avon aforesaid; thence (2) along the middle line thereof north thirty-one degrees and thirty minutes west one hundred and ninety-two feet and six-tenths feet; thence (3) continuing along said road north fifty-one degrees and forty-five minutes west seventy-five and eight-tenths feet to the line of the lands belonging to Alexander Morris; thence (4) along said line north eighty-five degrees and fifty-three minutes west eighty-six feet; thence (5) south forty-four degrees and twenty-three minutes west forty-two and two-tenths feet; thence (6) north fifty-one degrees and fifty-seven minutes west ninety-two and six-tenths feet; thence (7) north thirty-six degrees and thirty-three minutes east eighty-nine and five tenths feet to the center line of the road or highway aforesaid; thence (8) along

Exhibit C. 1.

the center line thereof north fifty-one degrees and forty-five minutes west one hundred and fifty-nine feet to the easterly line of an avenue fifty feet in width known as Windsor Avenue; thence (9) along the easterly line of said avenue and the prolongation thereof south forty-three degrees and forty-five minutes west twelve hundred and five feet more or less to the edge of Shark River; thence (10) southwestwardly along the several courses of said river six hundred and sixty feet more or less to the place of beginning, and containing eighteen and twenty-eight one-hundredths acres.

This deed is madeb y virtue of Paragraph 30 of the will of the said Henry M. Bennett, dated the twenty-seventh day of September, Nineteen Hundred and one, and duly probated in the Orphans' Court of the County of Monmouth on the twenty-eighth day of July, nineteen hundred and two, which said Paragraph 30 of said will reads as follows: "Thirtieth:—All the rest and residue of my property of whatsoever kind and wheresoever situate, I give, bequeath and devise unto my executors hereinafter named, and to the survivors or survivor of them, in trust, for the purpose specified in my will, with full power to sell and dispose of the same, at public or private sale, at such times and upon such terms and in such manner as to them shall seem meet and proper."

Habendum to heirs and assigns.
Against encumbrances.

Duly acknowledged July 8th, 1903, by Peter J. McNulty and John F. Hawkins, executors, before Isaac C. Kennedy, Master in Chancery of New Jersey; and duly acknowledged by James W.

Exhibit C. 1.

Piatt, July 7th, 1903, before J. F. McKenna, Notary Public of Allegheny County. Certificate of authority of Clerk of the Court of Quarter Sessions duly attached.

Richard M. Gulick and Kathryn Carr Gulick, his wife,	Deed dated August 17th, 1903
TO	Recorded August 22nd, 1903 in Book 714 of
The Lynore Land Company, body corporate.	deeds, at pages 227, etc.
	Cons. $20,000.

CONVEYS

ALL those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Township of Neptune, in the County of Monmouth and State of New Jersey, on the southerly side of Shark River.

FIRST TRACT BEGINNING at a stake in the northerly edge or line of Shark River at the southwest corner of lands formerly belonging to Julius Lippmann, deceased, said stake being about fifty feet from the top edge of the bank along said river, and from thence running according to a survey made Niart Rogers, C. E., December A. D. 1902, and shown on a map entitled "Estate of the late Henry M. Bennett, Neptune Township, Monmouth County, N. J." thence (1) by and along the westerly line of Lippmann's land, north forty-four degrees east four hundred and four and five-tenths feet to an iron stake in the middle line of an avenue sixty feet in width, known as Riverview Avenue; thence (2) along the middle line thereof south

Exhibit C. 1.

forty-six degrees and eleven minutes east one hundred and forty-seven feet; thence (3) continuing along the line of Lippmann's land aforesaid, north forty-three degrees and forty-five minutes east five hundred and seventy-four feet to the middle of the public road or highway leading from Hamilton to Avon, thence (4) along the middle line thereof north fifty-one degrees and forty-five minutes west seventeen feet; thence (5) north forty-five degrees and thirteen minutes east along lands of Henry Fleming and John E. Slocum eight hundred and fifteen and two tenths feet to a stone at the southwest corner of lands belonging to Alexander Morris; thence (6) by and along the westerly line thereof north thirty-two degrees and fifty-eight minutes east six hundred and sixty-one and five-tenths feet to a stone; thence (7) north fifty-three degrees and fifty-six minutes west one thousand nine hundred and fifty-two and five-tenths feet to a stake and stone in the northeast corner of lands of the Mary Bennett estate; thence (8) by and along the easterly line thereof south seventeen degrees and thirteen minutes west fourteen hundred and sixty-three feet more or less to the middle line of the aforesaid public road or highway; thence (9) by and along said road north fifty-one degrees and forty-five minutes west one hundred and seventy-four feet more or less to the prolongation of the easterly line of an avenue forty-four feet in width extending southwardly from said public road to the northerly shore of Shark River, said avenue being the continuation of Neptune Avenue; thence (10) south twenty-six degrees and ten minutes west along the easterly line of said avenue seven hundred and sixty feet more or less to the edge or shore of Shark

Exhibit C. 1.

River; thence (11) along the shore the several courses thereof, about ten hundred and eighty feet to the place of beginning, and containing 78 12/100 acres of land. (Excepting and reserving thereout and therefrom however, all those two certain building lots on which Thomas LeCompte now resides, 100 x 150 feet, situate on the westerly side of Union Avenue about midway between the aforementioned public road and the northerly line of the tract hereinbefore described.)

SECOND TRACT. BEGINNING at the low water mark at the southwest corner of lands formerly belonging to Mrs. E. M. Bell, now deceased, about fifty-five feet southwardly from a marble monument on the top of a bank along said Shark River, thence (1) by and along the westerly line of said land north forty-four degrees and twenty-three minutes east fourteen hundred and thirty-three feet more or less to the middle of the public road or highway leading from Hamilton to Avon aforesaid; thence (2) along the middle line thereof north thirty-one degrees and thirty minutes west one hundred and ninety-two feet and six tenths feet; thence (3) continuing along said road north fifty-one degrees and forty-five minutes west seventy-five and eight-tenths feet to the line of the lands belonging to Alexander Morris; thence (4) along said line north eighty-five degrees and fifty-three minutes west eighty-six feet; thence (5) south forty-four degrees and twenty-three minutes west forty-two and two tenths feet; thence (6) north fifty-one degrees and fifty-seven minutes west ninety-two and six-tenths feet; thence (7) north thirty-six degrees and thirty-three minutes east eighty-nine and five tenths feet to

Exhibit C. 1.

the center line of the road or highway aforesaid; thence (8) along the center line thereof north fifty-one degrees and forty-five minutes west one hundred and fifty-nine feet to the easterly line of an avenue fifty feet in width known as Windsor Avenue; thence (9) along the easterly line of said avenue and the prolongation thereof south forty-three degrees and forty-five minutes west twelve hundred and five feet more or less to the edge of Shark River; thence (10) southwestwardly along the several courses of said river six hundred and sixty feet more or less to the place of beginning, and containing eighteen and twenty-eight one-hundredths acres.

Being the same premises conveyed to the said Richard M. Gulick, by deed of conveyance from Peter J. McNulty, James W. Piatt and John F. Hawkins, executors of the last Will and Testament of Henry M. Bennett, deceased, dated July 7th, 1903, recorded in Monmouth County Clerk's Office at Freehold, Book 714 of deeds, at pages 39, etc.

Habendum to successors and assigns.
Covenants of seizin
Against encumbrances,
Good right to convey, and
General Warranty.

Duly acknowledged August 17th, 1903, before Edward Schrimer, Notary Public for Allegheny County. Certificate of authority duly attached.

Exhibit C. 1.

Lynore Land Company, Body Corporate,	DEED dated Jan. 12, 1910
TO	Recorded Mar. 11, 1910
Richard M. Gulick and	Book 872, page 55
Margaret A. McNulty.	Cons. $1.00 and other cons.

Grants, bargains, sells, aliens, remises, releases, enfoeffs, conveys and confirms unto the said party of the second part and to their heirs and assigns forever,

Lands in the Borough of Neptune City, containing eighteen acres and twenty-eight hundredths of an acre.

Premises in Question.

Together &c.
Habendum in fee.
Covenant of seizin
Power to convey
Quiet enjoyment
Against encumbrances
Further assurance
Warranty

Proved by William Hageman, Secretary, March 2, 1910 before Thomas M. Binner, Notary Public. Seal.

Certificate of William B. Kirker, Prothonotary. attached seal.

Exhibit C. 1.

James C. Gulick, 2nd, TO Florence S. Housewright	Agreement dated Sept. 14, 1911 Recorded Oct. 22, 1914. Book 985, page 156.

Recites, Whereas Richard M. Gulick, died on the sixth day of August, 1911, leaving no widow and one child and descendant only, said James C. Gulick, 2nd, with his business affairs considerably involved so that the parties hereto do not know of the value, if any, of the estate of said decedant.

And whereas said Richard M. Gulick left a will and Testament bearing date May 4, 1911 which has not yet been admitted to probate whereby he gave to his son a legacy of One Hundred Dollars and gave the bulk of his estate to said Mrs Housewright, with whom as a foster sister he had been brought up and who had made a home and kept house for said decedent during a considerable period prior to decease.

And whereas said James C. Gulick, 2nd, feels aggrieved over the action of his father believing that he should have been given a larger portion of his father's estate and does not feel willing to acquiesce in or submit to the distribution made by said will without a contest, although at the same time he would rather avoid such a contest.

And whereas said Mrs. Housewright feels toward said James and appreciates his feelings and at the same time desires to avoid a family controversy and contest, with the publicity and the bitterness and ill-feelings generally attendant and consequent thereon, and thus both of said parties deem it best to compromise and adjust amicably their differences concerning the said will and to avoid a legal contest.

Exhibit C. 1.

Now, therefore, these articles witness as follows:—

Said James C. Gulick, 2nd, for the consideration hereinafter mentioned, hereby promises, covenants and agrees to and with said Florence S. Housewright that he, the said James will suffer and permit the said will of his father to be admitted to probate without objection or exception upon his part and to be regarded and treated as entirely valid; that no caveat shall be filed and that no appeal shall be taken from the decision of the Register admitting said will to probate either by him, said James, or by anyone else at his instance, procurement or suggestion, that the provisions of said bill shall be effectual and carried out according to the terms thereof just the same as though no question could be raised regarding the validity of said Will.

And said Florence S. Housewright for the consideration hereinbefore mentioned and in consideration of the carrying out of said premises upon her part, hereby promises, covenants and agrees to and with the said James C. Gulick, 2nd, that she will pay over to said James the full one-half of the net assets, real and personal, left by said Richard M. Gulick (including said legacy of One Hundred Dollars) coming into the hands or possession of her the said Florence and remaining after the payment of all debts and liabilities of said decedent; and that he the said James shall share with her, said Florence, in the proportions aforesaid in all the property and estate left by said decedent. The said parties hereby mutually agree and covenant to divide between themselves in said *por*portions the said estate of said decedent, real and per-

sonal, coming into the hands and control of said Florence S. Housewright who is to be appointed sole executrix under said will and remaining after the payment of all debts, and liabilities of said decedent.

Signed by James C. Gulick, 2nd, and Florence S. Housewright.

Acknowledged September 18, 1911 by James C. Gulick, 2nd, before John C. Gulick, Notary Public, Seal.

Acknowledged September 14, 1911 by Florence S. Housewright before Sion B. Smith, Notary Public, Seal.

Re-acknowledged September 18, 1911, by James C. Gulick, 2nd, before John C. Gulick, Notary Public. Seal.

Certificate of William F. Schneider, Clerk, attached seal.

James C. Gulick, 2nd, TO John C. Gulick	DEED dated Feb. 25, 1915. Recorded Nov. 18, 1915. Book 1009 page 346.

Recites, Whereas Richard M. Gulick, late of the City of Pittsburgh, died seized of one equal undivided half of acres, eighteen and twenty-eight hundredths situate in Neptune Township and Neptune City, and described in deed recorded in Book 872, page 55,

Whereas by virtue of a certain agreement dated September 14, 1911, by and between James C. Gulick, 2nd, and Florence S. Housewright, Executrix and sole residuary devisee under and by virtue of the Last Will of said Richard M.

Exhibit C. 1.

Gulick, the said James C. Gulick is entitled to a conveyance from the said Florence S. Housewright of one undivided fourth part of said tract of land in fee by virtue of said agreement between him and the said Florence Housewright.

Now, therefore, &c. in consideration of One Dollar and other considerations have sold, assigned, transferred, set over and conveyed unto the said John C. Gulick all my right, title and interest in said agreement between me and the said Florence S. Housewright to the extent of my right by virtue of said agreement or contract to a conveyance of the undivided one-fourth part of said tract of eighteen acres and twenty-eight hundredths of an acre described in the deed above set forth but reserving to myself all other right and interest under said agreement in the estate of said Richard M. Gulick, deceased.

Habendum in fee to party of the second part.

And I hereby authorize and empower the said John C. Gulick to demand and receive of the said Florence S. Housewright a deed of conveyance to himself in fee of the undivided one-fourth part of said tract of land pursuant to said contract in the same manner to all intents and purposes and as fully as I might or could do if these presents were not executed.

And I do hereby make, constitute and appoint the said John C. Gulick my true and lawful attorney irrevocably in my name or otherwise, but at his own proper costs and charges to take all legal measures which may be proper and necessary for the complete recovery and enjoyment of the assigned premises with full power of substitution as fully as I might or could do if these presents were not made.

Exhibit C. 1.

Acknowledged March 3, 1915 by James C. Gulick, 2nd, before William H. Wolfrath, Jr. Notary Public, New York County Seal.

Certificate of William F. Schneider, Clerk, attached. Seal.

Florence Stuart Housewright, unmarried,	Deed dated March 4, 1915.
TO	Recorded Nov. 18, 1915.
John C. Gulick.	Book 1009, page 348
	Cons. $1.00 and other cons.

Grants, bargains, sells, aliens, releases, enfeoffs, conveys and confirms to the said party of the second part, and to his heirs and assigns forever. All the equal undivided one-fourth part of all that tract of land situate in the Township of Neptune, in the County of Monmouth and State of New Jersey on the north side of Shark River, containing eighteen acres and twenty-eight hundredths of an acre. Premises in Question. The said Richard M. Gulick died seized of one equal undivided half of said premises August 6, 1911, leaving a last Will and Testament probated in the Registry's office of Wills at Pittsburgh in the County of Allegheny on September 15, 1911 in and by which he devised all the rest, residue and remainded of his estate wheresoever the same may be situated unto Florence S. Housewright to have and to hold unto her, her heirs, executors, administrators and assigns absolutely and forever by virtue of which will the title to one undivided one-half part of said premises vested in said Florence S. Housewright. This deed is intended to convey to the said John C. Gulick in fee one undivided

Exhibit C. 1.

fourth part of the tract above described being the undivided one-fourth part to which James C. Gulick, nephew of said John C. Gulick, would have been entitled to have conveyed to him by virtue of a certain agreement between the said Florence S. Housewright and the said James C. Gulick, dated September 14, 1911, which, however, he has assigned and transferred to said John C. Gulick to the extent of his right to such conveyance of said one-fourth portion of said lands by an assignment in writing dated February 25, 1915 and not yet recorded.

Together &c.
Habendum in fee.
Covenant against grantor.

Acknowledged by Florence Stuart Housewright the fourth day of March, 1915 before Samuel C. Cowart, M. C. C. of N. J.

Florence S. Housewright,	Mortgage dated Mar. 4, 1915.
TO	Ackgd. Mar. 4, 1915
James C. Gulick.	Recorded Nov. 18, 1915. Book 508, page 128.

COVERS

All the equal undivided one-fourth of lands in the Township of Neptune on the northerly side of Shark River containing eighteen acres and twenty-eight hundredths of an acre. Premises in Question. Given to secure Five Hundred and Thirty-three dollars and eighty-four hundredths in three years from date with interest at six per cent. per annum. payable semi-annually.

Exhibit C. 2.

EXHIBIT C. 2.

Lynore Land Company,	Deed dated Jan. 12,
Incorporation	1910.
TO	Recorded March 11,
Richard M. Gulick and	1910.
Margaret A. McNulty	Book 872 page 55.
	Cons. $1.00 &c.

Gives, grants, bargains, sells, aliens, remises, releases, enfeoffs, conveys and confirms to the said party of the second part and to their heirs and assigns forever.

All tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Neptune City, in the County of Monmouth and State of New Jersey.

BEGINNING at the low water mark at the southwest corner of lands formerly belonging to Mrs. E. M. Bell, now deceased, about fifty five feet southwardly from a marble monument on the top of a bank along Shark River; thence (1) by and along the westerly line of said land north forty four degrees and twenty three minutes east fourteen hundred and thirty three feet, more or less, to the middle of the public road or Highway leading from Hamilton to Avon; thence (2) along the middle line thereof north thirty one degrees and thirty minutes west one hundred and ninety two feet and six tenths feet; thence (3) continuing along said road north fifty one degrees and forty five minutes west seventy five and eight tenths feet to the line of lands belonging to Alexander Morris; thence (4) along said line north eighty five degrees and fifty three minutes west eighty six feet; thence (5) south forty four degrees and twenty three minutes

Exhibit C. 2.

west forty two and two tenths feet; thence (6) north fifty one degrees and fifty seven minutes west ninety two and six tenths feet; thence (7) north thirty six degrees and thirty three minutes east eighty nine and five tenths feet to the center line of the road or Highway aforesaid; thence (8) along the center line thereof north fifty one degrees and forty five minutes west one hundred and fifty nine feet to the easterly line of an Avenue fifty feet in width, known as Windsor Avenue; thence (9) along the easterly line of said Avenue and the prolongation thereof south forty three degrees and forty five minutes west twelve hundred & five feet, more or less, to the edge of Shark River; thence (10) southwestwardly along the several courses of said River six hundred and sixty feet, more or less, to the place of beginning, and containing eighteen and twenty eight one hundredths acres.

And being a part of the same premises conveyed to the said Lynore Land Company by Richard M. Gulick and wife by Deed bearing date August 17, 1903 and recorded in the Monmouth County Clerk's Office in Book 714 of Deeds at pages 227 &c.

Together &c.
Habendum in fee.
Covenant of seizin.
Good right to convey.
Quiet enjoyment.
Against encumbrances.
Further assurance.
Warranty.
Signed and sealed.

The Lynore Land Company
(L. S.) Per R. M. Gulick, President

Exhibit C. 2.

Attest:
William Hageman, Secretary.

Acknowledged March 2, 1910 by William Hageman, Secretary, before Thos. M. Benner, Attorney Public Allegheny County, Pennsylvania.

Certificate of William B. Kirker, Prothonotary of the County of Allegheny, State of Pennsylvania as to authority of the above Notary Public attached.

ESTATE OF RICHARD M. GULICK DECEASED	IN THE ORPHANS COURT Allegheny County, Pennsylvania Number 218 Dec. Term, 1911

PETITION OF EXECUTRIX FOR DISCHARGE.

TO THE HONORABLE, the judges of the said Court.

The petition of Florence S. Housewright, executrix under the last will and testament of Richard M. Gulick, deceased, respectfully sets forth as follows:

Richard M. Gulick, late of the County of Allegheny, Pennsylvania, died on the 6th day of August, 1911, having first made his last will and testament which was duly admitted to probate and recorded in the Office of the Register of Wills in and for said County, and Letters *tetsmanetary* thereon, bearing date the 15th day of September, 1911, were issued to your petitioner.

Exhibit C. 2.

In and by said will said decedent gave to his son, James C. Gulick, 2nd, the sum of $100.00 and gave, devised and bequeathed all the rest, residue and remainder of his estate and property of whatsoever kind and wheresoever situated, unto your petitioner. Said decedent left no widow, and no survivor of descendants except said James C. Gulick, 2nd, who is the sole heir and next of kin of said decedent. Petitioner has filed an inventory and appraisement of the estate of said testator showing personal property to the amount of $11,047.90.

Petitioner applied for and accepted Letters Testamentary in this case with very inadequate knowledge of the value or condition of said estate and of the amount of time and attention that would be required in the settlement thereof. She has learned that the settlement of said estate, instead of being easy and of short duration, involves complications, and is likely to be delayed; and that for various reasons the issue is somewhat uncertain. Petitioner has had but little experience in business transactions, particularly in the settlement of estates, and does not feel well qualified to discharge the duties of her said trust. She is by calling or profession a trained nurse, and practised said calling in the East, where she resided until July 1910. Having but a small acquaintance in Pittsburgh and Allegheny County, she does not deem it best to attempt to practice her calling here. Outside of her claim against and her interest in the estate of said decedent petitioner has substantially no means; and having no source of income outside of her said calling, she is without sufficient means during the time while she would probably be engaged in settling said estate. Instead of her-

Exhibit C. 2.

self waiting for services as nurse from July 28, 1910, to August 6, 1911—53 weeks, @ $18. per week,—$954.

In addition to her other duties petitioner did the entire housework for eight weeks in February and March 1911, and a reasonable compensation therefor would be at the rate of $5. per week; for these services she claims $5. per week extra being in all $40. and she claims further, for travelling expenses from Brooklyn, New York, to Pittsburgh, Pennsylvania in July 1910, the sum of $14.50, and for travelling expenses from Pittsburgh to Brooklyn and return in December 1910, the sum of $33. as hereinbefore set forth; said petitioner claims also $50, for moneys advanced by her for said decedent as hereinbefore set forth; this entire amount of $1,091.50, made up of the items aforesaid, is due and unpaid; and there is thereon no credit, deduction, off-set or counterclaim. And said amount petitioner claims a preference to the extent of $976. as wages for her services as a servant rendered at the residence of said decedent, at his instance and request, within one year prior to his death; and petitioner is not so situated as to be able to wait until the final settlement of said estate to present her said claim. The said statement of petitioner's account, hereby *atached,* showing a balance of $9808.00 indicated also a payment to the amount of $558.05 upon petitioner's said preferred claim; and she desires to turn over to her successor the unconverted assets of said estate, subject to the balance of her claim. And petitioner attaches hereto and files herewith the consent of the said James C. Gulick, 2nd, to the granting of this petition.

Exhibit C. 2.

Wherefore petitioner prays that she be forever relieved and discharged from her office as executrix under the will of said decedent.

Florence S. Housewright
Executrix.

STATE OF PENNSYLVANIA,
COUNTY OF ALLEGHENY, } ss.

Before me personally came Florence S. Housewright executrix under the last will and testament of Richard M. Gulick, who, being by me duly sworn says that the statements in the above and foregoing petition are correct and true, to the best of her knowledge and information, and as she verily believes.

Florence S. Housewright

Sworn and subscribed to this 27 day of December A. D. 1911, before me.

Fred W. Edwards
Clerk of Courts.

Statement of Inventory and Appraisement. Also expense account attached.

IN RE ESTATE OF RICHARD M. GULICK DECEASED
No.....

IN THE ORPHANS COURT OF ALLEGHENY COUNTY PENNSYLVANIA.
Term 191

WHEREAS, Letters Testamentary under the last will and testament of Richard M. Gulick, late of Allegheny County, Pennsylvania, deceased, were duly issued by the Register of

Exhibit C. 2.

Wills of said County on November 15, 1911, to Florence S. Housewright executrix. And whereas, said Mrs. Housewright desires to leave said County and State, and is making application in the Orphans Court of said County to be relieved and discharged from her duties and obligations as executrix aforesaid.

And whereas the rule of the said Court provides that executors &c. shall not be discharged on their own application unless ten days personal notice be given to the parties interested, if such notice be reasonably practicable.

NOW, I, the undersigned James C. Gulick II, being of full age, and being the only surviving child and the sole descendant, heir and the next of kin, of said Richard M. Gulick, deceased, do hereby waive the ten days notice required by said rule of Court and consent that the said Mrs. Florence S. Housewright be forthwith relieved and discharged, of and from the duties and obligations of her said trust as executrix aforesaid.

James C. Gulick, 2nd,

Witness

John C. Gulick

(Estate of Richard M. Gulick, deceased)

AND NOW, December 30, 1911, the foregoing petition of Mrs. Florence S. Housewright, executrix under the will of Richard M. Gulick, deceased, to be relieved and discharged as executrix presented in open Court, and it appearing to the open Court, that said executrix desires to remove from the State of Pennsylvania, to return to her former home in New York, and does not wish to take the assets of the estate of said decedent with her, and that consent

Exhibit C. 2.

thereto has been given, by the sole heir and next of kin of said decedent, it is now ordered adjudged and decreed that said petitioner, Florence S. Housewright be, and she is hereby discharged from her position as executrix aforesaid, of the estate of Richard M. Gulick, deceased, and directed to file an account and deliver and pay over to her successor to be appointed by the Register all assets and money of said estate in her hands; she is not to be relieved, however, from liability until the final confirmation of her account, and the delivery and payment of all assets and money of the estate to her successor.

PER CURIAM.

In re estate of Richard M. Gulick, deceased.

To the Register of Wills in and for the County of Allegheny; State of Pennsylvania.

Whereas Mrs. Florence S. Housewright has been, by the Orphans' Court of said County on her own application, relieved and discharged as executrix under the last Will and Testament of Richard M. Gulick, deceased, and it rests with said Register to appoint her successor.

Now I, being the only surviving child, and the sole descendant and heir and next of kin of said Richard M. Gulick, deceased, do hereby renounce and waive any claim that I may have to be appointed Administrator *de bonis non cum testamento annexo* of the estate of said decedent, and I hereby consent to the appointment of The Safe Deposit and Trust Company of Pittsburg, as Administrator *de bonis non cum testamento annexo* of the estate of said decedent.

James C. Gulick, 2nd,

WITNESS
John C. Gulick

Exhibit C. 2.

To the Register of Wills of Allegheny County, Pennsylvania.

The undersigned residuary devisee and legatee under the last will of Richard M. Gulick, decd. having been discharged as executrix at her own request, respectfully asks that Letters of Administration *de bonis non cum testamento annexo* be issued to the Safe Deposit and Trust Company of Pittsburgh.

Florence S. Housewright.

January 2, 1911.

WITNESS
S. W. Cunningham

IN RE—PROBATE OF THE WILL OF RICHARD M. GULICK, late of Allegheny County, deceased, and grant of Letters of Administration D. B. N. *cum testamento annexo.*

REGISTER'S OFFICE,
ALLEGHENY COUNTY, } ss:

Before the Register, of Allegheny County personally appeared W. F. Knox, Asst. Trust Officer of the Safe Deposit and Trust Company of Pgh. who, being duly sworn, says that Richard M. Gulick being at the time a resident of Allegheny County, and a citizen of — died at — on August 6th A. D. 1911 at — M. having first made — last will and testament, dated — when he appointed Florence Stuart Housewright executor, which executor has since been discharged see order at 218 December T. 1911.

That testator was possessed of personal estate to the value of $— and of real estate (less en-

Exhibit C. 2.

cumbrances) to the value of $— as nearly as can be ascertained situate in —.

That testator's heirs and next of kin are as follows:

	Relationship	Residence
James C. Gulick, 2nd,	son	Allegheny County.

See his renunciation and that of Florence S. Housewright residuary legatee attached.

That said testa — has married and — children have been born to said testa — since the execution of the will afforded for probate.

That deponent whose P. O. *adress* is Fourth Ave. and Wood St., Pgh., is a resident of Pennsylvania and respectfully petitions the Register to admit said will to probate, and to grant Letters of Adminustration d. b. n. *cum testamento annexo* on said estate to The Safe Deposit and Trust Company of Pgh.

W. F. Knox

Sworn and subscribed before me,
January 5th A. D. 1912

William Conner
Register

ALLEGHENY COUNTY, ss:

I, W. F. KNOX, Asst. Trust O. of the Safe Deposit and Trust Co. of Pgh. do swear that, as I verily believe, the above named Richard M. Gulick died on the 6th day of August A. D. 1911 at 4:10 P. M. and I do further swear that as the Adminitsrator D. B. N. *cum testamento annexo* of the estate of the said decedent Safe Dep. & Tr. Co. will well and truly administer the goods and chattels, rights and credits of

Exhibit C. 2.

said deceased according to law, and also will diligently and faithfully regard and well and truly comply with the provisions of the law relating to inheritance tax.

W. F. KNOX.

Sworn and subscribed before me this 5th day of Jan. A. D. 1912 and Letters of Administration D. B. N. *cum testamento annexo* granted unto Safe Deposit & Trust Co. of P. G. H.

William Conner
Register.

COMMONWEALTH OF PENNSYLVANIA,
ALLEGHENY COUNTY, ss:

I, Joseph N. Mackrell, Register for the probate of wills, granting Letters (L. S.) of Administration &c., in and for the County aforesaid, DO HEREBY CERTIFY that the foregoing pages contain a true copy of the record and proceedings, viz: WILL, Probate, decree of deputy Register admitting will to probate, application for probate of will, certificate of death, grant of Letters Testamentary unto Florence S. Housewright, petition for discharge of executrix, Order of Court, discharging executrix, renunciations, application for Letters of Administration *de bonnis non, cum testamento annexo* and grant of Letters of Administration, *de bonnis non cum testamento annexo* unto Safe Deposit and Trust Company, of Pittsburg, in the estate of Richard M. Gulick, deceased, so full and entire as the same remains of record in my office.

Exhibit C. 2.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said office, at Pittsburgh, this 17th day of April 1924.

Joseph N. Mackrell, Register

COMMONWEALTH OF PENNSYLVANIA,
ALLEGHENY COUNTY, ss:

I, J. J. Miller, president of the *Orpans'* Court in and for the County aforesaid, Do hereby certify that JOSEPH N. MACKRELL, whose certificate is above written, is the Register for the probate of Wills, granting Letters of Administration, &c., in and for the said County, duly commissioned and sworn, to all whose official acts, full faith and credit are due and that his certificate is in due form of law and that the seal affixed to said certificate is the seal of said Register.

Witness my hand and seal at Pittsburgh, this 17th day of April A. D. 1924.

J. J. Miller (L. S.)
President Judge.

COMMONWEALTH OF PENNSYLVANIA,
ALLEGHENY COUNTY, ss:

(L. S.) I, Joseph N. Mackrell, Register of Wills and ex-officio Clerk of the Orphan's Court, in and for said County, Do certify that the Hon. J. J. Miller, by whom the foregoing certificate was given, and whose name is thereto subscribed in his own proper handwriting, was at the date thereof President Judge of the said Court, duly commissioned, sworn and acting.

Exhibit C. 2.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of the said Court, at Pittsburg, this 17th day of April 1924.

Joseph N. Mackrell
Register and Ex-Officio Clerk of
Orphan's Court.

Filed May 5, 1924.
Book 86 page 25.

James C. Gulick, 2nd,	Agreement dated Sept.
TO	14, 1911.
Florence S. Housewright	Recorded Oct. 22, 1914.
	Book 985 page 156.
	Cons. —

WHEREAS said Richard M. Gulick deceased on the 6th day of August 1911 at said City of Pittsburg, leaving no widow and one child and descendant only, said James C. Gulick II, with his business affairs considerably involved, so that the parties hereto do not know what is the value, if any, of the estate of the said decedent:

AND WHEREAS said Richard M. Gulick left a last Will and Testament, bearing date the 4th day of May 1911, which has not yet been admitted to probate; whereby he gave to his son a legacy of One Hundred Dollars, and gave the bulk of his estate to said Mrs. Housewright, with whom, as a foster-sister, he had been brought up, and who had made a home and had kept house for said decedent during a considerable period prior to decease:

AND WHEREAS said James C. Gulick II, feels aggrieved over the action of his father, believing that he should have been given a larger

Exhibit C. 2.

portion of his father's estate, and does not feel willing to acquiesce in, or submit to the distribution made by said Will without a contest, although at the time he would rather avoid such a contest:

AND WHEREAS, said Mrs. Housewright feels friendly to said James, and appreciates his feelings, and the same time desires to avoid a family controversy and contest, with the publicity and the bitterness and ill-feeling generally attendant and consequent thereon: and thus both of said parties deem it best to compromise and adjust amicably their differences concerning the said Will and to avoid a legal contest.

NOW THEREFORE these articles witness as follows:

Said James C. Gulick II, for the consideration herein after mentioned, hereby premises, covenants and agrees to and with the said Florence S. Housewright, that he, the said James will suffer and permit the said will of his father to be admitted to probate without objection or exception upon his part, and to be regarded and treated as entirely valid; that no caveat shall be filed, and that no appeal shall be taken from the decision of the Register admitting said Will to probate, either by him, said James or by any one else at his instance procurement or suggestion, that the provisions of said Will shall be effectuated and carried out according to the terms thereof, just the same as though no question could be raised regarding the validity of said Will. And said Florence S. Housewright, for the consideration hereinbefore mentioned, and in consideration of the carrying out of said promises, upon her part hereby promises, covenants and agrees to and with the said James C.

Exhibit C. 2.

Gulick II, that she will pay over to said James the full one-half (½) of the net assets, real and personal, left by said Richard M. Gulick, (including said legacy of one hundred dollars), coming into the hands or possession of her, the said Florence and remaining after the payment of all debts and liabilities of said decedent; and that he, said James shall share with her, said Florence, in the proportions aforesaid, in all the property and estate left by said decedent. And said parties hereby mutually agree and covenant to divide between themselves, in said proportions, the said estate of said decedent, real and personal, coming into the hands and control of said Florence S. Housewright, who is to be appointed Sole Executor under said Will, and remaining after the payment of all debts and liabilities of said decedent.

Signed and sealed.

Acknowledged September 18, 1911 by James C. Gulick, before John C. Gulick Notary Public New York County, New York.

Acknowledged September 14, 1911 by Florence S. Housewright before Sion B. Smith, Notary Public Alleghany County, Pennsylvania.

Acknowledged September 18, 1911 by James C. Gulick II, before John C. Gulick, Notary Public New York County, New York.

Certificate of William F. Schneider, Clerk of the County of New York, State of New York, as to authority of the above Notary Public attached.

Exhibit C. 2.

James C. Gulick, 2nd	Deed dated Feb. 25,
TO	1915
John C. Gulick	Recorded Nov. 18, 1915
	Book 1009 page 346
	Cons. $1.00

WHEREAS, Richard M. Gulick late of the City of Pittsburgh in the County of Allegheny and State of Pennsylvania, died seized of one equal undivided half part of a tract of Eighteen Acres and twenty eight hundred of an Acre more or less situate in the Township of Neptune, County of Monmouth and State of New Jersey at Neptune City, more particularly described in a certain deed made by Lynore Land Company body corporate to said Richard M. Gulick and Margaret A. McNulty, dated Jan. 12, 1910, recorded in the Monmouth County Clerk's Office in Book 872 of Deeds page 55 on March 11, 1910 and

WHEREAS by virtue of a certain agreement dated September 14, 1911 by and between James C. Gulick II, of the City of New York and State of New York, son of said Richard M. Gulick and Mrs. Florence S. Housewright formerly of the City of Pittsburgh, State of Pennsylvania Executrix and sole residuary devisee under and by virtue of the last will and test*imony* of said Richard M. Gulick deceased the said Richard M. Gulick deceased the said James C. Gulick is entitled to a conveyance from the said Florence S. Housewright of one undivided equal fourth part of said tract of land in fee by virtue of said agreement, between him and the said Florence S. Housewright, now

Know all Men by these presents that I, the said James C. Gulick II, in consideration of the

Exhibit C. 2.

sum of One Dollars and other good and valuable consideration, lawful money of the United States to me paid before the sealing and delivery of these presents, the receipt of which is hereby acknowledged have sold assigned, *transfered* set over and conveyed by these *present* do sell assign, transfer, set over and convey unto John C. Gulick of the City, County and State of New York all my right, title and interest in said agreement between me and the said Florence S. Housewright to the extent of my right by virtue of the said agreement or contract to a conveyance of the undivided one fourth part of said tract of eighteen Acres and twenty eight one hundredths of an Acre, described in the deed above set forth, but reserving to myself all other rights and interest under said agreement in the Estate of said Richard M. Gulick, deceased.

To have and to hold the same unto the said John C. Gulick his heirs, executors, administrator*d* and assigns, his heirs and their use and benefit forever.

And I hereby authorize and empower the said John C. Gulick to demand and receive of said Florence S. Housewright a deed of conveyance to himself in fee of the undivided one fourth part of said tract of land pursuant to said contract, in the same manner to all intents and purposes and as fully as I might or could do, if these presents were not executed.

And I do hereby make, constitute and appoint the said John C. Gulick my true and lawful Attorney, irrevocably in my name, or otherwise but at his own proper costs and charges to take all legal measures, which may be proper and necessary for the complete recovery and enjoyment of the assigned premises, with full power

Exhibit C. 2.

of substitution as fully as I might or could do, if these presents were not made.

Signed and sealed.

James C. Gulick, 2nd

$1.00 Doc. Revenue Stamp cancelled.

Acknowledged March 3, 1915 by James C. Gulick 2nd before William H. Wolfrath, Jr., Notary Public #4081 New York County.

Certificate of William F. Schneider Clerk of the County of New York and Supreme Court as to the authority of above Notary Public attached.

Florence Stuart Housewright	Deed dated Mar. 4, 1915
TO	Recorded Nov. 18, 1915
John C. Gulick	Book 1009 page 348
	Cons. $1.00 &c.

Gives, grants, bargains, sells, aliens, releases, enfeoffs, conveys and confirms unto the said party of the second part and to his heirs and assigns forever.

All the equal undivied one fourth part of all that certain tract or parcel of land and premises situate, in the Township of Neptune, County of Monmouth and State of New Jersey on the northerly side of Shark River.

Same premises as described in Deed Book 872 page 55.

Being the same premises described in a deed made by Lynore Land Company, body corporate, to said Richard M. Gulick and Margaret A. McNulty dated Jan. 12, 1910 recorded in the Monmouth County Clerk's Office in Book 872 of Deeds page 55 on March 11, 1910.

Exhibit C. 2.

The said Richard M. Gulick died seized of one equal undivided half part of said premises on August 6, 1911 leaving a last will and testament dated May 4, 1911 and probated in the Register's Office of Wills at Pittsburgh in the County of Allegheny, State of Pennsylvania on September 15, 1911 in and by which he devised all the rest, residue and remainder of his estate of whatsoever kind and wheresoever the same may be situated unto the said Florence Stuart Housewright to have and to hold unto her heirs, executors, administrators and assigns absolutely and forever by virtue of which will the title to one undivided half part of said premises vested in the said Florence S. Housewright.

This deed is intended to convey to the said John C. Gulick in fee one undivided fourth part of the tract above described being the undivided one fourth part to one James C. Gulick Nephew of said John C. Gulick would have been entitled to have conveyed to him by virtue of a certain agreement by the said Florence S. Housewright and said James C. Gulick dated Sept. 14, 1911 which however he has assigned and transferred to said John C. Gulick to the extent of his right to such conveyance of said one fourth portion of said lands by an assignment in writing dated February 25, 1915 not yet recorded.

Together &c.

Habendum in fee.

Covenant against Grantor.

Signed and sealed.

$1.00 Documentary Revenue Stamp cancelled.

Acknowledged March 4, 1915 by Florence Stuart Housewright before Samuel C. Cowart, Master in Chancery of New Jersey.

Exhibit C. 2.

John C. Gulick's Exemplified Copy of Will &c.

Dated July 10, 1914
Filed May 5, 1924
Book 86 page 30

The people of the State of New York, By the Grace of God, Free and Independent. To all to whom these presents shall come or may concern, GREETING:—

KNOW YE, That we having examined the records and files in the Office of the Surrogate of the County of New York, do find there remaining, a certain record of the last will and testament of John C. Gulick, deceased, together with the probate thereof and letters testamentary granted thereon (said Will having been duly executed and proved agreeably to the laws and usages of the State of New York and admitted to probate as a Will of real and personal property on the 8th day of July in the year One Thousand Nine hundred and sixteen) in the words and figures following:—to wit.

SURROGATE'S COURT,
COUNTY OF NEW YORK:

In the Matter of proving the last will and testament of John C. Gulick, deceased, as a will of real and personal property.

To the Surrogate's Court, of the County of New York:

The Petition of Frederick M. Dearborn residing at No. 25 West 68th Street in the Borough of Manhattan City of New York, respectfully states.

That your Petitioner is the Executor named in the last will and Testament of John C. Gulick, late of the County of New York, deceased;

Exhibit C. 2.

That said last Will and Testament, herewith presented and hereby offered for probate, relates to both real and personal property, and bears date the 10th day of July 1914, and is signed at the end thereof by the said Testator and by John C. Griswold and Arthur Plage as subscribing witnesses.

That petitioner does not known of any Codicil to said last Will and Testament, nor is there any to the best of his information and belief.

That the said deceased was at the time of his death, a resident of the County of New York, residing at No. 331 West Second Street, in the Borough of Manhattan City of New York and departed this life in said County on the 20th day of June, 1916.

That said deceased was unmarried, that all the heirs, and all the next of kin of said Testator, each person designated in the will herewith presented and hereby offered for probate as Executor, testamentary Trustee or Guardian, and their residences and Post Office Addresses are hereinafter mentioned in subdivisions, a, b, c, and d hereof, as follows:

a: The following named persons who are of full age and of sound mind;

James C. Gulick a nephew of deceased who resides at 135 St. Marks Avenue, Brooklyn, New York.

Milicent Grissman, a niece of deceased who resides at 331 West 22nd St., New York City, New York.

Kenneth Grissman a nephew of deceased who resides at 11 Vincent Place, Montclair, N. J.

Frank Grissman a nephew of deceased who resides at 331 West 22nd St., New York City, N. Y.

Exhibit C. 2.

Milicent G. Grissman, (named as Milicent Grissman) a sister of deceased who resides at Milford, Pennsylvania.

James I. Gulick a brother of deceased who resides at 1405 10th Street Coronado, California.

Mariana G. Bradley, a sister of deceased who resides at 136 Upper Mountain Avenue, Montclair, New Jersey.

Frederick M. Dearborn, Executor no relation of deceased who resides at 25 West 68th Street New York City, N. Y.

b. The following named persons who are infants of fourteen years of age;

There are no infants over fourteen years of age.

c. The following named persons who are infants under fourteen years of age.

There are no infants under fourteen years of age:

d. The following named persons who are of full age but of unsound mind;

There are no persons of full age, but of unsound mind.

That the value of the real property in this State of which the Testator died seized is more *the* Ten Thousand Dollars and that the value of the personal property of which said Testator died possessed is more than Ten Thousand Dollars.

That said Testator left him surviving no widow, child or children, no adopted child or children, no issue of any deceased child or children, no issue of any deceased adopted child or children, no father or mother no brother or sister of the half or the whole blood, no issue of any deceased brother or sister, except those hereinbefore mentioned.

Exhibit C. 2.

That no petition for the probate of the Will herewith presented and hereby offered for probate or for letter of administration on said Estate, had been heretofore, filed in this or any other Surrogate's Court of this State and that no other Will of said Testator has been filed in the Surrogate's Office of New York County, except as hereinbefore mentioned and described.

That there is no person designated in the Will herewith presented and hereby offered for probate as Executor, testamentary Trustee or Guardian, except as hereinbefore mentioned.

That there is no person named as Executor, Testamentary Trustee, Guardian, Devisee, Legatee or beneficiary in any other Will of the same Testator filed in the Surrogate's Office of the County of New York, except as hereinbefore mentioned.

That the names and Post Office addresses of the devisees, legatees, and other beneficiaries made in the Will herewith presented and hereby offered for probate, are as follows:—

1. The following named persons have been hereinbefore mentioned:

Name of the Legatee, Devisee or Beneficiary	Post Office Address.	Value of Legacy or Devise.
James C. Gulick	135 St. Mark Ave. Brooklyn, N. Y.	Unknown
Milicent Grissman	331 West 22nd st. New York City, N. Y.	$1,000.00
Kenneth Grissman	11 Vincent Place Montclair, N. J.	500.00
Frank Grissman	331 West 22nd St. New York City, N. Y.	500.00
Mariana G. Bradley	136 Upper Mountain Ave., Montclair, N. J.	Unknown

Exhibit C. 2.

Milicent G. Grissman (named as Milicent Grissman) Milford, Pennsylvania ..... "

James I. Gulick 1405 10th St., Coronado, California ..... "

That there are no persons intended in this proceeding other than those hereinbefore mentioned.

WHEREFORE YOUR PETITIONER PRAYS:

That a citation to show cause issue herein to the persons hereinbefore named, described and included in subdivisions, a, b, c & d hereof, citing them to show cause why the last will and testament herewith presented and hereby offered for probate should not be admitted to probate.

That the last will and testament herewith presented and hereby offered for Probate as a will of real and personal property, and that letters testamentary may be issued to the Executor who may qualify thereunder.

Dated New York, June 22nd, 1916

Frederick M. Dearborn,
Petitioner.

County and State of New York, SS

Frederick M. Dearborn the Petitioner named in the foregoing Petition, being duly sworn, deposed and says, that he has read the foregoing petition subscribed by him and know the contents thereof, and that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief,

Exhibit C. 2.

and that as to those matters he *believe* it to be true.

Frederick Dearborn,
Petitioner.

Sworn to this 22nd day of
June, 1916.

L. S. Chas. A. Chas*d*
New York County,
Notary Public.
New York Co. No. 220
" " Register No. 8119

IN THE NAME OF GOD, AMEN: I, John C. Gulick publish this as my last will, written wholly with my own hand.

1. I revoke all previous Wills made by me.

2. I appoint Dr. Frederick M. Dearborn as sole Executor.

3. I devise my house No 331 West 22d St., in the Borough of Manhattan and City of New York to my dear nephew James C. Gulick, I bequeath to him the cedar chest which belonged to his father and the hall clock which belonged to his great great grand father, to be carefully cherished as heirlooms.

4. I bequeath to my dear niece Milicent Crissman, the sum of One Thousand dollars, and to her brothers Kenneth and Frank each the sum of Five hundred Dollars all these legacies to be free of transfer tax.

5. I devise and bequeath all the rest of my property to my sister Mariana G. Bradley and Milicent Crissman my brother James I. Gulick and my nephew James C. Gulick to be divided equally between them.

Exhibit C. 2.

IN WITNESS WHEREOF, I have set my hand hereto this 10th day of July 1924.

John C. Gulick

Subscribed, signed, published and declared by the above named Testator John C. Gulick as his last Will and Testament in the presence of us and each of us who at his request and in his presence and in the presence of each other have subscribed our names as Witnesses hereto.

John C. Griswold #629 Walton Ave., Bronx, New York, N. Y.

Arthur Plage, 236-9th Avenue Astoria, L. I. N. Y.

Affidavit of John C. Griswold, a Witness in the above will attached.

Affidavit of Arthur Plage, a Witness in the above Will attached.

Decree Admitting Will attached.

Certificate of Robert Ludlow Fowler, attached.

Certificate of James A. Foley, a Surrogate of said County and Presiding Magistrate of the Surrogate's Court, attached.

Certificate of Martin G. McCue, Clerk of the Surrogate's Court, attached.

NOTE:

We fail to find any record of Will or Administration of the Estate of Mariana G. Bradley on Record in the Monmouth County Surrogate's Office to date.

We also fail to find any record of Inheritance Tax Waiver of the Estate of Mariana G. Bradley on Record in the Monmouth County Clerk's Office to date.

Exhibit C. 2.

Edwin A. Bradley, Millicent G. Crissman and Frank Crissman, her husband	Deed dated Sept. 11, 1923
	Recorded Nov. 7, 1923
	Book 1241 page 87
TO	Cons. $1.00 &c.
Irma Klophaus	

Grants, bargains, sells, aliens, releases, remises, conveys and confirms unto the said party of the second part and to her heirs and assigns forever.

All the right, title and interest, of the parties of the first part in the tract or parcel of land and premises hereinafter particularly described situate, lying and being in the City of Neptune City, in the County of Monmouth and State of New Jersey.

Same premises as described in deed Book 872 page 55.

John C. Gulick died seized of a one quarter interest in said premises leaving a last will and testament dated July 10, 1914 and probated in the County and State of New York wherein he devised his interest in said premises equal to Marianna G. Bradley, Millicent Crissman, James I. Gulick and James C. Gulick, the said Marianna G. Bradley having since died leaving any interest she might possess in said premises to Edwin A. Bradley one of the parties of the first part.

Together &c.

Habendum in fee.

Warranty.

Signed and sealed.

Acknowledged September 11, 1923 by James C. Gulick before Thomas C. Patterson, Notary Public.

Exhibit C. 2.

Certificate of James A. Donegan, Clerk of the County of New York.

Acknowledged on October 9, 1923 by Millicent G. Crissman and Frank Crissman her husband before M. C. Bond, Notary Public in and for the County of Los Angeles, State of California.

Certificate of L. E. Lampton, Clerk of the County of Los Angeles and Clerk of the Supreme Court as to the Authority of Notary Public, attached.

Acknowledged September 22, 1923 by Edwin A. Bradley before William W. Crane, Attorney at Law of New Jersey.

James I. Gulick and Nellie Marigold Gulick, his wife,	Deed dated Sept. 15, 1923
TO	Recorded Nov. 7, 1923
Irma Klophaus	Book 1241 page 90
	Cons. $1.00 &c.

Grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the said party of the second part and to her heirs and assigns forever.

All the right, title and interest of the parties of the first part, in the tract or parcel of land and premises, hereinafter particularly described situate, lying and being in the City of Neptune City, in the County of Monmouth and State of New Jersey.

Same premises as described in deed Book 872 page 55.

Together &c.

Habendum in fee.

Signed and sealed.

$.50 I. R. U. S. Stamp cancelled.

Exhibit C. 2.

Acknowledged Sept. 15, 1923 by James I. Gulick and Nellie Marigold Gulick his wife before Thomas A. Sanson Notary Public in and for the County of Los Angeles, State of California.

My Commission expires Oct. 22, 1926.

Certificate of L. E. Lampton, Clerk of the County of Los Angeles and Clerk of the Supreme Court and for the said County as to the authority of above Notary Public attached.

$.50 I. R. U. S. Stamp cancelled.

Florence S. Johnson, widow, formerly Florence S. Housewright.	Deed dated Sept. 12, 1923
TO	Recorded Oct. 25, 1923.
Irma Klophaus	Book 1238 page 256.
	Cons. $1.00 &c.

Grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the said party of the second part and to her heirs and assigns forever.

All the right, title and interest of the party of the first part in and to the tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the City of Neptune City, in the County of Monmouth and State of New Jersey.

Same premises and description as described in Deed Book 872 page 55.

Being the same premises a one half interest of which was devised to the party of the first part by the last Will and Testament of R. M. Gulick and this Deed is to convey out of the party of the first part any interest not heretofore conveyed.

Exhibit C. 2.

Together &c.
Habendum in fee.
Signed and sealed.
Acknowledged September 12, 1923 by Florence S. Johnson, widow, formerly Florence S. Housewright before Thomas C. Patterson, Notary Public of New York County.
Certificate of James A. Donegan, Clerk of the County of New York, State of New York, as to authority of above Notary Public attached.

Margaret A. McNulty	Deed Dated Aug. 13,
TO	1915.
Francis Margaret McNulty	Recorded Sept. 1, 1915.
	Book 1005 page 102.
	Cons. $1.00 &c.

Grants, bargains, sell, aliens, enfeoffs, releases, conveys and confirms unto the said party of the second part, her heirs and assigns.
All her the party of the first part's full equal undivided one half interest in all that tract, lot or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Neptune City, in the County of Monmouth and State of New Jersey.
Same premises as described in Deed Book 872 page 55.
Together &c.
Habendum in fee.
Covenant against grantor.
Signed and sealed.
$3.00 I. R. U. S. Stamp Cancelled.
Acknowledged Aug. 13, 1915 by Margaret A. McNulty before Frank C. Propert, a Foreign Commissioner of Deeds for New Jersey in Pennsylvania.

Exhibit C. 2.

Frances Margaret McNulty Tighe and James J. Tighe, her husband	Deed dated Feb. 15, 1916
TO	Recorded Mar. 14, 1916
Inez H. McNulty	Book 1015 page 359
	Cons. $1.00

Grants, bargains, sells, aliens, enfeoffs, releases and confirms unto the said Grantee her heirs and assigns.

All her, the said Frances Margaret McNulty Tighe's full equal undivided one half interest in all that tract, lot or parcel of land and premises hereinafter particularly described situate, lying and being in the Borough of Neptune City, County of Monmouth and State of New Jersey.

Same premises as described in deed Book 872 page 55.

Together &c.

Habendum in fee.

Warranty.

$1.00 Documentary Stamp cancelled.

Acknowledged Feb. 15, 1916 by Frances Margaret McNulty Tighe and James J. Tighe before W. H. G. Gould a Foreign Commissioner of Deeds for N. J.

Inez H. McNulty, single,	Deed dated Sept. 7, 1923.
TO	Recorded Oct. 25, 1923.
Irma Klophaus	Book 1238 page 254.
	Cons. $1.00 &c.

Grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the said party of the second part and to her heirs and assigns forever.

Exhibit C. 2.

All that certain undivided one half interest of the party of the first part in the tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Neptune City, in the County of Monmouth and State of New Jersey.

Same premises and description as described in Deed Book 872 page 55.

Together &c.

Habendum in fee.

Signed and sealed.

$2.50 I. R. U. S. Stamp Cancelled.

Acknowledged Sept. 7, 1923 by Inez H. McNulty, single, before John V. Martin, Notary Public Philadelphia County, Pennsylvania.

Certificate of William M. Bunn, Prothonotary of the County of Philadelphia, State of Pennsylvania, as to authority of above Notary Public attached.

Irma Klophaus (single)	Deed dated Oct. 25,
TO	1923
Eichengreen Land	Recorded Nov. 7, 1923
Company, Inc, a body	Book 1241 page 92
corporate	Cons. $1.00 &c.

Grants, bargains, sells, aliens, releases, enfeoffs, conveys and confirms unto the said party of the second part, its successors and assigns forever.

ALL that certain tract or parcel of land and premises hereinafter particularly described situate, lying and being in the Borough of Neptune City, in the County of Monmouth and State of New Jersey.

Exhibit C. 2.

Same premises as described in deed Book 872 page 55.

Being part of the same premises conveyed to Lynore Land Company by Richard M. Gulick and wife by deed recorded in Book 714 page 227.

Together &c.

Habendum in fee.

Against encumbrances.

Good right to convey.

Warranty.

Signed and sealed.

$.50 I. R. U. S. Stamp cancelled.

Acknowledged 29th day of October 1923 by Irma Klophaus before Charles Jones, Master in Chancery of N. J.

Search in the Monmouth County Clerk's Office for Conveyances, Mortgages, Mechanics Liens and Notices of Lis Pendens affecting premises described in deed Book 872 page 55.

AGAINST

Richard M. Gulick
from Jan. 11, 1910 to Nov. 19, 1915
Margaret A. McNulty
from Jan. 11, 1910 to Sept. 2, 1915
James C. Gulick, 2nd
from Aug. 5, 1911 to Nov. 19, 1915
Florence Housewright,
Individually & as Executrix
from Aug. 5, 1911 to Nov. 19, 1915
John C. Gulick
from Feb. 24, 1915 to Nov. 8, 1923
Frederick M. Dearborn, Exor
from June 19, 1916 to Nov. 8, 1923
Mariana G. Bradley
from Nov. 8, 1916 to Nov. 8, 1923

Exhibit C. 2.

Millicent Crissman
from June 19, 1916 to Nov. 8, 1923
James R. Gulick
from June 19, 1916 to Nov. 8, 1923
Edwin A. Bradley
from June 19, 1916 to Nov. 8, 1923
Irma Klophaus
from Sept. 6, 1923 to Nov. 8, 1923
Frances Margaret McNulty
from Aug. 12, 1915 to Mar. 15, 1916
Inez H. McNulty
from Feb. 14, 1916 to Oct. 26, 1923
Eichengreen Land Company,
from Oct. 24, 1923 to Nov. 18, 1924

And for Judgments, Attachments and Sheriff's Bonds.

AGAINST

Richard M. Gulick
from Nov. 1, 1904 to Nov. 19, 1915
Margaret A. McNulty
from Nov. 1, 1904 to Sept. 2, 1915
James C. Gulick, 2nd
from Nov. 1, 1904 to Nov. 19, 1915
Florence Housewright,
Individually & as Exrx.
from Nov. 1, 1904 to Nov. 19, 1915
John C. Gulick
from Nov. 1, 1904 to Nov. 8, 1923
Frederick M. Dearborn, Exr.
from Nov. 1, 1904 to Nov. 8, 1923
Mariana G. Bradley
from Nov. 1, 1904 to Nov. 8, 1923
Millicent Crissman
from Nov. 1, 1904 to Nov. 8, 1923

Exhibit C. 2.

James R. Gulick
from Nov. 1, 1904 to Nov. 8, 1923
Edwin A. Bradley
from Nov. 1, 1904 to Nov. 8, 1923
Irma Klophaus
from Nov. 1, 1904 to Nov. 8, 1923
Frances Margaret McNulty
from Nov. 1, 1904 to Mar. 15, 1916
Inez H. McNulty
from Nov. 1, 1904 to Oct. 26, 1923
Eichengreen Land Company
from Nov. 1, 1904 to Nov. 18, 1924

And for Recognizances.

AGAINST

John C. Gulick
from Nov. 1, 1918 to Nov. 8, 1923
Mariana G. Bradley
from Nov. 1, 1918 to Nov. 8, 1923
Millicent Crissman
from Nov. 1, 1918 to Nov. 8, 1923
James I. Gulick
from Nov. 1, 1918 to Nov. 8, 1923
Edwin A. Bradley
from Nov. 1, 1918 to Nov. 8, 1923
Irma Klophaus
from Nov. 1, 1918 to Nov. 8, 1923
Inez H. McNulty
from Nov. 1, 1918 to Ovt. 26, 1923

Exhibit C. 2.

IN CHANCERY OF NEW JERSEY

Between: JAMES C. GULICK, II. *Complainant* *and-* FLORENCE S. HOUSEWRIGHT JAMES D. CARTON and the BOROUGH OF NEPTUNE CITY *Defendants*	*On Bill &c.* *Lis Pendens.*

Take notice that a suit entitled as above set forth, has been commenced, and is pending in the Court of Chancery of the State of New Jersey: That the general object of said suit is, that the said Florence S. Housewright, defendant, may be decreed and ordered to convey to the complaint by a proper deed of conveyance in fee simple one undivided fourth part of a tract of Eighteen Acres and twenty eight hundredths of an acre of land situate at Neptune City in the County of Monmouth, State of New Jersey of which the said Richard M. Gulick died seized of the one undivided half part, by virtue of a certain deed made and executed to him and Margaret A. McNulty by the Lynore Land Company, body corporate of the State of New Jersey, dated January 12, 1910 recorded in the Monmouth County Clerk's Office at Freehold New Jersey in Book 872 of Deeds page 55 on March 11, 1910; the tract of land in question being more particularly described as follows:—

Same premises as set forth and described in deed Book 872 page 55.

Exhibit C. 2.

The said James C. Gulick II, claiming in the said suit in Chancery, that the undivided one fourth part of the said tract of land and premises belonging to him by virtue of a certain agreement made between him and the said Florence S. Housewright dated September 14, 1911 and recorded in the Monmouth County Clerk's Office in Book 985 of Deeds page 156 on October 22, 1914; and the said suit is also instituted for the purpose of requiring the said Florence S. Housewright to account to the Complainant James C. Gulick, for his legacy and his one half share of all income received by her from the Estate of said Richard M. Gulick deceased and that the same may be charged as a lien upon the said Florence S. Housewright's undivided share of the lands above described and that if need be, a receiver may be appointed for the said lands by the said Court, to the extent of the shares therein of the said Complainant, and the said Florence S. Housewright, Defendant, and that the Court would either decree that the said premises *sould* be sold to the extent of the one half interest or share of the said Richard M. Gulick deceased belonging to the said Defendant Florence S. Housewright and the Complainant James C. Gulick, as tenants in common and that out of the proceeds of the sale thereof, and one half of the taxes due thereon to one James D. Carton, and the Borough of Neptune City be paid to them and that the amount found to be due to the Complainant from the said Florence S. Housewright, for the Complainant legacy and his share of the income received by the said Florence S. Housewright from the Estate of the said Richard M. Gulick, deceased, pursuant to the agreement above mentioned be paid to Complainant or that the said Florence S. Housewright,

Exhibit C. 2.

should be decreed and ordered to convey to the Complainant by a proper deed of conveyance in fee simple, one undivided fourth part of said tract of eighteen and twenty eight hundredths Acres of land above described and the further object of said suit is, to redeem the said lands from certain tax sales made to James D. Carton by the Borough of Neptune City, and from certain tax returns and tax liens held by the said Borough of Neptune City the Municipal Corporation in which the said lands are located and that the said James D. Carton and the Borough of Neptune City may be decreed and ordered by the said Court of Chancery to convey and release to the Complainants, all right, title and interest in the said Tract of Eighteen Acres and twenty eight hundredths of an acre by virtue of their respective certificate of sale for taxes and tax liens and assessments for taxes on said premises to the extent of the one fourth share of the Complainant in the said premises, and to the extent of the Complainant, share of the right, title and interest of the said Florence S. Housrwright, therein for whatever amount shall be ascertained by the said Court to be due to the Complainant from the said Florence S. Housewright for the Complainant's share of income received by the said Florence S. Housewright from the Estate of the said Richard M. Gulick for which she has failed to account to the Complainant, and which remains unpaid to the Complainant by the said Florence S. Housewright; and the further object to the said suit is to compel the said Florence S. Housewright, Defendant to convey to the Complainant, one half of all other lands, of which the said Richard M. Gulick died seized or possessed, or to which he was entitled to, situate in the County of Mon-

Exhibit C. 2.

mouth and State of New Jersey by virtue of the 30th clause being the residuary Clause in the last will and testament of Henry M. Bennett late of the Township of Neptune, County of Monmouth and State of New Jersey dated September 27, 1901 and probated in the Monmouth County Surrogate's Office on July 28, 1902, and recorded in Book K-2 of Wills page 139.

SAMUEL CRAIG COWART,
Sol'r. & Counsel for Compl't.

Received, filed and recorded
Nov. 12th A. D. 1914
Book 4 page 25.

Edwin F. Bennett, Collector	Certificate of Tax Sale
	Dated Oct. 14, 1911
TO	Recorded Jan. 23, 1912
H. S. Kinmonth	Book 428 page 317
	Cons. $122.89

Sells for taxes for year 1910, eighteen and one quarter Acres of land on the south side of Sylvania Avenue between the properties of Mrs. Mary Kelly and Mrs. Frances K. Lippman, Neptune City, N. J.

Right to redeem will expire October 14, 1913.

Assessed to Margaret McNulty and Richard Gulick.

Exhibit C. 2.

Edwin F. Bennett, Collector	Certificate of Tax Sale
	Dated Sept. 28, 19—
TO	Recorded Oct. 5, 1912
James D. Carton	Book 442 page 401
	Cons. $119.45

Sells for taxes for the year of 1911.

All that real estate assessed to Richard Gulick and others and described as follows to wit: Eighteen and one quarter Acres Sylvania Avenue, South side between Kelly's and Lippman's Estate, Neptune City, N. J.

Right to redeem will expire Sept. 22, 1914.

Edwin F. Bennett, Collector	Certificate of Tax Sale
	Dated Nov. 22, 1913
TO	Recorded Dec. 18, 1913
James D. Carton	Book 465 page 473
	Cons. $153.37

Sells for taxes for the year 1912.

All that certain tract of land and real estate assessed to Richard Gulick and Margaret McNulty and described as follows to wit: Eighteen and one quarter Acres of land situate in the Borough of Neptune City, being located between Sylvania Avenue and Shark River adjoining Lippman's property on the west and property of Kelly's Estate on the East.

Right to redeem will expire Nov. 22, 1915.

Exhibit C. 2.

Edwin F. Bennett, Collector	Certificate of Tax Sale
	Dated Dec. 26. 1914
TO	Recorded Feb. 24, 1915
James D. Carton	Book 490 page 223
	Cons. $153.52

Sells for taxes for the year 1913.

All that certain real estate assessed to Gulick Richard and Margaret McNulty and described as follows: Eighteen and one half acres Sylvania Avenue between Bells and Lypmans.

Right to redeem will expire Nov. 26, 1916.

James D. Carton	Assignment of Tax Sale
TO	Dated Nov. 22, 1915
James C. Gulick	Recorded Nov. 24, 1915
	Book 72 page 74
	Cons. $109.18

A S S I G N S

Certain Certificate of Tax Sale for taxes bearing date November 22, 1913 made by Edwin F. Bennett, Collector of Taxes of the Borough of Neptune City, Monmouth County, N. J. on lands of the Borough of Neptune City Monmouth County, New Jersey, to secure the payment of the sum of One hundred and thirty six dollars and fifty cents for taxes assessed for year 1912 to Richard Gulick and Margaret McNulty on lands described therein and Twelve dollars and fifty cents interest and four hundred and thirty seven cents cost, which certificate of Tax Sale was recorded in the Office of the Clerk of the County of Monmouth, State of New Jersey in Book 465 of Mortgages page 473 &c.

Exhibit C. 2.

E. F. Bennett, Collector	Certificate of Tax Sale
TO	Dated Dec. 26, 1915
James D. Carton	Recorded Jan. 10, 1916
	Book 508 page 292
	Cons. $170.42

Sells for taxes for the year 1914.

All that certain parcel of land assessed to Richard Gulick and Margaret McNulty and described as follows to wit: Eighteen and one quarter Acres Sylvania Avenue, South between Bell's Tract and Lippmans.

Right to redeem will expire December 28, 1917.

Emelius M. Bentell,	Certificate of Tax Sale
Collector	Dated Oct. 23, 1916
TO	Recorded Nov. 21, 1916
James D. Carton	Book 524 page 401
	Cons. $184.92

Sells for taxes for the year of 191—, eighteen and one quarter acres of land situate on the South side of Sylvania Avenue between Lippmans and Bell's Tracts, Neptune City, New Jersey.

Assessed to Estate of Richard M. Gulick and Margaret McNulty.

Right to redeem will expire sixty days.

Exhibit C. 2.

A. Frank Bennett, Jr.	Certificate of Tax Sale
Collector	Dated Mar. 24, 1918
TO	Recorded Mar. 26, 1919
James D. Carton	Book 555 page 27
	Cons. $217.75

Sells for taxes for the year of 191—.

All that certain lot or parcel of land situate in the Borough of Neptune City. Containing eighteen and one quarter Acres of land.

Sold for the Term of Twenty Years.

Right to redeem will expire Sixty days.

Assessed to Inez McNulty.

A. Frank Bennett, Jr.,	Certificate of Tax Sale
Collector	Dated Aug. 4, 1923
TO	Recorded Sept. 7, 1923
James D. Carton	Book 673 page 35
	Cons. $311.50

Sells for taxes for the year of 1921.

Block 37, 18 Acres Sylvania South side.

Right to redeem will expire in six months.

Assessed to Inez McNulty.

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

THE MONMOUTH TITLE COMPANY, OF FREEHOLD, County of Monmouth, and State of New Jersey, hereby certifies, for James D. Carton only, that it has searched the records in the office of the Clerk of the County of Monmouth, for Conveyances, Mortgages, Attachments, Mechanics' Liens, Notices of Lis Pendens, Judgments, Recognizances and Bonds to Sheriff

Exhibit C. 2.

as directed by the above requisition and that it finds none by or against the persons named, within the time specified affecting the premises referred to in said requisition, except as above set forth, as shown by the indices.

In Witness Whereof, The Mon-
(seal) month Title Company hath caused these presents to be signed by its President and its corporate seal to be hereunto affixed, attested by its Secretary this 18th day of November A. D., 1924

MONMOUTH TITLE COMPANY.
RICHARD H. STOUT,
President.

Attest:

Wm. C. Hankinson, Jr.,
Asst. Secretary.

Legal Fees $————

NOTE:—We Advise that Searches for Taxes be made in the Office of Tax Collector.

Exhibit C. 2.

ABSTRACT

of the

TITLE

of

EICHENGREEN LAND COMPANY

TO

EIGHTEEN AND TWENTY-EIGHT ONE HUNDREDTHS ACRES IN THE BOROUGH OF NEPTUNE CITY.

MONMOUTH TITLE CO.

FREEHOLD, N. J.

Exhibit C. 3.

Carton vs. Eichengeen
Letters re McNulty interest

EXHIBIT C. 3.

MOORSHEAD & JOHNSON
COUNSELLORS AT LAW
Bailey Building 1218 Chestnut Street
PHILADELPHIA

November 3rd, 1915.

James B. Carton, Esq.,
Asbury Park, New Jersey.

Dear Sir,—

ESTATE OF PETER JAY McNULTY, DEC'D.

Several days ago I sent Mr. James J. Tighe to Asbury Park to see you in regard to the sale of property known as "Bijou Villa" by the above Estate to you.

Those interested in the Estate are not satisfied that Frank T. Patterson has rendered a correct statement of the money received from the sale of this property; no two statements rendered by Mr. Patterson being the same. Taking advantage of your offer to Mr. Tighe to furnish us with any data you may have available that will aid us in arriving at the knowledge of the disposition of these funds, will you kindly look up the cheque or cheques by which you made payment for this property and which were turned over to Mr. Patterson; also cheque by which the $500 option money was turned over to Mr. Pelatere who subsequently turned it over to Mr. Patterson.

Have you any data in your office showing to whom the shares of stock of the Lenore Land Company should have been issued. Mr. McNulty left a written direction to you to issue

Exhibit C. 3.

some shares to Mrs. McNulty and some to his daughters; a thorough search has been made among Mr. McNulty's papers, we have on hand, we cannot find this document. A number of letters written by you to Mr. Pelatere were turned over to me, and I find mention of the fact that such a paper was turned over to you. From Patterson's statement I infer that two cheques were delivered in payment of the purchase price, one to Gulick's attorney and the other to Patterson of approximately $8900 each. Will you also advise me if the taxes on the Neptune City property, Bijou Villa, were paid before settlement, or if Mr. Patterson's statement that he paid them out of the funds received is correct?

Thanking you in advance for the above information, I am

Very truly yours,
FRANK A. MOORSHEAD.

M-W.

5116 Regent St Philadelphia

Mr James D Carton
My dear Mr Carton

Mr. Frank Moorshead, of Philadelphia has been retained by me to represent me in the McNulty estate. By giving him any information you can, regarding anything he wishes to secure, you will confer on me a great favor.

Thanking you for any courtesy you may extend to us, I am with best wishes to Mrs Carton and yourself

Very truly yours
Margaret A McNulty

November Fourth.

Exhibit C. 3.

MOORSHEAD & JOHNSON
COUNSELLORS AT LAW
Bailey Building 1218 Chestnut Street
PHILADELPHIA

November 12th, 1915.

James B. Carton, Esq.,
Asbury Park, New Jersey.

Dear Sir,
ESTATE OF PETER J. McNULTY, DEC'D.

I have received no reply to my letter to you of the 3rd inst. in regard to the above matter, and as we are very anxious to get this matter disposed of as soon as possible, I would appreciate a reply to the several queries set forth in my letter.

Thanking you in advance, I am

Very truly yours,

Frank A. Moorshead.

M-W

MOORSHEAD & JOHNSON
COUNSELLORS AT LAW
Bailey Building 1218 Chestnut Street
PHILADELPHIA

November 26th, 1915.

James D. Carton, Esq.,
Asbury Park, New Jersey.

Dear Sir,—

McNULTY ESTATE.

Please accept my thanks for your letter of the 15th inst. in regard to the above Estate.

I have not had an earlier opportunity to acknowledge this, and will take up with you the

Exhibit C. 3.

early part of next week the contents of your letter which I have submitted to my Pittsburgh correspondent.

Thanking you again, I am

Very truly yours,

Frank A. Moorshead.

M-W

December 15th, 1915.

MR. FRANK A. MOORESHEAD,

My dear sir,—

I have just been able to answer your's of recent date concerning the Avon property, in which you say Mrs. McNulty is interested as one-half owner, of the eighteen acre tract, and which interest she is desirous of selling.

This is not a good time to sell any real estate, particularly in this locality, because all real estate values are depressed, and there is no activity in matters of investment in this line.

Concerning this particular piece of property however, I had up with the owners some two years ago some sort of a proposed contract to buy. Mrs. Housewright, the owner of the one-half interest, taking the interest of Gulick, signed the contract, but the contract as to the other half interest was not signed. Probably your client has a copy of this contract among her papers, and is familiar with its terms. I only recall now in a general way the terms outlined in the contract.

At the outset, it must be borne in mind that no one is in shape at this time to give good marketable title to this property, for the reason that this property is one of the particular sub-

Exhibit C. 3.

jects of attack in the various bills filed by Laura Biggar in this estate. In these bills she asks that the original conveyance of the executors be set aside as fraudulent, or that the old executors be surcharged with the difference between the full value of the property at the time

MR. FRANK A. MOORESHEAD, #2.—

it was sold by the executors, and its actual value, and while the Vice Chancellor, in the Court of Chancery, decided against the complainants, yet, an appeal from this decree has been taken to the Court of Errors and Appeals, where it was recently argued, and from where a decision has not yet been handed down, and likely will not for some months to come, probably not until the opening of the February term, so that all that could be done at this time would be to enter into a tentative contract pending the final outcome.

As I recall the terms of the contract with Mrs. Housewright, same was to the effect that I offered to pay at the basis of an $8,000 valuation of the property at such time as the litigation might be disposed of, and the owners in a position to give good title; that there was to be deducted from this the amount paid to one Alexander Morris, for a portion of this tract owned by him, some $250. or $300.00, as I now recall; that there should also be deducted all the various items due for taxes, interest, etc., against the property. Prior to the entering into of this agreement with Mrs. Housewright, the property had been sold for taxes to one Hugh S. Kinmonth, and on another occasion, or two occasions, I do not recall at this time, to myself. The understanding was that if the parties were

Exhibit C. 3.

in a position to give good title, that the amount due for these various taxes, with the Morris item, was to be deducted from the $8,000. I have been taking care of the taxes ever since. I notice the property is now advertised for sale again by the Borough of Neptune City for delinquent taxes for the year 1914; the taxes amounting to $175.00, as I now recall. This sale is set for December 26th. Because of the uncertainty of the proposition, I have been in some doubt as to the advisability

MR. FRANK A. MOORESHEAD, #3.

of continuing further to take care of the taxes, but if your client wishes to enter into a contract for her one-half interest (if she holds a one-half interest in the property at this time, along the lines as above indicated,) I will enter into such a contract, and will take care of the tax sale on the 26th inst.,

I was only moved to make this proposition at the time, because of the fact that there was some proposition from the owners to sell the property to some Hebrew for the purpose of using the property for a Jewish settlement. While I have absolutely no use for the property whatever, and was only interested for the purpose of preventing such use of the property, because it would practically destroy the value of the other property, which I endeavor to rent in the summer time, and which has been a very heavy load ever since I have had it, yet, under the circumstances, I made the proposition at that time, and am still willing to carry it out.

Yours truly,

Exhibit C. 3.

MOORSHEAD & JOHNSON
COUNSELLORS AT LAW
Bailey Building 1218 Chestnut Street
PHILADELPHIA

March 7th, 1916.

Mrs. Florence Housewright,
240 Prospect Avenue,
Mt. Vernon, New York.

Dear Madam,—

I represent Mrs. Margaret A. McNulty, the owner of an undivided one-half interest in a property at Avon, New Jersey, and am informed you are the owner of the other undivided half interest in same.

There is a prospect of our being able to sell the entire property if you and Mrs. McNulty join in the sale.

Will you kindly let me know what you want for your interest?

Very truly yours,
Frank A. Moorshead.

F-W.

5116 Regent St Philadelphia

Mr James D Carton

My dear Mr Carton

I am writing to ask you what you would give for the McNulty interest in Avon property as my daughter Inez H McNulty holds the deed and she requested me to communicate with you. Best wishes to you and your Family I beg to remain

Very truly yours
Margaret A McNulty

April Twenty Third 1916.

Exhibit C. 3.

5116 Regent St

Mr James D Carton

My dear Mr Carton

Received your letter a few days ago in regard Avon property. I was under impression since the street was piped for water and the bed of Shark river raised that those improvements had enhanced the value of the holdings. I think four thousand clear the buyer assuming the back taxes would be a clearer solution.

However think it over. With best wishes to you and family

Very truly yours

M A McNulty

May Third 1916

MOORSHEAD & JOHNSON

COUNSELLORS AT LAW

Bailey Building 1218 Chestnut Street

PHILADELPHIA

May 5th, 1916

James D. Carton, Esq.,

Asbury Park, N. J.

Dear Sir,—

Your letter of the 3rd inst. in regard to the Avon property received; my understanding is that you have an Option from Mrs. Housewright to purchase her undivided one-half interest in the property, that this Option long since expired and that Mrs. Housewright and Mrs. McNulty are both in a position to sell their interest in the property.

Mrs. McNulty doesn't care to whom she sells, as long as her interest is disposed of to her ad-

Exhibit C. 3.

vantage. Kindly let me know what you will give for Mrs. McNulty's interest as it stands.

Awaiting your early reply, I am

Very truly yours,

Frank A. Moorshead

M-W.

5116 Regent St
Philadelphia

Mr James D Carton

Dear Sir

In regard to Avon property if you wish to purchase McNulty holding, send me a statement of just how it stands in regards to taxes and when it would be convenient to settle matter. Thanking you hoping to hear at your earliest convenience

Very truly yours

Margaret A McNulty

May Seventeenth 1916
Also quote price

MOORSHEAD & JOHNSON
COUNSELLORS AT LAW
Bailey Building 1218 Chestnut Street
PHILADELPHIA

June 9th, 1916

JAMES D. CARTON, ESQ.,
Asbury Park, N. J.

Dear Sir,—

Mrs. Margaret McNulty has turned over to me the statement of taxes furnished by you against the Gulick and McNulty property at Neptune City.

Exhibit C. 3.

Mrs. McNulty, I understand, is the owner of an undivided one-half interest in this property and I would appreciate your advising me definitely what amount of these taxes is payable by her.

I note the statement of taxes is only until 1914. What would be the net amount Mrs. McNulty would received if the settlement were made on the basis upon which you offered to purchase this property.

Thanking you for an early reply, I am

Very truly yours,

Frank A. Moorshead

M-W.

MOORSHEAD & JOHNSON
COUNSELLORS AT LAW
Bailey Building 1218 Chestnut Street
PHILADELPHIA

June 15th, 1916

JAMES CARTON, ESQ.,
Asbury Park, New Jersey.

Dear Sir,—

I am in receipt of your letter of the 10th inst. in regard to the Avon property, belonging to Mrs. McNulty.

Mrs. McNulty will sell her interest, an undivided one-half interest in this property for $4000, less the taxes and interest on taxes to date, her share of which would be approximately $525.

Very truly yours,

Frank A. Moorshead
W

M-W.

Exhibit C. 3.

Let me know how soon
you think this will be settled.

5116 Regent St
Philadelphia

Mr. James D Carton.

My dear Mr. Carton

I read your letter to Mr Moorshead in regard Avon property; as Mr. Moorshead is out of Town I concluded to reply. Now Mr Carton I told you I was anxious to dispose of our interest in Avon. As we had an opportunity of making an investment to our advantage, and it is very deplorable that this did not come to the settlement you anticipated in June

I feel from our talk you are most kindly disposed to us as you can readily realize what our position is and I am sure you would try and help us in this matter and as you are intimately acquainted with Vice Chancellor you could hurry matters I am quite sure Mr. McNulty would have favored you and yours in similar circumstances as he was always ready to help the distressed and I feel you are the same type. My youngest child is in poor health and my paltry income from the estate has been cut off through Mr. Pattersons blunder so this is my distressing predicament. Please think this matter over and advise me as early as possible and you will greatly oblige me
Best wishes

Most sincerely

Margaret A McNulty

Exhibit C. 3.

MOORSHEAD & JOHNSON
COUNSELLORS AT LAW
Bailey Building 1218 Chestnut Street
PHILADELPHIA

June 21st, 1916

JAMES C. CARTON, ESQ.,
Asbury Park, New Jersey.

Dear Sir,—

I am in receipt of your letter of the 20th inst. in regard to the Avon property belonging to Mrs. McNulty, and note you will take up the purchase of her interest therein when the litigation in regard to the Bennett Estate is disposed of.

Very truly yours,
Frank A. Moorshead
W

F-W.

MOORSHEAD & JOHNSON
COUNSELLORS AT LAW
Bailey Building 1218 Chestnut Street
PHILADELPHIA

June 24th, 1916

JAMES D. CARTON, ESQ.,
Asbury Park,
New Jersey.

Dear Sir,

Since receipt of your letter of the 20th inst. relative to the Avon property, I have been in communication with Mrs. McNulty and she stated you had informed her the Bennett Estate would probably be disposed of finally the second week in June.

Will you kindly advise me when you think the litigation will be finally cleaned up in which the

Exhibit C. 3.

Bennett Estate is involved, and also if you are still interested in purchasing Mrs. McNulty's interest in the Avon property on a basis of $4000 less taxes, interest, etc. I would appreciate your advices concerning this at the earliest possible moment.

Very truly yours,

Frank M. Moorshead

W

M-W.

Law Offices of
FRANK A. MOORSHEAD
1011-1014 Commonwealth Trust Building
Chestnut and Twelfth Streets
PHILADELPHIA

April 20, 1922.

James D. Carton, Esq.,
Asbury Park, N. J.

Dear Sir:—

Re: McNULTY

Mrs. Margaret McNulty died several years ago but I believe several of her daughters are living in Philadelphia and they are represented by Gerald Ronon, Esq., Land Title Building, Philadelphia, to whom I have referred your letter and I have no doubt he will give the matter attention.

Very truly yours,

Frank A. Moorshead

E

M-E

Exhibit C. 3.

Page 223.

Mr. Gerald Ronon,
C/O Henry, Pepper, Redine & Stokes,
Phila., Pa.

Dear Sir: *Re: McNutly Estate.*

I have yours of the 21st inst. in the above matter and at the present time, I do not figure on being out of the office on Monday, Tuesday or Wednesday of next week, and if you can come down on either of these days and will call me up the day before you contemplate coming, I will make definite arrangements to meet you.

Yours very truly,

James D. Carton
S

JDC/S

LAW OFFICES
HENRY, PEPPER, BODINE & STOKES
2231-42 LAND TITLE BUILDING
PHILADELPHIA

April 27, 1922.

In Re—McNULTY ESTATE.

James D. Carton, Esq.,
Asbury Park & Ocean Grove Bank Bldg.,
Asbury Park, N. J.

Dear Sir:

Referring to our conversation of yesterday in relation to the above matter, I beg to state that I have spoken to Miss McNulty concerning the title to the property, and will write you further within the next two or three days.

I hope to receive a letter from you at your earliest convenience, setting forth your proposals

Exhibit C. 3.

in accordance with our understanding of yesterday.

Awaiting to hear from you, I am,

Yours very truly,

Gerald Ronon

GR/MR

Page 56.

May 9th, 1922.

Mr. Gerald Ronan,
2231 Land Title Building
Philadelphia, Pa.

Re: McNulty Estate.

Dear Sir:

I duly received yours of the 27th ult. in the above matter.

I am enclosing herein to you memorandum of taxes and obligations to date as requested and wish you would take same up with your client at an early opportunity and let me hear from you.

Yours very truly,

James D. Carton
S.

JDC/s
Encl.

Exhibit C. 3.

Page 118.

May 11th, 1922.

Mr. Gerald Ronan
2231 Land Title Building
Philadelphia, Pa.

Dear Mr. Ronan:

I procured from the Tax Collector of the Borough of Neptune City a list of the taxes and interest on the socalled "McNulty & Gulick" property from 1910 to 1922, inclusive.

The property was sold for the years 1910 and 1911 to Hugh S. Kinmonth, and I took an assignment of Tax Deed from him. The remaining years I purchased, with the exception of 1920 and 1921, for which years, the taxes have not been paid, 1922, of course, is also unpaid but this is not payable until June and December of this year.

The total amount of taxes, interest and costs to date is $3266.13. In addition to this, there is an item of $250.00 representing the amount paid to Alexander Morris for a section of a tract owned by him, for which I paid Mr. Morris $250. and $165.00 interest to this item, so that with this $415.00, it makes a total amount of $3681.13.

Yours very truly,

James D. Carton
S.

Exhibit C. 3.

Page 362

July 25th, 1922.

Mr. Gerald Ronon
2231 Land Title Building
Philadelphia, Pa.

Dear Mr. Ronon:

When you were here to see me some weeks ago concerning the status of the Avon property, you were going to take up with your parties just what they wished to do in this matter. I wrote you after you were here giving you some data regarding the same, but have not since heard from you.

Something should be done to dispose of this situation promptly as the Borough is proceeding to lay sidewalks and curbs in front of this and other property, and as the frontage of the road is a considerable distance, it will naturally mean a big expense against the property to have sidewalks and curbs laid.

I, therefore, wish you would let me know just what you wish to do with regard to the matter at your very earliest convenience.

Yours very truly,

James D. Carton
S

JDC/S

Page 154.

August Tenth, 1922.

Mr. Gerald Ronon
2231 Land Title Building
Philadelphia, Pa.

Dear Mr. Ronon:

I am in receipt of yours of the 8th inst. in the McNulty matter, in which you ask what I

Exhibit C. 3.

would be willing to pay for the McNulty interest, knowing that your clients are not in a position to purchase.

Something must be done to clear up this situation one way or another, and if your clients are not in a position to buy, I wish you would let me know exactly the interest your clients hold, and immediately upon receipt of your reply, I will make you an offer for that interest.

Yours very truly,

James D. Carton,
S.

JDC/S

Page 311.

April Tenth, 1923.

Mr. Gerald Ronon,
Land Title Building,
Phila., Pa.

Dear Sir:—

I have been expecting to hear from you concerning the McNulty matter about which I communicated with you some months ago. Nothing further has ever been done in this matter and the Borough now threatens to advertise the property for sale for the laying of sidewalks and curbs.

Something must be done to close the matter out one way or the other. I wrote you last summer with my suggestion in the matter and I wish you would take the same up with your clients and let me know what they wish to do one way or the other.

Yours very truly,

James D. Carton
S

JDC/S

Exhibit C. 3.

Law Offices
HENRY, PEPPER, BODINE & STOKES
2231-42 Land Title Building
Philadelphia

August 10, 1923.

James D. Carton, Esq.,
Asbury Park, N. J.

Dear Sir:

Your favor of August 3rd, which was addressed to me at Lincoln Building, instead of Land Title Building, received.

At the present time, Miss Inez H. McNulty, one of the McNulty heirs, is away on a vacation, and will not return until the 20th instant, when I will take up the matter with her and communicate with you at once.

Yours very truly,

Gerald Ronon
R

GR.MR

Page 222.

August 13, 1923.

Mr. Gerald Ronon,
Philadelphia, Pa.

Dear Sir:

I have yours of the 10th inst. in the McNulty matter and note that Miss McNulty is away on her vacation and will not return before the 20th. I will be obliged if you will then take the matter up with her and communicate with her at once, as it is imperative that something be done to close this matter out.

Yours very truly,

James D. Carton,
H.

JDC/H

Exhibit C. 3.

Law Offices
HENRY, PEPPER, BODINE & STOKES
2231-42 Land Title Building
Philadelphia

August 22, 1923

James D. Carton, Esq.,
Asbury Park & Ocean Grove Bank Bldg.,
Asbury Park, N. J.

Dear Sir:

Referring to your favor of the 13th instant, Miss McNulty has returned to the office and advises me that the property in question was conveyed by her mother to her sister Frances Margaret McNulty on August 30, 1915. I have the deed in my possession. The deed is as follows:

Margaret A. McNulty to Frances M. McNulty dated August 30, 1915, and recorded in the Clerk's Office at Monmouth County, at Freehold, in Deed Book 1005, folio 102, etc., on September 1, 1915.

Miss McNulty informs me that subsequently her sister Frances Margaret McNulty made a deed to my client Inez H. McNulty in the fall of 1915. Miss McNulty is trying to locate the deed.

Will you kindly advise me what sum you would be willing to pay to Miss McNulty for a quit-claim deed, also the price for which you would be willing to transfer the property to Inez H. McNulty.

Waiting to hear from you, I am

Yours very truly,

GR.C

Gerald Ronon

Exhibit C. 3.

Page 494.

August 23, 1923.

Mr. Gerald Ronon,
Philadelphia, Pa.

Dear Mr. Ronon:

I have yours of the 22nd in the McNulty matter, in which you state that your client, Miss McNulty has a deed for half interest in the W. Avon property. F*ro* some time I have been endeavoring to find out the status of the one-half interest formerly owned by the Gulick estate, but it appears it was disposed of by James C. Gulick in his will to several parties, who have since died leaving heirs all over the country and it seems an interminable matter and I do not know whether it can be successfully worked out or not. If I thought it could, I would be willing to make Miss McNulty an offer for her interest, which coupled with the Gulick interest and my own interest, would enable me to make a marketable sale of the property, so that I could get my money out of it. The property has again been sold for taxes and will very shortly be put up for re-sale to pay for the curb and side walk assessment, which is a very considerable one, and someone has got to raise the money to take care of these items, and as I say, my concern is about clearing up the title in such a way in order to get something out of it.

However, and without prejudice, I am willing to make your client an offer of $2,000. for her one-half interest in the property, which I consider under the circumstances is a very fair one, and I wish you would let me know at your early convenience if it is accepted or not. If it is not,

Exhibit C. 3.

I must take some steps to protect my own interest under my tax titles.

Yours very truly,

James D. Carton

JDC/S S

Law Offices
HENRY, PEPPER, BODINE & STOKES
2231-42 Land Title Building
Philadelphia

August 29, 1923

James D. Carton, Esq.,
Asbury Park & Ocean Grove Bank Bldg.,
Asbury Park, N. J.

My dear Mr. Carton:

Today I tried to reach you by telephone in regard to the McNulty matter, but learned that you were out of town and would not return until Friday of this week.

I shall be obliged if you will call me on the telephone when you return to the office on Friday, so that we may come to some definite arrangement. I realize the necessity of immediate action and will do everything I can to assist in coming to a settlement.

My telephone number is Locust 6414. If you could telephone me about noon on Friday, I shall be glad to talk with you.

Yours very truly,

GR.C Gerald Ronon

Exhibit C. 3.

Law Offices
HENRY, PEPPER, BODINE & STOKES
2231-42 Land Title Building
Philadelphia

September 11, 1923.

James D. Carton, Esq.,
Asbury Park, N. J.

Dear Sir:

Your favor of 6th instant received on my return to town. I have been away from the office for some days owing to illness.

I regret that you were not in town when I telephoned you on Friday, August 31st, for the reason that Miss McNulty was offered a considerably larger price for her interest in the property than you offered. The party making the offer to Miss McNulty was ready to close immediately, and in view of the fact that Miss McNulty had no interest in the matter other than to obtain what she could for herself and sisters, she accepted the offer and executed a deed covering her interest such as it might be.

Yours very truly,

GR.MR

Gerald Ronon

Page 207.

November 8th, 1923.

Mr. Gerald Ronon
Land Title Building
Philadelphia, Pa.

Dear Sir:

Will you be good enough to let me know the name of the party to whom you sold the Mc-

Exhibit C. 3.

Nulty interest in the Avon property and the amount of the purchase price?

This at least will aid me some, and I shall be greatly obliged to you.

Yours very truly,

James D. Carton

JDC/S

S

Page 469.

January 16, 1924.

Mr. Gerald Ronon
2231 Land Title Building
Phila., Penna.

My dear Mr. Ronon:—

I am in due receipt of yours of the 11th inst., concerning the McNulty interest in the Avon property and shall communicate with Mr. Jones, as you suggest.

I am very sorry to learn of your illness but do hope you have entirely recovered. I feel sure that if it had not been for your illness at the time Miss. McNulty sold her interest to another that you would have taken the matter up with me knowing of my interest in the property and former dealings with you. Based on my assurance of a conveyance of the interest of Miss McNulty in the property to me as well as the other interests, I had entered into an agreement to sell the property to Mr. Eichengreen, Mr. Eichengreen afterwards having gone direct to the other parties in interest and purchased direct. It is my purpose to contest his right to the property and I may take the liberty of call-

Exhibit C. 4.

ing upon you sometime when I am in Philadelphia and go over the matter with you in detail.

Yours very truly,

James D. Carton.

Carton vs. Eichengreen
Letters, Gulick interest

EXHIBIT C. 4.

Page 469.

March 17, 1921.

Mr. John J. Lawrence, Jr.,
2 Rector Street,
New York City, N. Y.

Dear Sir:

I have been ill and out of the office for several months and have never had an opportunity to take up with you further the matter of the Gulich-Housewright interest in the Avon property. I will endeavor, however, to call in and see you the next time I am in the City and talk the matter over with you.

Yours very truly,

James D. Carton
G

JDC/G

Exhibit C. 4.

JOHN J. LAWRENCE
COUNSELLOR AT LAW
3 East 44th Street New York City, N. Y.

March 18, 1921.

James D. Carton, Esq.
Bank Building
Asbury Park, New Jersey

Dear Sir—

I am in receipt of your letter of yesterday and will be very glad to see you when you are in New York.

Please note that my address is now at 3 East 44th Street, and I might add that if you are in New York during lunch time I would like very much to have you take lunch with me.

Yours very truly,

John J. Lawrence

JJL/LB

JOHN J. LAWRENCE
COUNSELLOR AT LAW
3 East 44th Street New York City, N. Y.

June 21, 1921.

James D. Carton, Esq.,
Asbury Park, N. J.

My dear Mr. Carton;—

Mr. Gulick is quite anxious to do something about the Avon property this summer, and I think that while he is the present frame of mind it would be a good time and an advantageous time to close a deal.

Since receiving your letter I have had an interview with Mrs. Housewright, and feel sure that she will enter into a disposition of her interest also, most reasonably.

Exhibit C. 4.

As usual, much is expected of me, as an attorney to help my clients in their desire. Altho I know the general location of the tract in question, I am not familiar with the exact boundaries. A survey and the time I would be forced to spend on the matter in giving it proper attention, would entail considerable expense to my client, so I too, would like to be rid of it.

Would it be possible for you to call to see me in a week or two at my office, and if you will give me a few days notice, I will endeavor to have my client here at the time. Come up in the morning and lunch with me.

Yours very truly,

John J. Lawrence

Murray Hill 5857

Page 440.

March 15th, 1922.

Mr. John J. Lawrence, Jr.
2 Rector Street
New York, N. Y.

Dear Mr. Lawrence:

I had intended to have called upon you before this concerning the disposition of the so-called Gulick and McNulty'' property at West Avon as you requested in your last letter, but have found it impossible to do so.

Some disposition should be made of the matter, however, as taxes are running up each year and I have become about tired of paying same without any return whatever.

As I recall, your clients, Mr. Gulick and Mrs. Housewright, represent a one-half interest in the property, and I wish you would let me know just

Exhibit C. 4.

the lowest amount they would take for this one-half interest so that I *amy* take up with the others interested and see if I cannot complete the same and get the matter out of the way.

The property is standing idle, doing no one any good and running up a big tax bill each year which puts it in bad shape.

If you will write me at your earliest convenience and let me know the very lowest sum they will take, I will see if I cannot arrange to take over their interest at once.

Yours very truly,

James D. Carton,
S

JDC/S

JOHN J. LAWRENCE
COUNSELLOR AT LAW
342 Madison Avenue New York City, N. Y.

April 11, 1922.

Mr. James D. Carton,
Asbury Park Bank Bldg.,
Asbury Park, New Jersey.

Dear Mr. Carton:

At the time of receiving your letter last month I was in the middle of moving my office to the above address.

I have not had an opportunity to take up the subject of your letter with my clients, but will do so within the next few days and will try to let you have full information regarding the property at West Avon.

Yours very truly,

John J. Lawrence

JJL/H

Exhibit C. 4.

Page 16.

April 12, 1922.

Mr. John J. Lawrence
342 Madison Avenue
New York, N. Y.

My dear Mr. Lawrence:

I have yours of the 11th inst. concerning the West Avon property and note that you have gone through the process of moving and trust you are settled down by this time.

If you can see your parties within the next few days, and get the information in question, I wish you would do so, for if there is anything to be done with this matter, I would like to do it now or drop it.

With best regards, I am,

Yours very truly,

James D. Carton,
S

JDC/S

Page 302.

August 17th, 1922.

Mr. John J. Lawrence,
342 Madison Avenue
New York, N. Y.

My dear Mr. Lawrence:

I am writing you again concerning the west Avon property in connection with the interest of your clients, Gulicks, in which matter, we have formerly had some correspondence.

I would like to take the matter up with you definitely and have the matter disposed of, as something must be done at once for the reason that the Borough of Neptune City has taken

Exhibit C. 4.

proceedings for the laying of curbs and sidewalks in front of this and other property, and as the property has considerable frontage on the main road, it will be a very considerable expense and lien against the property for the cost of laying the sidewalk and curb, and, as you know, I have been taking care of the taxes on this property for years, and the taxes and this new cost would amount to a very considerable sum, and something will have to be done with the property so that we can get our money out of it.

I would like to either sell my interest or buy whatever other interest there may be, and I wish you would let me know just what interest you represent and let me know their very lowest selling figure, if they wish to buy, let me know.

We should get together and make some disposition of the matter one way or the other at our very earliest opportunity.

Yours very truly,

James D. Carton,

S

JDC/S

Page 235.

September 14th, 1922.

Mr. John J. Lawrence, Jr.,
342 Madison Avenue
New York, N. Y.

Dear Sir:—

I have yours of the 12th inst. concerning the Gulick matter and note what you have to say.

In view of the fact that the Borough has laid a sidewalk and curb in front of this property and there will be an assessment laid against same shortly, and which will have to be paid or the

Exhibit C. 4.

property sold by the Borough, it is important that whatever is to be done one way or the other should be taken care of shortly.

I note that you have been in communication with the McNulty attorneys, and if and when the matter is to be closed out, it should be closed out as a whole.

I had some correspondence with the McNulty attorneys sometime ago but have not heard from them recently. You suggest an appointment in your office sometime in the near future. Can you arrange with the attorney representing the McNultys to attend at a conference to be held in your office where we might meet to endeavor to adjust the matter as a whole? If you can arrange such an appointment and will let me know some days in advance, I will arrange to meet with you for the purpose.

Yours very truly,

Page 320.

April 10th, 1923.

Mr. John J. Lawrence
342 Madison Avenue
New York, N. Y.

Dear Sir:

Concerning the McNulty-Gulick matter about which I spoke with you some time ago, I have been delayed in procuring an abstract of the title to the property but have now procured same which shows a conveyance by the Lynore Land Company to Richard M. Gulick and Margaret McNulty; agreement between James C. Gulick, 2nd and Florence S. Houseright; Deed from Houseright to John G. Gulick, etc.

Exhibit C. 4.

It was my purpose to get this information to you so that you might start procuring a deed for the property at this time, and so that you will have the matter before you I will have a copy of the abstract of title made showing the situation and will mail it to you in a day or two.

Yours very truly,

James D. Carton,
S

JDC/S

Page 365.

April 12th, 1923.

Mr. John J. Lawrence, Jr.,
342 Madison Avenue
New York, N. Y.

Dear Sir:—

I am enclosing herein to you memorandum of the chain of title in the Gulick matter, as suggested in my letter to you of a few days ago.

I have only included the chain of title and that which also sets out a raft of tax certificates I have not included.

I assume that Mrs. Housewright claims under Richard M. Gulick, and, likely, through a will and not by a conveyance.

Have you among your papers, however, any deed from Richard M. Gulick to Mrs. Housewright? If not, have you a copy of the Richard M. Gulick will? We prefer to make up the title and show Mrs. Housewright's right to deal with

Exhibit C. 4.

the situation, we should have a copy of the Richard M. Gulick will for filing in this county.

Yours very truly,

James D. Carton,
S

JDC/S
Encl.

JOHN J. LAWRENCE
ATTORNEY AND COUNSELLOR AT LAW
New York

342 Madison Avenue,
New York City.
August 16th, 1923.

Mr. James D. Carton,
Asbury Park Bank B'ldg.
Asbury Park, New Jersey.

My dear Mr. Carton;—

Your letters were duly received together with the Chain of Title of the Shark River Property.

You requested a copy of the Will of Richard M. Gulick, and I am enclosing the same as it is under that instrument that Mrs. Housewright received title.

Your Abstract clearly shows the title in the name of John C. Gulick who died in 1916 and I am enclosing a copy of his will also.

Mr. John C. Gulick as attorney in the matter between Mrs. Housewright and James C. Gulick had voluminous correspondance and proceedings regarding the adjustment of their affairs. He evidently took title to the property in his name so as to be in a better position to negotiate and close the Contract of Sale which he was negotiating with you at the time of his death.

Exhibit C. 4.

Altho Mrs. Housewright and James C. Gulick feel, and rightly so, that they are entitled to the proceeds of a sale of the property, yet the fact remains that the owners of record are the heirs of the late John C. Gulick, to wit;— James I Gulick,—James C. Gulick,—Milicent G. Crissman,—Mariana G. Bradley.

Mariana G. Bradley died two years ago, but her husband who was the beneficiary under her will is still living and could satisfy the Bradley claim.

Two of the parties live in California, one in Montclair N. J. and the other in Brooklyn.

James C. Gulick has not lived with his wife for the past 12 years or more, and has not seen nor heard from her for over four years at least so it will not be possible to get her signature.

As I see it, it will be necessary to secure Quit Claim Deeds from each of the four heirs. I have written reams to them on the subject in an endeavor to prepare their minds to act in justice to Mrs. Housewright and James C. Gulick. Of course each will have to be reimbursed for their trouble in the matter, and also I cannot afford to give any more time to it without compensation.

Your old Contract price was $6,000.00. The taxes you have paid have amounted to a substantial sum thru all these years, and then there are the assessments comprising no doubt a considerable amount also, however these items will be partly compensated for in the advance value of property during the past few years.

Will you agree to pay $2500. for the half interest in the property if I am able to secure Quit Claim Deeds to you from the heirs:— James I. Gulick and wife,—James C. Gulick,—Milicent G. Crissman and husband,—and Mr. Edwin A.

Exhibit C. 4.

Bradley? Of the $2500. the sum of $500. would have to go to me as a fee, for I could not drive the thing thru for a lesser compensation especially as I have already put about two hundred dollars worth of time on it to date. This would leave $2000. to be divided between Mrs. Housewright and James C. Gulick and pay the others for the trouble incurred.

Let me know your views on the subject, and if they coincide with the above, I will send the Deeds to you for approval and then dispatch them forthwith to the respective parties for execution, for they are expecting some word from me relative to this matter at any time.

Very sincerely yours,

John J. Lawrence

JJL/L.

(COPY OF THE WILL OF RICHARD M. GULICK, Dec.)

I, Richard M. Gulick, of the City of Pittsburg, County of Allegheny and State of Pennsylvania, being of sound mind, memory and understanding, do make and publish this as and for my Last Will and Testament, hereby revoking any and all wills by me at any time heretofore made.

And for the settlement of the succession to such means and estate as I shall die seized and possessed of, I do hereby devise, give, grant and bequesth the same as follows, to wit;

First. I give to my son, James C. Gulick, II, the sum of One hundred ($100.00) Dollars, it being my deliberate intention that he shall not participate in my estate to any greater extent than the aforesaid sum.

Exhibit C. 4.

Second. All the rest, residue and remainder of my estate of whatsoever kind or wheresoever the same may be situated, I devise, give, grant and bequeath unto Mrs. Florence Stuart Housewright, now residing at No. 327 McKee Place, in the City of Pittsburgh, aforesaid; to have and to hold unto her, her heirs, executors, administrators and assigns, absolutely and forever. And I do appoint her Executrix of this my Last Will and Testament.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 4th day of May, 1911.

RICHARD M. GULICK (SEAL)

Signed, sealed, published and declared by the teator Richard M. Gulick, as and for his Last Will and Testament in the presence of us who in testamony whereof attach our signatures hereto at the request of the testator in his presence and in the presence of each other this Fourth day of May, A. D. 1911.

S. S. Robertson.
Justus Mulert.

(COPY OF THE WILL OF JOHN C. GULICK, dec.)

IN THE NAME OF GOD, AMEN.

I, JOHN C. GULICK, publish this as my Last Will written wholly with my own hand.

1. I revoke all previous wills made by me.
2. I appoint Dr. Frederick A. Dearborn as sole Executor.
3. I devise my house, No. 331 West 22d Street, in the Borough of Manhattan and City of

Exhibit C. 4.

New York, to my dear nephew, James C. Gulick. I bequeath to him the cedar chest which belonged to his father, and the hall clock which belonged to his great great grandfather, to be carefully cherished as heirlooms.

4. I bequeath to my dear niece, Milicent Crissman, the sum of One Thousand Dollars, and to her brothers, Kenneth and Frank, each the sum of Five Hundred Dollars, all these legacies to be free of transfer tax.

5. I devise and bequeath all the rest of my property to my sisters, Mariana G. Bradley and Milicent Crissman, my brother, James I. Gulick and my nephew, James C. Gulick, to be divided equally between them.

IN WITNESS WHEREOF I have set my hand hereto this 10th day of July, 1914.

JOHN C. GULICK

Subscribed, signed, published and declared by the above named Testator, John C. Gulick, as his Last Will and Testament in the presence of us, and each of us, who, at his request, in his presence, and in the presence of each other, have subscribed our names as witnesses hereto.

JOHN C. GRISWOLD #629 Walton Avenue, Bronx, New York, N. Y.

ARTHUR PLAGE 236 9th Ave. Astoria, L. I., N. Y.

Exhibit C. 4.

DURAND, IVINS & CARTON
COUNSELORS-AT-LAW
Asbury Park and Ocean Grove
Bank Building
Asbury Park, New Jersey

Aug. 17, 1923.

Mr. John J. Lawrence,
342 Madison Ave., N. Y. C.

Dear Sir:

I am just in receipt of yours of the 14th inst. enclosing copies of the wills of Richard M. Gulick and John C. Gulick and note what you suggest of the possible embarrassment in securing the title from the parties in whom same may be legally lodged in connection with the claim of Mrs. Housewright and Mrs. James Gulick. The matter is pretty well mixed up but it seems to me it aught to be straightened out. As I talked with you and already written you I am almost to a point of desperation in this matter because of the delay in getting it closed fearing that alloof us may loose the property because of the very heavy taxes and assessments against it.

You suggest that I agree to pay $2500. for one half interest in the property. In view of what I already have in the property and the large outstanding claims against it, this figure is high and I am sure more than the interest would amount to. However, I appreciate that because there are so many parties in interest with whom it would have to be devided and so that your suggested fee may be taken care of, I am without prejudice, willing to make you this offer at this time so that you may immediately take up the matter of procuring the necessary deeds to cover the fee of the one half interest formerly held by Gulicks, and the sooner you can put the matter

Exhibit C. 4.

through the better it will be for me and all concerned as it is going to be necessary in the near future to raise about $2000. to put up for assessments and I must have the matter of title fixed before I would be justified in advancing this money. Please therefore, consider this, my offer to pay $2500. for this interest as above stated and I wish you would take the matter up with the view of whipping it in shape as speedily as possible.

Yours very truly,

JDC:K

Port Jefferson Long Island N. Y.

My dear Mr. Carton:

I have been out of town for a short vacation and therefore did not receive your letter promptly.

I will be at my office next Tuesday or Wednesday and will prepare the deeds at once.

Very truly yours

John J. Lawrence

Aug 24th 23

My dear Mr. Carton:

I was not able to be in town as I had expected but will return to my office the first of next week at which time your matter will receive my immediate attention.

Very sincerely yours

John J Lawrence
342 Madison Ave N Y C.

Port Jefferson, L. I. Aug 29, 1923

Exhibit C. 4.

Page 94.

September 4, 1923.

Mr. John J. Lawrence
New York City.

Dear Sir:

I received both your notes while you were away on your vacation and expect to hear from you upon your return to the office the first of the week.

With best wishes, I am,

Yours very truly,

James D. Carton

JDC/H H.

Page 208.

November 8th, 1923.

Mr. John J. Lawrence
342 Madison Avenue
New York, N. Y.

Dear Sir:

I have been expecting to hear from you from day to day and to receive the deeds in closing out the Gulick matter, as per our arrangements sometime ago.

Will you let me know with what success you are meeting and when you think you will have the necessary papers ready for delivery, and oblige?

Yours very truly,

James D. Carton

JDC/S H

Exhibit C. 5.

JOHN J. LAWRENCE
COUNSELLOR AT LAW
342 Madison Avenue New York City, N. Y.

November 12th, 1923.

Mr. James D. Carton
Asbury Park Bank Bldg
Asbury Park, New Jersey

Dear Sir:

Enclosed is the chain of title which you this morning requested me to return to you.

Yours very truly,

JJL:H
Encl.

John J. Lawrence

EXHIBIT C. 5.

838 E. Front St Plainfield N. J.

Mr. James D Carton

Dear Sir:

I am in receipt of a letter from Mr. S. W. Cunningham of Pittsburgh, informing me as to "per you suggest necessary to engage counsel for "Biggar litigation" I will be pleased to engage you, to look after my interests in said litigation for the compensation of $100.00

Respt

Mrs. Florence S. Housewright
5/6/12

Exhibit C. 5.

547 Eastern Parkway Brooklyn, N. Y.

Mr. James D. Carton
Asbury Park, N. J.

Dear Mr Carton:

I am in receipt of your letter of Jan 3rd 1914 with enclosed "Notice of Tax Sale." Am I supposed to forward same, to Mr Cunningham? I have, as yet, not received "copy" of agreement," you sent to Mr Patterson also to Mr Cunningham some time ago, although, I forwarded my last communication from you, to him. I do not understand the silence, or delay. I was under the impression that perhaps you might have heard from either one, or both of them.

Cordially
Florence S. Housewright

Jan 5th 1914

Law Offices of
S. W. CUNNINGHAM,
SION B. SMITH,
St. Nicholas Building,
450 Fourth Ave., Cor. Grant St.
Pittsburg, Pa.

May 4, 1912

James D. Carton, Esq.,
Counselor at Law,
A. P. & O. G. Bank Bldg.,
Asbury Park, N. J.

Dear Sir:—

Yours of 3d inst. is at hand. As the time is now so short, I hastened to consult with the Trust Department of The Safe Deposit and Trust Co. of Pittsburg, Administrator of the Estate of R. M. Gulick, dec'd, and now hasten

Exhibit C. 5.

to reply to you. I am authorized by said Administrator to engage Hon. E. Wilson and you to represent and act for it in the matter of the litigation in your State by Laura Biggar about which we have been corresponding, with the understanding that it is to pay an amount not to exceed $100, and I now do so.

Mrs. F. S. Housewright has returned to your State, and her address is 838 E. Front Street, Plainfield, N. J. I am writing to her recommending that she authorize the same counsel to appear for her, in the same litigation, and on the same terms. In order to save time, I think I will ask her to write you directly. Kindly let me know later whether she has done so, and whether the matter is satisfactory. If there is anything that we should do in the matter, kindly let us know. Very truly,

S W Cunningham

LAW OFFICES OF
S. W. CUNNINGHAM,
SION B. SMITH
St. Nicholas Building
450 Fourth Ave., Cor. Grant St., Pittsburg, Pa.

Sept. 25, 1913

Mrs. Florence S. Housewright,
547 Eastern Parkway,
Brooklyn, N. Y.

Dear Mrs. Housewright:—

I landed in New York from my European trip on Monday last, and have come back to the office, and am getting to work.

I have communication for you from the Real Estate Trust Company, but it might be more

Exhibit C. 5.

prudent perhaps to hold it until I learn whether you are still at the same place. I will be pleased to forward it when I hear from you.

There is a matter of importance which you may have forgotten, and which I would like to call your attention. It is the tax sale of 18¼ acres of land formerly of R. M. Gulick, now deceased, situate in the Borough of Neptune City, N. J. You were in my office at the time when the letter came from Mr. Ferguson, with the notices pertaining to the sale. Lest you may not remember the contents of the notices, perhaps I would better now give you the substance of them. They were addressed to you et al., and the substance was that H. S. Kinmonth, 724 Cookman Ave., Asbury Park, N. J., had purchased said land at Tax Sale for $122.89, on October 14, 1911, and that unless said land should be redeemed, as provided in "An Act for the Assessment and Collection of Taxes," Chapter 208 of the Laws of 1903, with the supplements thereto, before the expiration of two years after the date of sale, * * * the deed for the said land theretofore given would become absolute in fee simple, according to the provisions of said Act.

This may be a very important matter for you, and you will notice that the two years will soon expire. I am not familiar with the laws of New Jersey, but under our laws the lien of a decedent's debts not of record ordinarily expires at the end of two years from the date of the death. Now if you as devisee are the owner of that land (subject to the tax sale) free from the claims of Mr. Gulick's creditors, then by redeeming it the land should belong to you absolutely. And it surely would be a pretty poor tract of land if it is not worth the amount paid as above, the ex-

Exhibit C. 5.

penses connected with redeeming it, and the taxes which have accrued since.

As there is no time to be lost, it seems to me that you should at once get some advice from an attorney familiar with New Jersey laws, and ascertain whether this tax sale is the only thing which stands between you and absolute ownership of that tract of 18¼ acres. Let him then advise you as to what your proper course would be.

Just how far the Bigger suit in equity will complicate the matter I do not know. You may remember that the Vice-Chancellor who originally heard that case held it over for a long time and was then appointed to some other position. I hear now that the case is ordered for re-argument, and is to be argued about the first of October. In order that your New Jersey counsel may be able to ascertain the present status of the case, he should know the names of the counsel who represented you there, in order to communicate with them. They represented the McNulty Estate as well. I see that the counsel were James D. Carton, Esq., of Asbury Park, and Hon. Edmund Wilson of Red Bank.

I think I have now given you the facts necessary, and I trust that the matter may be so handled as to get something for you out of the wreck. I would be glad to know that you have received this letter and will give prompt attention to your interests there.

Very respectfully,

S. W. Cunningham

Exhibit C. 5.

Page 419.

January 7, 1914.

Mrs. Florence E. Housewright

Dear Madam:

I am in receipt of yours of the 6th instant, and have not heard from either Mr. Cunningham or Mr. Patterson either returning the copies of the agreement referred to them or commenting on the matter in any way, I think I did receive a letter after sending them to Mr. Patterson some time ago saying that he would take the matter up with the parties. In order to get the matter again before Mr. Cunningham, it might be well for you to forward the notice which you received, as he is the attorney and it might be well to take it up with him. I saw Mr. Samuel C. Cowart in Freehold yesterday and he spoke to me about bringing some action to establish the interest of the young Mr. Gulick under the agreement existing between you. I assured him that I did not think any such action was necessary as you had informed me of the situation and I knew it was your purpose to carry out the agreement, and to divide with him anything you might receive from this property.

Very truly yours,

James D. Carton

B.

Exhibit C. 5.

Law Offices of
S. W. CUNNINGHAM,
SION B. SMITH,
ST. NICHOLAS BUILDING,
450 Fourth Ave., Cor. Grant St.,
PITTSBURG, PA.

December 3, 1914

James D. Carton, Esq.,
A. P. & O. G. Bank Bldg.,
Asbury Park, N. J.

Dear Sir:—

No doubt you remember the contract pertaining to land at Neptune City, Monmouth County, N. J., owned by the Estates of R. M. Gulick dec'd and P. J. McNulty dec'd, which you proposed to buy from Mrs. McNulty and from Mrs. Housewright, who was the devisee of R. M. Gulick. You may remember that two copies of the final contract were prepared in your office, signed by you, and mailed to me on April 20, 1914, to secure the signatures of Mrs. Housewright, my client, and Mrs. McNulty thereto.

You may remember also that I had a good deal to do with preparing said contract, and that it was so prepared as to be several as far as the two women were concerned, so that it might be binding upon them separately, and might be carried out *pro tanto* by the one, if the other would decline to enter into the contract, or to carry it out. The reason for this I made known to you, and it arose from Mrs. McNulty's manner of doing business, and from the fear that she would follow her previous practice in this matter. The issue has proved that my fears as to what Mrs. McNulty would do were well founded—or rather as to what she might not

Exhibit C. 5.

do. I presume you have been wondering as to what has become of said contract.

I wrote you on Apl 21st last, saying that I had forwarded said copies to Mrs. Housewright for execution by her, and that I had since received them duly executed by her, and that they had been left at the office of Mr. Patterson (F. P.), Mrs. McNulty's attorney, for execution by Mrs. McNulty. And then I added the following: "Now, whether or not Mrs. McNulty shall sign, I would like to have it understood that Mrs. Housewright has entered into said contract with you, and that the same is binding upon you and her. To that end I now constructively deliver to you said contract upon behalf of my client, said Mrs. F. S. Housewright." To this I be*live* you assented.

Since that time I have been endeavoring to get the said contract back from Mrs. McNulty, but without success. I learn from Mr. Patterson that he advised his client, Mrs. McNulty, to sign and return the contracts. Then when she failed to do this, I requested him to ask her to return them unsigned, if she were unwilling to sign them. This I believe he did, and he afterwards mentioned to me an excuse which she gave for not returning the contracts promptly. I have been urging him to insist upon her returning the papers at least, and two or three days ago he informed me that he cannot get any answer from her at all. So it appears to me that we are not likely to get the contracts out of Mrs. McNulty's hands. The situation is a very unsatisfactory one for us. I have somewhere memoranda of the substance of said contract, but I would like to have it in proper shape.

Exhibit C. 5.

Will you not kindly have two copies of the contract prepared, sign them and send them to me for execution by Mrs. Housewright, so that the transaction, as to you and her, may be in a business-like shape. We understand that the contract is in force as between Mrs. Housewright and yourself, but it is not very convenient or satisfactory to have a contract which is not within reach.

The final account of the Administrator d b n c t a of the Estate of R. M. Gulick, deceased, has been filed here, and has been finally confirmed, and a decree of distribution of the balance on hand has been made. Have these facts any bearing upon the time when Mrs. Housewright can make a valid deed of conveyance to you of her interest in said land? If not, then when will she be able to make a valid conveyance?

Very truly,

S W Cunningham

240 Prospect Av Mount Vernon N. Y.

My dear Mr. Carton

Enclosed please find the "document" you wished me to read. To say that I am disgusted, is a very mild expression. If that man "Cowart" would charge me with some truths, I would like it better

However, I am leaving it all in your hands, feeling assured that everything will be alright.

Last week I gave an order to the "Real Estate Co," of Pittsburgh, to pay James C. Gulick, his ½ share of rentals, so I hope he is convinced that I expect to live up to the "agreement." The whole proceeding, is a contemptable

Exhibit C. 5.

piece of business and I guess "Cowart" thought to make a considerable amount, out of the "suit." I forgot to take Mr John C Gulick's letter to me, when I was in your office, so please mail it to me.

Cordially

(Mrs) Florence S. Housewright

Jan 9th 1915

They are shylocks, Mr Carton, and have always demanded the pound of flesh. And as I know nothing of how to deal with them I rely on your wisdom to guide me. Trusting I may hear from you

Sincerely

(Mrs) F. S. Housewright

Jan 26th 1915

Page 702.

March 2nd, 1915.

Mrs. Florence Housewright.

Dear Mrs. Housewright:

I am in receipt of yours of yesterday, and I have just received a letter from Mr. Cowart in which he says it will not be convenient for him to go to Mr. Gulick's office in New York on Thursday, but will have the meeting at his office at two o'clock in the afternoon instead of ten in the morning, and that he has notified Mr. Gulick accordingly. So that it will not be necessary for you to get such an early start from New York in order to reach Freehold by ten O'clock, and if you take the train reaching Free-

Exhibit C. 5.

hold sometime after one, as you suggested in your former letter, this will be quite time enough, and I will arrange to meet you at Mr. Cowart's office at Freehold as soon as you arrive. You will likely reach there about one-thirty. Mr. Cowart's office is in the Bank Building immediately beside the Court House, but a short distance from the railroad station. It likely would be better for you to take a bus at the station, and have them take you directly to Mr. Cowart's office.

I note that you will bring with you your contract with whatever other papers you have in connection with this matter.

Yours truly,

James D. Carton.

LAW OFFICES OF
SAMUEL CRAIG COWART
Freehold, N. J.

Mch 5/15

Mrs. Florence S. Housewright,

Dear Mrs. Housewright, I return to you your copy of proposed agreement between you and Mrs. McNulty andMr. Carton in regard to land at Neptune City. It is not in very good shape and I doubt whether it will be satisfactory to Mr. John C. Gulick. I hope however the whole matter can be settled in satisfactory shape.

Yours very truly,

S. C. Cowart

Exhibit C. 5.

Page 541.

February 23rd, 1915.

Mrs. Florence S. Housewright.

Dear Mrs. Housewright:—

I have just received the enclosed letter from Mr. Cowart. While the time is short, I wish you would, if you can arrange to attend, do so. I will meet you at Mr. Cowart's office in Freehold Friday morning, unless you write or telephone me to the contrary upon receipt of this letter that the appointment will not be convenient to you. I think you can take the Central train from New York about eight-thirty, and connection with the Freehold train at Matawan, arriving in Freehold about ten o'clock.

Yours truly,

James D. Carton

S

Telephone
Mount Vernon
(610)

240 Prospect Ave
Mount Vernon
N. Y.

Mr. James D. Carton

Dear Mr Carton

I am in receipt of yours of 26th with enclosed letter from "Mr. Cowart" also yours of 27th inst. Of course, it goes without saying, that a meeting at Mr Gulick's office 132 Nassau St. N. Y. would be far more convenient for me than to go to Freehold and, if such an arrangement can be made, alright. Now, on the other hand, if there is no special reason for me seeing

Exhibit C. 5.

you, before Thursday, at the office of Mr. Cowart, I know of no reason, why I should come to Asbury Park, and remain at a hotel, over night, as I would be obliged to do, as the Frenche's have sickness at their home "Erysipelas," and Mr. French has been quite ill also, Consequently, I do not feel like intruding.

There is a train leaving Mount Vernon about six A. M. or after, which I can take, in order to make connections on the Central R. R. of N. J. which I will endeavor to make, if no better arrangements can be made.

You failed to instruct me how to reach Mr. Cowart's office, after arriving at Freehold. Trusting I may have an early reply

Cordially

(Mrs) Florence S. Housewright

March 1st 1915

240 Prospect Ave
Mount Vernon
N. Y.

James D. Carton Esq.
A. P. & O. G. Bank Bldg
Asbury Park. N. J.

Dear Mr Carton

I am in receipt of a letter from Mr. S. W. Cunningham, which surprised me, something about a "bill of equity" &c. & I am inclined to think that some of the facts are not very true. You remember when I last saw you, I mentioned the fact of an "agreement" with James C. Gulick, being drawn up by John C. Gulick or rather dictated by him who asked me "not to mention the matter to any one," which I thought very peculiar. Well, I signed the paper agreeing

Exhibit C. 5.

to give James the ½ & I think it best, to save the trouble and expense of litigation & to do now what the court would require me to do, or at least to make the most favorable compromise that can be had.

I am not a person of means and I am dependent upon my own exertion, and I would like to get this matter settled up with the least expense possible what do *you* think best for me to do.

Would you care to see me that I could explain something perhaps more clearly?

Very truly

Mrs. F. S. Housewright

Dec 14th 1914

240 Prospect Ave
Mount Vernon
N. Y.

James D. Carton Esq.

Dear Mr Carton, I am enclosing a letter from John C. Gulick to me. So that you may not be in ignorance of anything & that I may not do anything that will in any way, hurt *you*. For you have been fair & square with us. Now in regard to to that sentence

"A Subpoena has not yet been served on you, but if you are willing to acknowledge service of the "Subpoena" I will send it to you." I don't know what to do, Of what use is it to serve it on me? I would rather settle the whole matter out of court. & as I understand it, if I acknowledge service of it, I am "*in* court." and would be bound by any decree entered

Should I need any Counsel would *you* be willing to act for me? I know, of no one more preferable. Could a suggestion be made as to a

Exhibit C. 5.

meeting in John C. Gulick's office, of all parties including Mr Cowart yourself, young Gulick myself &c.? With a view of having the case withdrawn I think you & I could fix it up, without the "Borough of N. C. I certainly do wish to avoid costs and expense & I think I should insist upon settling the whole business *out of* Court.

Trusting you may understand, this letter, and that I may hear from you as to what to do & your opinion

Cordially

Mrs. F. S. Housewright

Dec 21st 1914

Please return J. C G's letter to me.

240 Prospect Ave
Mount Vernon
N. Y.

Mr James D. Carton

Dear Mr Carton

I am enclosing the few lines I received from Mr Cowart, this morning so that you may know how they feel about the "agreement." They are not willing to give in one inch, but want all things to go their way. Surely we are due some consideration or do they think they have all to say in the matter.

I suppose were the tract of land were to be divided or fenced off, in quarters, they, would want the first & best choice notwithstanding, Mrs. McNulty or myself, might have a preference Would it not be a good idea to ask Mr Patterson to mail the original "agreement," to you, *I* would write Mr Cunningham were it not that he informed me some weeks ago, that he was about to start for Cal May I ask what right the other

Exhibit C. 5.

side has to draw another "agreement" to suit themselves, I really do not understand it at all. As I before mentioned to you they want all or nothing & is there any way, through my "agreement" With James C Gulick 2nd, that I could not make a "conveyance" you understand my meaning I do not want these people to get the best of you or of me

Cordially

(Mrs) Florence S. Housewright

March 6th 1915

page 858.

Mrs. Florence Housewright.

Dear Mrs. Housewright:

I am in receipt of yours enclosing the memorandum from Mr. Cowart, and note what you say concerning the attitude of their parties. I entirely agree with you that they are entirely too aggressive and they too quickly take the position of having the "tail wag the dog". They seem to think that because they have a one-quarter interest in the property that this right predominates, and that all other rights are to be subservient to it. As for myself, I am not especially anxious about the matter, one way or the other. I have however, and at a time when I could not afford it, advanced considerable money to preserve this property, and as you say, I think we have some right in the matter. However, we will not be obstinate and we will agreement that is agreeable not only to them but our present position. I am writing Mr. Cowart in this mail to send me the original agreement if he has same in his possession and am also taking the liberty of writing Mr. Cunningham

Exhibit C. 5.

assuming that there may be some one in his office, asking him if his office has a copy of the agreement to mail it directly to you. Before anything is done in the matter we will be sure that it is agreeable to all concerned, as I quite agree with you, that the other parties to any closing transaction are entitled to some consideration even if not as much as that represented by their one-quarter.

Very truly yours,

James D. Carton
S

LAW OFFICES OF
SAMUEL CRAIG COWART,
FREEHOLD, N. J.

May 28, 1915.

Mr. James D. Carton,
Counsellor at Law,
Asbury Park, N. J.

Dear Mr. Carton:—

Mr. John C. Gulick has again just written me to know the present situation of the Housewright case. Won't you kindly send me a statement and interest of the amount due you at the present time for ¼ of the taxes on the eighteen acre tract at Avon, owned by Gulick and McNulty, so that John C. Gulick can pay you ¼ of the taxes and secure a release or assignment of a ¼ interest in the certificates of sale? The matter is in very unsatisfactory shape at present.

Very truly yours,

S C Cowart

Exhibit C. 5.

Wish you would also prepare another agreement sale to be executed by John C Gulick & Mrs Housewright to you for undivided ½ of tract.

Law Offices of
S. W. CUNNINGHAM,
SION B. SMITH,
St. Nicholas Building,
450 Fourth Ave., Cor. Grant St.,
Pittsburg, Pa.

June 3, 1915

James D. Carton, Esq.,
A. P. & O. G. Bank Bldg.,
Asbury Park, N. J.

My dear Mr. Carton:—

Thank you for your very kind letter of yesterday, and particularly for your consent to help me in securing the $200 assigned to me by Mrs. Housewright. I have no reason to suspect that Mrs. Housewright will object to the payment of the amount, as there has been no trouble between us. As you suggest, I enclose herewith a copy of the assignment of said amount to me by Mrs. F. S. Housewright, bearing date Feb. 7, 1914. It was intended as an assignment of a part of the purchase money, to be paid to me directly by the purchaser, who is recited to be yourself. My recollection is that it was on the strength of this paper that I prepared the long contract which I sent you about March 25, 1914, and which, with some changes by you, was signed by yourself and by Mrs. Housewright. I remember distinctly that I put some considerable work upon it, and it is clear that the assignment stands for real

Exhibit C. 5.

services, many of which were rendered before its date.

Very truly,
S. W. Cunningham

[Copy]

Whereas I, Mrs. Florence S. Housewright, as devisee under the Will of Richard M. Gulick, deceased, (in connection with the widow of P. J. McNulty, deceased,) have an interest in a tract of about eighteen acres of land, situated at Neptune City, Monmouth County, New Jersey; and whereas James D. Carton, Esq., of Asbury Park, N. J., is willing to enter into an arrangement to purchase the said land from us, although he has already taken a tax title to the same.

And whereas S. W. Cunningham, Esq., has rendered to me professional services in matters connected with the Gulick Estate, for which he has not been compensated, and considerable additional services upon behalf of the Gulick interest will be needed in connection with said proposed purchase and sale of land, and I desire to induce said Cunningham to proceed with said services, which I deem important in order to realize anything out of said land;

NOW I hereby assign, transfer and set over unto said S. W. Cunningham Two hundred (200) Dollars of the purchase money to come for and out of the Gulick interest in said land, held by me, as compensation for his professional services aforesaid, and I hereby authorize and direct that said amount be paid to him by the purchaser of said land, and charged to my account.

Exhibit C. 5.

Witness my hand and seal this 7th day of February, A. D. 1914.

[Signed] Mrs. Florence S. Housewright [SEAL]

Correct copy.

S. W. Cunningham

June 3, 1915

240 Prospect Ave
Mount Vernon
N. Y.

Mr James D. Carton
Asbury Park, N. J.

Dear Mr Carton

Yours received but I have been unable to answer same, intelligently and am still in the same condition, owing to a most awful accident, which nearly killed me, as it is I received a compound fracture of the nose & forehead, beside being bruised and generally shaken up which has been a great shock to the nervous system. I am still bandaged suffering or I would come to Asbury Park to talk this matter over and be advised by you. What *is* the matter with those people. I don't understand *now,* any more than I did at the last meeting. I thought a mortgage had already been drawn, for the back rents, I surely do not want to cheat them out it, and am perfectly willing that they take them out of the amount that is realized from the property. I am not able to write further as this is the first time I have been able to use my eyes. Please advise me, to the best of your judgment

Cordially

Mrs. Florence S. Housewright

Aug 28th 1915

Exhibit C. 5.

Sept. 20, 1916.

Mrs. Florence S. Housewright.

Dear Madam:—

I am just in receipt of yours of the 19th instand, and had not before heard of the death of Mr. John G. Gulick. I am communicating with Mr. Samuel C. Cowart, his attorney at Freehold informing him of the situation. As I recall, Mr. Gulick took a deed for the interest in the Avon property as Trustee, but I assume that they have between themselves made proper adjustment of the matter. There seems to be nothing new in this matter, and we are expecting that the affairs of the Bennett Estate will be closed to such an extent that this matter may be closed out also.

Yours very truly,

James D. Carton.

240 Prospect Ave
Mount Vernon
N. Y.

Mr James D. Carton
Asbury Park
N. J.

Dear Mr Carton

I am writing these few lines, to advise you of the death of Mr. John C. Gulick. Perhaps you have already received the information, but, I assume not.

Cordially

Florence S. Housewright

Sept 19th 1916

Exhibit C. 5.

240 Prospect Ave
Mount Vernon N. Y.

Mr James D. Carton

Dear Mr Carton Yours of the 23rd & 24th inst received. I am obliged to you for not making any appointment for Saturday of this week and Thursday, of next week, will be agreeable to me, as far as I know now but the hour, is most inconveniently early, coming, as I will have to, from Mount Vernon owing to train service. There is a 11.30 train on the Central R. R. which reaches Freehold at 1.07 which I could make and which I wish you would try & arrange for. Otherwise, I am not sure I could get there, Is it not possible for this meeting to be held in Mr John C Gulick's office, in New York. I have not as yet received any written request, signed by James C Gulick II, himself in regard to this "conveyance" to his Uncle, John Gulick, & I will not take, simply, John C G's word for it. I have'nt any papers in connection with this "suit" except two, my "agreement" with James C Gulick 2nd and the copy of the "agreement" with you drawn by Mr Cunningham. If you think it would be more satisfactory to talk matters over before going to Freehold, I will come to your office in Asbury Park, if you will state when you would like to see me. Tuesday, if agreeable to you.

Cordially
(Mrs) Florence S. Housewright

Exhibit C. 6.

240 Prospect Ave
Mount Vernon N. Y.

Mr James D. Carton
A. P and O. G. Bank Building
Asbury Park N. J.

Dear Mr Carton

I am in receipt of enclosed information, by this means only. I will call upon the gentleman, and ascertain if it is authentic I am sending you his letter so if he should wish, or, have to, communicate with you, which he probably will, you will know something of of the party. But, you be just as smart as he is in a deal

John C Gulick died leaving a total estate of $444,488 having a net value of $417,929 of which James C Gulick, the one in question inherits $116,038. Some people are born for luck. Will you kindly return enclosed letter, after you have noticed name and address, as perhaps I better keep it for future reference.

Cordially
(Mrs) Florence S. Housewright

Jan 21st 1917

EXHIBIT C. 6.

MORRIS EICHENGREEN
229 West 42nd Street
New York City New York

March 5th, 1923.

Mr. James D. Carton,
Asbury Park, N. J.

My Dear Friend:—

Spring is coming on now, and wish you could get that property ready for me if possible, as I

Exhibit C. 7.

would like to get in there and have a lot of work done.

With kindest regards to your family and self, I am as ever

Your Friend,

Morris Eichengreen

ME/L

EXHIBIT C. 7.

HERBERT BOGGS
Counsellor at Law
Special Master in Chancery
Kinney Building
Market and Broad Streets
Newark, N. J.

November 30, 1923.

James E. Carton, Esq.,
Counselor at Law,
Asbury Park, N. J.

Dear Sir:—

I have been consulted by Morris Eichengreen in reference to certain premises in the Borough of Neptune City, bordering on the Shark River, which have been sold for taxes for several years last past. Investigation indicates that certificates of tax sale have been issued to you on the sale of taxes for the years 1911 to 1921 inclusive, with the exception of 1913, which was assigned.

Mr. Eichengreen, or the corporation he represents, is now the owner of the premises, and his right to redeem these premises seems perfectly clear. He tells me, however, that he offered to pay these taxes to you and that you refused to take it.

Exhibit C. 8.

Knowing your high standing in the community, I am loath to commence an action for the redemption of this property from the taxes, unless it is absolutely necessary. I think, if you will glance at the statute, you will agree with me that the procedure is clear.

Mr. Eichengreen is ready at any time to pay off the full amount due to you upon the surrender of the certificates. I would appreciate it if you would let me know whether you will accept payments of the amount due to you, and if so, when it will be convenient.

Yours very truly,

Herbert Boggs.

EXHIBIT C. 8.

HERBERT BOGGS
Counsellor at Law
Special Master in Chancery
Kinney Building
Market and Broad Streets
Newark, N. J.

April 23, 1924.

James A. Carton, Esq.,
Counselor at Law,
Asbury Park and Ocean Grove
Bank Building, Asbury Park, N. J.

Dear Sir:—

I beg to acknowledge your favor of the 22nd instant relating to the property of Mr. Eichengreen. You misunderstood my position. I told you that I would inform Mr. Eichengreen of your claim and discuss with him the advisability of bringing a suit against you. I consulted with

Mr. Eichengreen and his decision was to let matters stand. I have not seen or heard from him since.

Very truly yours,

HB:B Herbert Boggs.

10

EXHIBIT C. 9

Asbury Park, N. J.

To Morris Eichengreen;

I have just noticed signs, evidently erected by you, on my lands situated on the south side of west Sylvania Avenue, Neptune City. These signs are on my property and their erection thereon constitute a tresspass and you are notified to forthwith remove same. Unless they are removed promptly I shall cause same to be taken down.

You are further notified not to tresspass on my land.

Dated June 10, 1924.

James D. Carton

Copy served personally on Eichengreen June 10/24 by J. C.

EXHIBIT C. 10.

COPY.

AGREEMENT, made the 19th day of March, A. D. 1914, by and between MARGARET McNULTY, widow and devisee of Peter McNulty, late of the City of Pittsburg, County of Alle-

Exhibit C. 10.

ghany and State of Pennsylvania, deceased, and FLORENCE S. HOUSEWRIGHT, widow devisee of Richard M. Gulick, late of the same place, deceased, parties of the first part, and

JAMES D. CARTON, Esq., of the City of Asbury Park, County of Monmouth and State of New Jersey, party of the second part,

WHEREAS, the said parties of the first part, as devisees aforesaid, are the owners of the tract of land hereinafter described, in equal shares, and that they will probably be able, within a reasonable length of time, except for the tax title herein elsewhere mentioned, to convey a good a marketable title to the said tract, free from all encumbrances, AND WHEREAS the said land has heretofore been sold for the taxes for the year 1910 to Dr. Hugh S. Kinmonth, and the said party has taken over, or will forthwith take over the tax deed of said Kinmonth, and has himself taken a tax deed to the said land for the taxes for the year 1911, AND WHEREAS, the said party of the second part has paid, or is about to pay the sum of Two hundred and fifty ($250.00) Dollars, for the interest of one Alexander Morris in a portion of said land. AND WHEREAS, there are other taxes in arrears against said land and still other taxes may be assessed against the same before the said parties of the first part shall be in a position to convey a good title to said land, free of encumbrances, as aforesaid. AND WHEREAS, it does not suit the said parties of the first part to put up the moneys needed, to provide for the taxes upon the said land, and they wish to induce the said party of the second part to take care of such taxes and to protect their interest in said property.

Exhibit C. 10.

NOW THIS AGREEMENT WITNESSETH that the said parties of the first part, each for herself, and not for the other, promise and agree to and with the said party of the second part, for the consideration hereinafter mentioned, that they, the said parties of the first part, will, within a reasonable time, after they shall be able to do so, or after they shall be notified to that effect by said party of the second part, well and sufficiently convey, except for the tax titles, herein elsewhere mentioned, to the said JAMES D. CARTON, party of the second part hereto, his heirs and assigns, by deed of warranty, free from all encumbrances, except as herein mentioned, all that certain tract or parcel of land and premises hereinafter particularly described situate, lying and being in the Borough of Neptune City, in the County of Monmouth, and State of New Jersey, bounded and described as follows:

BEGINNING at the low water mark at the southwest corner of lands formerly belonging to Mrs. E. M. Bell, now deceased, about fifty-five (55) feet, southwardly from a marble monument on the top of a bank along the Shark River, thence (1) and by along the westerly line of said land north forty-four (44) degrees and twenty-three (23) minutes east fourteen hundred and thirty-three (1433) feet more or less to the middle of a public road or highway leading from Hamilton to Avon, thence (2) along the middle line thereof, north thirty-one (31) degrees and thirty (30) minutes west, one hundred and ninety-two and six tenths (92.6) feet, thence (3) continuing along said north road, fifty-one degrees (51) and forty-five minutes (45) west seventy-five and eight tenths (75.8) feet to the

Exhibit C. 10.

line of the lands belonging to Alexander Morris, thence (4) along said line north eighty-five degrees (85) and fifty-three minutes (53) west eighty-six feet; thence (5) south forty-four degrees (44) and twenty-three minutes (23) west forty-two and two tenths (42.2) feet, thence (6) north fifty-one degrees (51) and fifty-seven minutes (57) west, ninety-two and six tenths (92.6) feet, thence (7) north, thirty-six degrees (36) and thirty-three minutes (33) east eighty-nine and five tenths (89.5) feet to the centre line of the road or highway aforesaid, thence (8) along the centre line thereof north fifty-one degrees (51) and forty-five minutes (45) west one hundred fifty-nine (159) feet to the easterly line of an avenue fifty (50) feet in width known as Windsor Avenue, thence (9) along the easterly line of said Avenue and the prolongation thereof south forty-three degrees (43) and forty-five minutes (45) west twelve hundred and five (1205) feet, more or less to the edge of Shark River, thence (10) southeastwardly along the several courses of said River Six hundred and sixty (660) feet, more or less to the place of BEGINNING, and containing eighteen and twenty-eight one hundredths (18.28) acres.

And the said JAMES D. CARTON, party of the second part, for himself, his heirs, executors and administrators, hereby covenants, promises and agrees to and with the said parties of the first part, and each of them, their heirs, executors, administrators and assigns, that he said Carton, will pay and satisfy or cause to be paid and satisfied, the sum of EIGHT THOUSAND ($8,000.00) Dollars, as and for the purchase money of the foregoing described land and premises, being the sum of FOUR

Exhibit C. 10.

THOUSAND ($4,000.00) Dollars, unto each one of the said parties of the first part, the said purchase money, (or the balance thereof, after deducting the amounts hereinafter set forth, from the said parties of the first part in equal shares) to be paid when the said parties of the first part shall be in a position to deed and convey said land, except for the tax titles, herein elsewhere mentioned, by making good and marketable title, thereto.

And if, either one of the said parties, of the first part, shall be able to make conveyance of a one half interest in the said land, and give a good and marketable title thereto, except as to the matters herein elsewhere mentioned, free of encumbrances, said party of the second part, will accept such ones half interes*y* and pay therefore, to the grantor thereof, the proportionate part of said purchase money, deducting one-half of the *d*redits for advancements, as herein elsewhere set forth.

And the said party of the second part, further agrees and covenants, as a part of the inducement to the said parties of the first part, for entering into this contract, and as a part of the consideration therefor, that he, the said party of the second part, either has paid or will forthwith pay the taxes, cost and expenses assessed against said property for the year 1910, and has taken over or will take over forthwith the tax deed of Dr. Hugh S. Kinmonth executed to him by the Collector*s* of Taxes of said Borough of Neptune City for said taxes for the year 1910, and that he, the said party of the second part, has also paid or will pay the taxes assessed against said property of the year 1911, already sold by the Collectors of the said Borough of

Exhibit C. 10.

Neptune City, and will take over tax deed for the same, and that he, said party of the second part, has purchased said property and premises for the taxes for the year 1912, sold under advertisement for sale, by *t*the Collector of taxes of the said Borough in October 1913, and that he will also pay the taxes that have been and the taxes that shall be assessed against said property and premises for the succeeding years until the delivery of deed or deeds, and the consumation of sale of land as aforesaid, and that he will in all respects, protect the said parties of the first part, against taxes assessed as aforesaid, or to be assessed upon said land. And he, the said party of the second part further agrees and covenants that he has already paid the purchase price Two hundred and fifty ($250.00) Dollars and expense, for procuring the interest of Alexander Morris in a portion of said premises. And it is fully understood and agreed that any and all sum or sums so paid and expended, or to be paid and expended under this agreement, for the interest of said Morris, and for said taxes and the necessary cost and expenses in connection therewith, except taxes on said property and premises after the year 1914, shall be applied on account of the purchase price, under this agreement. And it is especially understood and agreed by and between the parties hereto, that the said party of the second part is not to pay interest on said purchase price, but is to carry out the terms of this agreement, as soon as the parties of the first part, or either of them if they shall act separately, shall be able. And it is also understood, and agreed by and between the parties hereto, that, in case the said parties of the first part,

Exhibit C. 10.

or either of them, shall not become able to make good and marketable title, to said premises and property and thus to carry out the terms of this agreement, upon behalf of them or either of them, (except for the matter, herein elsewhere mentioned) in such an event, the said party of the second part, does not waive any rights that he now has, or that he may hereafter acquire to the title to said land and premises, by virtue of the matter of taxes and the Morris Tract, herein elsewhere referred to, or otherwise.

And it is further agreed by the parties hereto that, the said party of the second part, his heirs and assigns may enter into and upon the said land and premises at any time after the execution and delivery of this agreement, and from thenceforth take rents, issues and profits to his and their use, and for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators.

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

Signed, sealed and delivered as to

.....

.....

.....

IN THE PRESENCE OF

.....

as to

.....

in the presence of

.....

Exhibit C. 11.

State of New York, }
County of Kings } ss.

On this day of April in the year nineteen hundred and fourteen, before me personally came to me known and known to me to be the individual described in and who executed the foregoing instrument, and thereupon acknowledged to me that executed the same.

EXHIBIT C. 11.

THIS INDENTURE, Made the thirtieth day of December, in the year of Our Lord One Thousand Nine Hundred and Eleven,

BETWEEN HUGH S. KINMONTH, of the City of Asbury Park, in the County of Monmouth and State of New Jersey, party of the first part,

AND JAMES D. CARTON, of the City of Asbury Park, in the County of Monmouth and State of New Jersey, party of the second part;

WITNESSETH, That the said party of the first part, for and in consideration of the sum of ONE DOLLAR AND OTHER VALUABLE CONSIDERATIONS, lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released, and forever Quit-Claimed, and by these presents does remise, release, and forever Quit-Claim unto the said party of the second part, and to his heirs and assigns forever,

ALL that certain lot, tract or parcel of land and premises, hereinafter particularly described,

Exhibit C. 11.

situate, lying and being in the Borough of Neptune City, in the County of Monmouth and State of New Jersey, and known and designated as the McNulty and Gulick property, being a tract of EIGHTEEN and one-quarter acres of land, situate on the south side of Sylvania Avenue, in said Borough of Neptune City; bounded on the north by said said Sylvania Avenue; on the east by the property of Mary Kelly; on the south by Shark River, and on the west by property of Frances K. Lippman,

BEING the same property described in a certificate of tax sale from Edwin F. Bennett, Collector of Taxes of the Borough of Neptune City, to the said party of the first part hereto; dated the fourteenth day of October, Nineteen hundred and Eleven, and recorded in the Monmouth County Clerk's Office in Book of deeds, at pages &c.,

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances. TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, to his own proper use, benefit and behoof forever.

Exhibit C. 11.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Hugh S. Kinmonth (SEAL)

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Anna F. Whitlock

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

BE IT REMEMBERED, That on this 22nd day of January, in the year of our Lord One Thousand Nine Hundred and Twelve, before me, the subscriber, a COMMISSIONER OF DEEDS FOR NEW JERSEY, personally appeared HUGH S. KINMONTH, who, I am satisfied, is the grantor mentioned in the within Indenture, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed; And the said

Anna F. Whitlock,
COMMISSIONER OF DEEDS FOR N. J.

Exhibit C. 11.

DEED.

HUGH S. KINMONTH.

TO

JAMES D. CARTON.

DATED, Dec. 30th, 1911.

RECEIVED in the Clerk's Office of the County of Monmouth N. J., on the 23d day of Jan A. D., 1912, at 8 o'clock in the forenoon, and Recorded in Book 920 of DEEDS for said County, on pages 415 &c.

Joseph McDermott
Clerk

I, Edwin F Bennett Collector of Taxes in and for the BOROUGH OF NEPTUNE CITY, in the County of Monmouth, and State of New Jersey, do hereby certify that, at a public sale of lands, tenements, hereditaments and real estate, made at the council room in said borough on the 14th day of October, A. D. 1911, for the purposes of making certain taxes on account of which said lands, tenements, hereditaments and real estate were assessed in said borough in the year 1910, all that certain Real Estate assessed to McNulty and Richard Gulick and described as follows, to wit:

18¼ Acres of Land on South side of Sylvania Ave. between the Properties of Mrs Mary Kelly and Mrs Frances K. Lipman was struck off and sold to H. S. Kinmonth for the term of Two years from the date of said sale, he, the said H S Kinmonth having bid and agreed to take the said Real Estate for the shortest term of

Exhibit C. 11.

years for which any person would take the same and pay the amount of tax, with the interest thereon, and all costs, fees, charges and expenses connected therewith.

AND I DO FURTHER CERTIFY, That the said H. S Kinmonth has paid therefor the sum of One hundred and twenty two and 89 dollars which amount is made up of the tax on the said Property being the sum of Ninety five dollars, and of interest thereon, being the sum of Seven and 15-100 dollars; and of costs, fees, charges and expenses, as follows, to wit:

Return to County Clerk—Collector, 2 cts.; Clerk, 5 cts.....	.07
Collector, Preparing and Publishing Notice of Sale	.25
Collector, Selling	.25
Collector, for Certificate	.50
Acknowledgment of Certificate ...	.50
Clerk, Recording Report of Sale...	.10
Advertising Sale	1.76
Postage	

AND I DO FURTHER CERTIFY, That the right of the owner or owners, mortgagee, occupant, or any other person or persons, having either a legal or equitable interest in the said Property to redeem the same will expire on the 14th day of October 1913

IN WITNESS WHEREOF, I have hereunto set my hand and seal this Fourteenth day of October A. D. 1911

(SEAL)

Edw F Bennett
Collector of Taxes.

Exhibit C. 11.

STATE OF NEW JERSEY }
COUNTY OF MONMOUTH } *ss.*

BE IT REMEMBERED, That on this Fourteenth day of October in the year of our Lord one thousand nine hundred and Eleven before me, a Commissioner of Deeds personally appeared Edwin F Bennett Collector of Taxes in the Borough of Neptune City, in the County of Monmouth, and I having first made known to him the contents of the foregoing certificate of sale, he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

PETER F. DODD
Commissioner of Deeds
for N J

Certificate of Sale

of

REAL ESTATE
for Taxes

Edwin F Bennett

Collector

TO

H S Kinmonth

Received Jan 23d 1912 at 8 o'clock A. M. and recorded in the Monmouth County Clerk's Office in Book 428 of Mortgages page 317 and C.

Joseph McDermott
Clerk

Exhibit C. 11.

To Margaret McNulty, and Florence E. Housewright, and the estate of Richard M. Gulick, or to whom it may concern:

You are hereby notified that I, HUGH S. KINMOUTH, of the City of Asbury Park, in the County of Monmouth, State of New Jersey, have purchased, for the sum of One hundred and twenty-two Dollars, and eighty-nine Cents, the eighteen and one quarter acres of land on the south side of Sylvania Avenue, between the properties of Mrs. Mary Kelly and Mrs. Frances K. Lipman, in the Borough of Neptune City Monmouth County, New Jersey, which said Lot was sold on the fourteenth day October Nineteen Hundred and Eleven, at a sale made by the Collector of the said Borough of Neptune City New Jersey, under and by virtue of the provisions of an act entitled, "An Act for the Assessment and Collection of Taxes," Chapter 208, of the Laws of 1903 with the Supplements thereto.

And you are hereby further notified that you have or claim to have an interest therein, and unless the said lot, tract or parcel of land shall be redeemed, as provided in said Act, before the expiration of two years from and after the date of sale above mentioned, or within sixty days if served subsequent to said expiration of two years, the deed for the same heretofore given will become absolute in fee simple according to the provisions of the said Act.

Dated December 15th, 1911

Hugh S. Kinmonth Purchaser.

PLEASE TAKE NOTICE.

Redemption can only be made at the Office of Dr. H. S. Kinmonth, 724 Cookman Avenue, Asbury Park New Jersey.

Exhibit C. 11.

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

BERTHA G. STRYKER, of full age, being by me duly sworn on her oath does depose and say, that she mailed a notice in writing of which the above is a true copy upon Mrs. Margaret McNulty, c/o Frank P. Patterson Pittsburgh, Pa; Florence E. Housewright, c/o Scott Ferguson, attorney-at-law, Pittsburgh, Pa; Estate of Richard M. Gulick, c/o Scott Ferguson, attorney-at-law, Pittsburgh, Pa, and the Colonial Trust Company, Pittsburgh Pa. on the twenty-second day of January 1912, by causing said notice to be mailed in a stamped envelope, and duly registered.

Bertha G. Stryker

Sworn and subscribed before me
this 22nd day of January A. D.,
1912.

Clare V. Wharton,
Notary Public, N. J.

Exhibit C. 11.

No.

Sale for Taxes
Levied for Year
1915

CERTIFICATE OF SALE

Under and by (STATE) Virtue of an
Act of the (SEAL) Legislature of the

STATE OF NEW JERSEY

Entitled

"AN ACT FOR THE ASSESSMENT AND COLLECTION OF TAXES"

Approved April 8th, A. D. 1903, and the various acts supplemental thereto and amendatory thereof, for taxes levied by

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN:

I, Emelius M. Bentell, Collector of Taxes of Borough of Neptune City, SEND GREETING:

WHEREAS, the property hereinafter particularly described was duly assessed for the taxes for the year 191 in accordance with the provisions of an act of the Legislature of the State of New Jersey entitled "AN ACT FOR THE ASSESSMENT AND COLLECTION OF TAXES," approved April 8th, A. D. 1903, and the various acts supplemental thereto and amendatory thereof, which taxes became a lien thereon on the twentieth day of December following such assessment; and

WHEREAS, on the first Tuesday in February following the assessment I filed with the clerk of the county aforesaid a list of all the unpaid taxes assessed for said year on the real property in said taxing district, which list contained, among other properties, the following-described property, which said list sets forth against whom

Exhibit C. 11.

the said property is assessed, a description of the said property and the amount of tax assessed thereon and to which list I affixed my oath, all as required by law, and all of which appears of record in the county clerk's office aforesaid, reference being thereunto had will more fully and at large appear; and

WHEREAS, the taxes, or a part thereof, remained due and was in arrears on the first day of July in the year following the levying thereof, and has continued in arrears up to and including the date hereof, and therefore it became my duty to enforce the said tax lien by selling the said land or any part sufficient for the purpose; and in performance of the duty imposed upon me by law I did give public notice of the time and place fixed by me for the sale of said real estate, stating the name of the delinquent owner and the land to be sold and the amount of the delinquent taxes due thereon, by advertisement signed by me and published in a newspaper published in the said taxing district once in each week for at least four weeks successively next preceding the day appointed for the sale; and

WHEREAS, I did further cause copies of the notice aforesaid to be set up in five of the most public places in the said taxing district for at least four weeks successively next preceding said sale, one of which places was on or near the said premises; and I did cause a copy of said notice to be mailed to the post-office address of the delinquent owner, as the same appears on my books, prior to the date of said sale in a sealed wrapper with the postage prepaid thereon; and

WHEREAS, at the time and place fixed in said notice of sale and from time to time thereafter, I did at the request of persons interested adjourn

Exhibit C. 11.

said sale by publicly announcing each adjournment thereof; that said adjournments were not for more than eight weeks in the whole; that said delinquent owner did not tender or offer payment of said tax and costs or any part thereof to me at any time before sale; and

WHEREAS, at the time and place specified in the said notice of last adjournment on , the 17th day of October 1916 at one o'clock in the afternoon, at Neptune City, aforesaid, I did duly sell at public auction the parcel of real estate hereinafter described, on which the tax was then in arrears, no part thereof being sufficient for the purpose to James D. Carton,

he having bid to purchase an estate in fee simple therein, and no one bidding for a shorter term, I having first offered to sell the said parcel of real property for a term of years, and no person being willing to bid to purchase the same for a term of years and pay the tax lien thereon, including the interest and costs of sale, I did then offer to sell an estate in fee simple in said parcel;

the taxing district of Neptune City, in fee simple, there being no other purchaser willing to purchase the said parcel of real property either for a term of years or an estate in fee simple therein, and to pay the tax lien thereon, including the interest and costs of sale, I having first offered the same for a term of years and receiving no bids thereon, then offered to sell an estate in fee simple therein, and no person bid thereon;

NOW THEREFORE, KNOW YE, that I, Emelius M. Bentell, Collector as aforesaid, under and by virtue of the power and authority vested in me by virtue of the statute aforesaid, and the proceedings had and taken as aforesaid, and in performance of the duty imposed upon me by

Exhibit C. 11.

law, and in consideration of the sum of One Hundred and Eighty four and 92/100 Dollars, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, assigned, transferred and set over, and by these presents do grant, bargain, sell, alien, assign, transfer and set over unto the said James D Carton the purchaser aforesaid, his heirs, successors and assigns, the real property hereinafter described, for the term sold as hereinabove set out, in as full, ample and beneficial a manner as by virtue of the act of the Legislature of the State of New Jersey entitled "AN ACT FOR THE ASSESSMENT AND COLLECTION OF TAXES," approved April 8th, A. D. 1903, and the various acts supplemental thereto and amendatory thereof, and the proceedings had and taken in pursuance thereof, I may, can or ought to convey the same; TO HAVE AND TO HOLD the same to his and their own use, benefit and behoof forever, SUBJECT to the provisions of the aforesaid act of the Legislature.

AND I DO CERTIFY that the property sold by me is described as follows: All th lot , or parcel, of land and premises assessed in the name of the hereinafter named delinquent owner and shown on a certain map being the OFFICIAL ASSESSMENT MAP OF THE..... and described as follows: Lot..numbered..... in Block numbered ..... on said map Number ..... Street, and more particularly described as follows:— Being 18¼ acres of land, situate on the south side of Sylvania Ave. between Lippmans and Bell tracts, Neptune City, Monmouth County New Jersey.

I DO FURTHER CERTIFY that the names of the delinquent owners are Est. of Richard M.

Exhibit C. 11.

Gulick and Margaret McNulty the terms for which the property is sold is an estate ; the amount of the tax, with the items of interest and costs in detail is—

Amount of taxes due	$169.05
Interest due to date of sale	11.27
Costs.	
Preparing and publishing notices of sale	.25
Selling parcel of real property..	.25
Certificate of sale	.50
Filing, recording and indexing delinquents	.07
Acknowledgment, 50c; affidavit, 25c	.75
Printing advertisement..; Forms	2.68
Postage	.....
Recording report	.10
Total amount paid Collector...	$184.92

AND I DO CERTIFY that the right of all persons who are entitled to redeem said parcel of real property will expire twenty years after the purchaser has entered into open and continued possession of the property under this sale; or the said right will expire on the 17th day of October, 1918, if written notice to redeem said property is served in accordance with the provisions of the statute aforesaid more than sixty days before said date; or, if written notice to redeem is served as aforesaid at any time thereafter, the right to redeem will expire sixty days after the date of such service.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 23rd day of October,

Exhibit C. 11.

in the year of our Lord, One Thousand Nine Hundred and Sixteen.

Emelius M Bentell (L. S.)
Collector of Taxes.

STATE OF NEW JERSEY }
COUNTY OF MONMOUTH } *ss.*

Emelius M. Bentell being duly sworn on his oath according to law, deposes and says that he is the Collector of Taxes of Borough of Neptune City and State of New Jersey; that all the matters set out in the above CERTIFICATE are true to his own personal knowledge, and that he has in all respects complied with the provisions of the statute entitled "AN ACT FOR THE ASSESSMENT AND COLLECTION OF TAXES" approved April 8th, 1903, and the various acts supplemental thereto and amendatory thereof, in making such sale.

Emelius M Bentell

Subscribed and sworn to this
twenty-third day of October, 1916
at Asbury Park, N. J., before me

Bertha G. Stryker,
Notary Public of New Jersey.

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

BE IT REMEMBERED, That on this twenty-third day of October, in the year of our Lord One Thousand Nine Hundred and Sixteen, before me, the subscriber, a NOTARY PUBLIC OF NEW JERSEY, personally appeared

Exhibit C. 11.

Emelius M. Bentell, who, I am satisfied, is the person named in and who executed the foregoing CERTIFICATE, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

Bertha G Stryker,
Notary Public of New Jersey.

by Emelius M. Bentell
Collector of Taxes
TO
James D. Carton

CERTIFICATE OF SALE

Entered Compared Checked

RECEIVED *in the Clerk Office of the County of Monmouth N. J., on the 21st day of Nov A. D.* 1914, *at* 8 *o'clock in the forenoon and Recorded in Book* 524 *of Mortgages for said County, on pages* 401

Joseph McDermott
Clerk

Received in the Clerk's Office of the County of on the day A. D. 19 *at o'clock in the noon, and entered in the Record of Unpaid Taxes and indexed.*

Exhibit C. 11.

No.

CERTIFICATE OF TAX SALE
(Chapter 237, Laws of 1918)

I A Frank Bennett Jr Collector of Taxes of the taxing district of Boro Neptune City in the County of Monmouth and State of New Jersey, do hereby certify that at a public sale of real estate in fee for delinquent taxes made at Boro Hall in said taxing district on the Twelveth day of July, A. D., 1922, I sold to James D Carton of Asbury Park for Two hundred twenty nine Dollars and Seventy five cents, the lands described and designated as follows:

South side Sylvania Ave. 18¼ acres on the tax duplicate of said municipality, and assessed thereon to Inez McNulty as owner for the year 1920 The Amount of the sale was made up of the following items:

	Dollars	Cents
Taxes	199	53
Interest	25	27
Assessments	..	..
Interest	..	..
	224	80

Costs as follows:

	Dollars	Cents	Dollars	Cents
Preparing and publishing notices of sale.		25		
Service in making		25		
Service in making		25		
Certificate of sale...		50		
Acknowledgments and affidavits		25		
Printing and postage	3	70		
Total costs			4	95
Amount of sale ..			$229	75

Exhibit C. 11.

Said sale is subject to redemption on repayment of the amount of the sale, together with interest at the rate of Eight per centum per annum from the date of sale, and the costs incurred by the purchaser. Said sale is subject only to municipal liens accruing after July 1, 1920.

The right to redeem will expire in six months after service of notice to redeem, except the right to redeem shall in all cases extend for two years from the date of sale. In case no notice is given, and there shall be no redemption within twenty years after the purchaser has entered into open possession, since continued, under the sale; then in either case the right to redemption shall be barred.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 9th day of August 1922

A Frank Bennett Jr (L.S.)
Collector.

in the presence of Irvin Bennett.

STATE OF NEW JERSEY, COUNTY OF.....SS:

BE IT REMEMBERED, That on this 9th day of August 1922 before me a Notary Public of N. J. personally appeared A Frank Bennett Jr Collector of Taxes of the taxing district of Boro Neptune City 1922 in the County of Monmouth who, I am satisfied, is the individual described in and who executed the above Certificate of Sale; and I having made known to him the contents thereof, he thereupon acknowledged to me that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

Joseph R. Megill,
Notary Public of N. J.

Exhibit C. 11.

No. 15

CERTIFICATE OF TAX SALE

(Chapter 237, Laws of 1918)

I A Frank Bennett Jr Collector of Taxes of the taxing district of Neptune City in the County of Monmouth and State of New Jersey, do hereby certify that at a public sale of real estate for delinquent taxes made at Boro Hall. in said taxing district on the Twentieth day of January A. D., 1921, I sold to James D Carton of Asbury Park N. J. for One hundred Eighty two Dollars and Eighty four cents in fee, the lands described and designated as follows:

S Side Sylvania 18¼ acres on the tax duplicate of said municipality, and assessed thereon to Inez McNulty as owner for the year 1919

The Amount of the sale was made up of the following items:

	Dollars	Cents
Taxes	155	48
Interest to July 1st 1920.....	17	01
Assessments		
Interest to July 20 1921.....	8	81

Costs as follows:

	Dollars	Cents	Dollars	Cents
Preparing and publishing notices of sale.		25		
Service in making sale		25		
Certificate of sale...		50		
Acknowledgments and affidavits		50		
Printing and postage		04		
Total costs			1	54
Amount of sale ..			182	84

Exhibit C. 11.

Said sale is subject to redemption on repayment of the amount of the sale, together with interest at the rate of 8% per centum per annum from the date of sale, and the costs incurred by the purchaser. Said sale is subject only to municipal liens accruing after July 1, 1920.

The right to redeem will expire in six months after service of notice to redeem, except the right to redeem shall in all cases extend for two years from the date of sale. In case no notice is given, and there shall be no redemption within twenty years after the purchaser has entered into open possession, since continued, under the sale; then in either case the right to redemption shall be barred.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this Thirty first day of January 1921

A Frank Bennett Jr (L. S.)
Collector.

in the presence of

Joseph R. Megill.

State of New Jersey, County of Monmouth, ss:

BE IT REMEMBERED, That on this Seventh day of February 1921 before me a Notary Public for N. J. personally appeared A. Frank Bennett Collector of Taxes of the taxing district of Borough of Neptune City 19 in the County of Monmouth who, I am satisfied, is the individual described in and who executed the above Certificate of Sale; and I having made known to him the contents thereof, he thereupon acknowledged to me that he signed, sealed and delivered the same

Exhibit C. 11.

as his voluntary act and deed, for the uses and purposes therein expressed.

Joseph R. Megill
Notary Public for New Jersey

I, Edwin F. Bennett Collector of Taxes in and for the BOROUGH OF NEPTUNE CITY, in the County of Monmouth, and State of New Jersey, do hereby certify that, at a public sale of lands, tenements, hereditaments and real estate, made at the council room in said borough on the 28th day of September, A. D. 1912, for the purposes of making certain taxes on account of which said lands, tenements, hereditaments and real estate were assessed in said borough in the year 1911, all that certain Real Estate assessed to Richard Gulick & others and described as follows, to wit:

18¼ Acres Sylvania Ave South Side Between Kelley's & Lippman's Estate was struck off and sold to James D. Carton for the term of 20 years from the date of said sale, he, the said James D. Carton having bid and agreed to take the said Land for the shortest term of years for which any person would take the same and pay the amount of tax, with the interest thereon, and all costs, fees, charges and expenses connected therewith.

AND I DO FURTHER CERTIFY, That the said James D. Carton has paid therefor the sum of One Hundred & Nineteen 45/100 dollars which amount is made up of the tax on the said Land One Hundred & Seven 25/100 being the sum of Eight 58/100 dollars, and of interest thereon, being the sum of Three 62/100 dollars; and of

Exhibit C. 11.

costs, fees, charges and expenses, as follows, to wit:

Return to County Clerk—Collector, 2 cts.; Clerk, 5 cts.	.07
Collector, Preparing and Publishing Notice of Sale	.25
Collector, Selling	.25
Collector, for Certificate	.50
Acknowledgment of Certificate	.50
Clerk, Recording Report of Sale	.10
Advertising Sale	1.95
Postage	..
	3.62

AND I DO FURTHER CERTIFY, That the right of the owner or owners, mortgagee, occupant, or any other person or persons, having either a legal or equitable interest in the said Land to redeem the same will expire on the 28th day of September 1914

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 28th day of September A D. 19

Edwin F Bennett
(L. s.) Collector of Taxes.

STATE OF NEW JERSEY }
COUNTY OF MONMOUTH } ss.

BE IT REMEMBERED, That on this Twenty Eighth day of September in the year of our Lord one thousand nine hundred and Twelve before me, a Commissioner of Deeds for N J personally appeared Edwin F Bennett Collector of Taxes in the Borough of Neptune City, in the County of Monmouth, and I having first made known

Exhibit C. 11.

to him the contents of the foregoing certificate of sale, he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

P. F. Dodd
Commissioner of Deeds for N. J.

Certificate of Sale

of

REAL ESTATE
for Taxes

Edwin F Bennett

Collector

to

James D Carton

Gulick Richard & others

Received Oct 5th 1912 at 8 o'clock A. M. and recorded in the Monmouth County Clerk's Office in Book 442 of Mortgages page 401 and C

Joseph McDermott
Clerk

I, E. F. Bennett Collector of Taxes in and for the BOROUGH OF NEPTUNE CITY, in the County of Monmouth, and State of New Jersey, do hereby certify that, at a public sale of lands, tenements, hereditaments and real estate, made at the council room in said borough on the 28 day of December, A. D. 1915, for the purposes

Exhibit C. 11.

of making certain taxes on account of which said lands, tenements, hereditaments and real estate were assessed in said borough in the year 1914, all that certain Parcel of Land assessed to Richard Gulick & Margret McNulty and described as follows, to wit:

18¼ acres Sylvania Ave (South) between Bells Tract & Lipmans was struck off and sold to James D. Carton in fee simple from the date of said sale, he, the said James D. Carton having bid and agreed to take the said Richard Gulick & Margret McNulty for the shortest term of years for which any person would take the same and pay the amount of tax, with the interest thereon, and all costs, fees, charges and expenses connected therewith.

AND I DO FURTHER CERTIFY, That the said J. D. Carton has paid therefor the sum of One Hundred & Seventy 42/100 dollars which amount is made up of the tax on the said Property being the sum of One Hundred & Fifty-Five 12/100 dollars, and of interest thereon, being the sum of Eleven Thirty Cents dollars; and of costs, fees, charges and expenses, as follows, to wit:

Return to County Clerk—Collector 2 cts.; Clerk, 5 cts.....	.07
Collector, Preparing and Publishing Notice of Sale	.25
Collector, Selling	.25
Collector, for Certificate	.50
Acknowledgment of Certificate....	.50
Clerk, Recording Report of Sale...	.10
Advertising Sale	2.33
Postage	

Exhibit C. 11.

AND I DO FURTHER CERTIFY, That the right of the owner or owners, mortgagee, occupant, or any other person or persons, having either a legal or equitable interest in the said Property to redeem the same will expire on the Twenty Eight December 1917

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 28th day of December A. D. 1915

Edwin F Bennett
(L. S.) Collector of Taxes.

STATE OF NEW JERSEY }
COUNTY OF MONMOUTH } *ss.*

BE IT REMEMBERED, That on this fifth day of January in the year of our Lord one thousand nine hundred and sixteen, before me, a MASTER IN CHANCERY OF NEW JERSEY, personally appeared EDWIN F. BENNETT, Collector of Taxes in the Borough of Neptune City, in the County of Monmouth, and I having first made known to him the contents of the foregoing certificate of sale, he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

(Signed) Signature unreadable.
MASTER IN CHANCERY OF NEW JERSEY.

Exhibit C. 11.

Certificate of Sale

of

REAL ESTATE
For Taxes

Edwin F. Bennett

Collector

to

James D Carton

COMPARED

Received Jan 10th 1916 at 8 o'clock A M and recorded in the Monmouth County Clerk's Office in Book 508 of Mortgages Page 292 and c

Joseph McDermott

Clerk

I, Edwin F Bennett Collector of Taxes in and for the BOROUGH OF NEPTUNE CITY, in the County of Monmouth, and State of New Jersey, do hereby certify that, at a public sale of lands, tenements, hereditaments and real estate, made at the council room in said borough on the 26th day of December, A. D. 1914, for the purposes of making certain taxes on account of which said lands, tenements, hereditaments and real estate were assessed in said borough in the year 1913, all that certain Real Estate assessed to Gulick Richard & Margret McNulty and described as follows, to wit:

18½ acres Sylvania Ave between Bells & Lypmans was struck off and sold to James D Carton for in Fee years from the date of said sale, he, the said James D Carton having bid and agreed

Exhibit C. 11.

to take the said Property for the shortest term of years for which any person would take the same and pay the amount of tax, with the interest thereon, and all costs, fees, charges and expenses connected therewith.

AND I DO FURTHER CERTIFY, That the said James D Carton has paid therefor the sum of One Hundred & Fifty Three 52/100 dollars which amount is made up of the tax on the said 18½ Acres on Sylvania Ave between Bells & Lypmans Property being the sum of One Hundred Thirty Six 32/100 dollars, and of interest thereon, being the sum of Thirteen 87 dollars; and of costs, fees, charges and expenses, as follows, to wit:

Return to County Clerk—Collector, 2 cts.; Clerk, 5 cts.	.07
Collector, Preparing and Publishing Notice of Sale	.25
Collector, Selling	.25
Collector, for Certificate	.50
Acknowledgment of Certificate....	.50
Clerk, Recording Report of Sale...	.10
Advertising Sale	1.66
Postage	
	3.33

AND I DO FURTHER CERTIFY, That the right of the owner or owners, mortgagee, occupant, or any other person or persons, having either a legal or equitable interest in the said 18½ Acres on Sylvania Ave between Bells & Lypmans Property to redeem the same will expire on the Dec 26 1916

Exhibit C. 11.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 26th day of December A. D. 1914.

Edwin F Bennett.
(L. S.) Collector of Taxes.

STATE OF NEW JERSEY }
COUNTY OF MONMOUTH } *ss.*

BE IT REMEMBERED, That on this twentieth day of February in the year of our Lord one thousand nine hundred and and Fifteen, before me, a COMMISSIONER OF DEEDS FOR NEW JERSEY, personally appeared EDWIN F. BENNETT, Collector of Taxes in the Borough of Neptune City, in the County of Monmouth, and I having first made known to him the contents of the foregoing certificate of sale, he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

Anna F. Whitlock
A COMMISSIONER OF DEEDS FOR N. J.

Exhibit C. 11.

Certificate of Sale

of

REAL ESTATE
for Taxes

Edwin F Bennett

Collector

TO

James D Carton

Received Feby 24th 1915 at 8 o'clock A M and recorded in the Monmouth County Clerk's Office in Book 490 of Mtgs Page 223 and c.

Joseph McDermott
Clerk

No. 4

CERTIFICATE OF TAX SALE
(Chapter 237, Laws of 1918)

I A Frank Bennett Jr Collector of Taxes of the taxing district of Neptune City in the County of Monmouth and State of New Jersey, do hereby certify that at a public sale of real estate for delinquent taxes made at Borough Hall in said taxing district on the Twenty third day of June A. D., 1920, I sold to James D Carton of Asbury Park, N. J. for Two hundred & fifteen Dollars and Nine cents, the lands described and designated as follows:

Block 37 Lot #2 Sylvania Avenue South Side on the tax duplicate of said municipality, and assessed thereon to Inez McNulty as owner for the year 1918

Exhibit C. 11.

The Amount of the sale was made up of the following items:

	Dollars	Cents
Taxes	$188	15
Interest	22	60
Assessments		
Interest		10

Costs as follows:

	Dollars	Cents		
Preparing and publishing notices of sale.		25		
Service in making sale		25		
Certificate of Sale..		50		
Acknowledgments and affidavits		50		
Printing and postage	2	84		20
Total costs			4	34
Amount of sale ..			$215	09

Said sale is subject to redemption on repayment of the amount of the sale, together with interest at the rate of Eight per centum per annum from the date of sale, and the costs incurred by the purchaser. Said sale is subject only to municipal liens accruing after July 1, 1919. 30

The right to redeem will expire in six months after service of notice to redeem, except the right to redeem shall in all cases extend for two years from the date of sale. In case no notice is given, and there shall be no redemption within twenty years after the purchaser has entered into open possession, since continued, under the sale; then in either case the right to redemption shall be barred. 40

Exhibit C. 11.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this Twenty Third day of June 1920

A Frank Bennett Jr (L. S.)
Collector.

in the presence of Earl S. Bennett

STATE OF NEW JERSEY, COUNTY OF MONMOUTH, SS:

BE IT REMEMBERED, that on this 21st day of July 1920 before me An Attorney at Law of New Jersey personally appeared A. Frank Bennett Jr. Collector of Taxes of the taxing district of Borough of Neptune City 1920 in the County of Monmouth who, I am satisfied, is the individual described in and who executed the above Certificate of Sale; and I having made known to him the contents thereof, he thereupon acknowledged to me that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

Forman T Bailey,
Attorney at Law of State of New Jersey.

No. 20

CERTIFICATE OF TAX SALE
(Chapter 237, Laws of 1918)

I A Frank Bennett Jr Collector of Taxes of the taxing district of Neptune City Boro in the County of Monmouth and State of New Jersey, do hereby certify that at a public sale of real estate in fee for delinquent taxes made at Boro Hall in said taxing district on the Thirtieth day of July A. D., 1923, I sold to Jas D Carton of Asbury Park for Three hundred and Eleven Dol-

Exhibit C. 11.

lars and Fifty Cents cents, the lands described and designated as follows:

Block 37—Eighteen Acres Sylvania South Side on the tax duplicate of said municipality, and assessed thereon to Inez McNulty as owner for the year 1921

The Amount of the sale was made up of the following items:

	Dollars	Cents
Taxes	266	94
Interest	40	89
Assessments		
Interest		

Costs as follows:

	Dollars	Cents	Dollars	Cents
Preparing and publishing notices of sale.		25		
Service in making sale		25		
Certificate of sale...		50		
Acknowledgments and affidavits		25		
Printing and postage	2	42		
Total costs			3	67
Amount of sale			$311	50

Said sale is subject to redemption on repayment of the amount of the sale, together with interest at the rate of 8% per centum per annum from the date of sale, and the costs incurred by the purchaser. Said sale is subject only to municipal liens accruing after July 1, 1921.

The right to redeem will expire in six months after service of notice to redeem, except the right to redeem shall in all cases extend for two

Exhibit C. 11.

years from the date of sale. In case no notice is given, and there shall be no redemption within twenty years after the purchaser has entered into open possession, since continued, under the sale; then in either case the right to redemption shall be barred.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this Fourth day of August 1923

A Frank Bennett Jr (L. S.)
Collector.

in the presence of Irvin Bennett.

STATE OF NEW JERSEY, COUNTY OF MONMOUTH, SS:

BE IT REMEMBERED, That on this Twenty Eighth day of August 1923 before me a Notary Public personally appeared A Frank Bennett Jr Collector of Taxes of the taxing district of Neptune City Borough 1923 in the County of Monmouth who, I am satisfied, is the individual described in and who executed the above Certificate of Sale; and I having made known to him the contents thereof, he thereupon acknowledged to me that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

John A Borden
(SEAL) Notary Public N. J.

Exhibit P. 12.

TAX SALE CERTIFICATE

State of New Jersey.

A. Frank Bennett, Jr.
Collector of Taxes.
to
James D. Carton

Recorded in Book 673 of Mortgages Page 35 &c of Mortgages Monmouth County this 7 day of Sep 1923 8 A M

Joseph McDermott
County Clerk.

(Stamped) Compared

EXHIBIT P. 12.

September 6th, 1923.

MR. GERALD RONON,
2231 Land Title Building,
Philadelphia, Pa.

Dear Sir:—

I duly received yours of the 29th ult. in the McNulty matter and am sorry I was not in when you called on the 'phone last Friday. I tried to reach you by 'phone yesterday and today but found you were out of the office.

As I am very anxious to get this matter closed out so that I can arrange for funds to adjust the taxes and outstanding assessment liens, I wish you would get your deed in shape and have it executed at your earliest opportunity and arrange an appointment with me for closing.

Yours very truly,
James D. Carton

S

Exhibit P. 13.

EXHIBIT P. 13.

MORRIS EICHENGREEN
229 W. 42ND ST.

BRYANT 9136

NEW YORK, March 28, 1922.

Mr. James D. Carton,
Asbury Park, N. J.

My Dear Friend:—

I saw Niart Rogers last Saturday and he promised to look over the property purchased from you last Saturday and promised to take the matter up immediately and let me know this coming week-end the best way to drain the water off the land and also a sketch of the way to lay it out in lots for development.

I told him he could call on you for any information that he might need.

If you do not mind I think the best way for us to handle this proposition is for you to give a deed and take back a mortgage with release clauses, say Four Hundred Dollars ($400.00) for each fifty feet of land (front), and One Thousand Dollars ($1000.00) for each fifty feet or river front lots. This will be ample protection to you. You can also add any contract that you wish to it.

I think by having a deed for the property will give the public more confidence in purchasing same, but if this is not agreeable to you use your own judgment in the matter. I will be at your office next Saturday morning, so kindly have the papers ready so that I can go ahead and order the streets put in, and also other things that must be done for the development of the property. April is the best selling month in the year, so I want to get busy.

Exhibit P. 14.

Kindly date all papers April 1st.
With kindest regards, I am

Yours truly,
EICHENGREEN LAND CO., INC.
ME/L Morris Eichengreen PRESIDENT.

EXHIBIT P. 14.

Lynore Land Company	Deed dated Jan. 12, 1910
TO	
Richard M. Gulick and	Recorded Mar. 11, 1910
Margaret A. McNulty	Book 872 page 55
	Cons. $1.00 and other cons.

Gives, grants, bargains, sells, aliens, remises, releases, enfeoffs, conveys and confirms unto the said party of the second part and to their heirs and assigns forever,

All that tract of land lying and being in the Borough of Neptune City, in the County of Monmouth and State of New Jersey,

Beginning at the low water mark at the southwest corner of lands formerly belonging to Mrs. E. M. Bell, now deceased, about fifty five feet southwardly from a marble monument on the top of the bank along Shark River, thence (1) by and along the westerly line of said land north forty four degrees and twenty three minutes east fourteen hundred and thirty three feet more or less to the middle of the public road or highway leading from Hamilton to Avon, thence (2) along the middle line thereof north thirty one degrees and thirty minutes west one hundred and ninety two and six tenths feet, thence (3) continuing along said road north fifty one degrees and

Exhibit P. 14.

forty five minutes west seventy five and eight tenths feet to the line of lands belonging to Alexander Morris, thence (4) along the said line north eighty-five degrees and fifty three minutes west eighty six feet, thence (5) south forty four degrees and twenty three minutes west forty two and two tenths feet, thence (6) north fifty one degrees and fifty seven minutes west ninety two and six tenths feet, thence (7) north thirty six degrees and thirty three minutes east eighty nine and five tenths feet to the center line of the road or highway aforesaid, thenec (8) along the center line thereof north fifty one degrees and forty five minutes west one hundred and fifty nine feet to the easterly line of an avenue fifty feet in width known as Windsor Avenue, thence (9) along the easterly line of said avenue and the prolongation thereof south forty three degrees and forty five minutes west twelve hundred and five feet more or less to the edge of Shark River, thence (10) southwestwardly along the several courses of said River six hundred and sixty feet more or less to the place of beginning and containing eighteen and twenty eight hundredths acres and being part of the premises conveyed to Lynore Land Company by Richard M. Gulick and wife by deed recorded in Book 714 page 227.

Together &c.
Habendum in fee
Covenant of seizin
Power to convey
Quiet enjoyment
Against encumbrances
Further assurance
Warranty

Exhibit P. 14.

Proved March 2, 1910 by William Hageman, Secretary before Thomas M. Benner, Notary Public, Seal.

Certificate of William B. Kirker, Prothonotary, attached. Seal.

James C. Gulick, 2nd,	Agreement dated Feb.
TO	14, 1911
Florence S. Housewright	Recorded Oct 22, 1914
	Book 985 page 156

Articles of Agreement made and concluded the fourteenth day of September, 1911 by and between James C. Gulick, 2nd, of the City of New York, son of Richard M. Gulick, late of Alleghany County, and Mrs. Florence S. Housewright of the City of Pittsburg.

Whereas said Richard M. Gulick, deceased on the sixth day of August, 1911 left no widow and one child and decendant only, said James C. Gulick, 2nd, with his business affairs considerably involved so that the parties hereto do not know what is the value, if any, of the estate of said decedent:

And whereas said Richard M. Gulick left a Last Will and Testament bearing date May 4, 1911 which has not yet been admitted to probate; whereby he gave to his said son a legacy of One Hundred Dollars and gave the bulk of his estate to Mrs. Housewright with whom as a foster sister he has been brought up and who had made a home and had kept house for said decedent during a considerable period prior to decease;

And whereas the said James C. Gulick, 2nd, feels aggrieved over the action of his father believing that he should have been given a larger portion of his fathers estate and does not feel

Exhibit P. 14.

willing to acquiesce in or submit to the distribution made by said will without a contest although at the same time he would rather avoid such a contest;

And whereas Mrs. Housewright feels friendly to said James and appreciates his feelings and at the same time desires to avoid a family controversy and contest with the publicity and the bitterness and ill-feeling generally attendant and consequent thereon: and thus both of said parties deem it best to compromise and adjust amicably their differences concerning the said will and to avoid a legal contest.

Now therefore these articles witness as follows:

Said James C. Gulick, 2nd, for the consideration hereinafter mentioned hereby promises, covenants and agrees to and with the said Florence S. Housewright that he the said James will suffer and permit the said will of his father to be admitted to probate without objection or exception upon his part and to be regarded and treated as entirely valid; that no caveat shall be filed and that no appeal shall be taken from the decision of the Register admitting said will to probate either by him said James or by any one else at his instance, procurement or suggestion that the performance of said will shall be effectuated and carried out according to the terms thereof just the same as though no question could be raised regarding the validity of said will.

And the said Florence S. Housewright for the consideration hereinbefore mentioned and in consideration of the carrying out of said promises upon her part hereby promises, covenants and agrees to and with the said James C. Gulick, 2nd,

Exhibit P. 14.

that she will pay over to the said James the full one half of the net assets real and personal left by said Richard M. Gulick (including said legacy of One Hundred Dollars) coming into the hands or possession of her the said Florence and remaining after the payment of all debts and liabilities of said decedent; and that he said James shall share with her said Florence in the proportions aforesaid in all the the property and estate left by said decedent.

And the said parties hereby mutually agree and covenant to divide between themselves in said proportions the said estate of said decedent real and personal coming into the hands and control of said Florence S. Housewright who is to be appointed sole executrix under said will and remaining after the payment of all debts and liabilities of said decedent.

In Witness Whereof the said parties have hereunto attached their hands and seals the fourteenth day of September, 1911.

James C. Gulick 2nd, Seal.
Florence S. Housewright, seal.

Acknowledged September 18, 1911 by James C. Gulick before John C. Gulick, Notary Public, New York County. Seal.

Acknowledged by Florence S. Housewright September 14, 1911 before Sion B. Smith, Notary Public, Seal.

Acknowledged September 18, 1911 by James C. Gulick 2nd, before John C. Gulick, Notary Public. Seal.

Certificate of William F. Schneider, Clerk attached. Seal.

Exhibit P. 14.

James C. Gulick, 2nd,
TO
John C. Gulick

Deed dated Feb. 25, 1915
Recorded Nov. 18, 1915
Book 1009 page 346

Recites, Whereas Richard M. Gulick, late of the City of Pittsburg, died seized of one equal undivided half part of a tract of eighteen and twenty eight hundredths acres more or less situate in the Township of Neptune, Monmouth County, New Jersey at Neptune City and more particularly described in Book 872 of Deeds page 55.

Whereas by virtue of a certain Agreement dated September 14, 1911 between James C. Gulick, 2nd, son of Richard M. Gulick, and Mrs. Florence S. Housewright, executrix and sole residuary devisee under and by virtue of the last Will and Testament of said Richard M. Gulick, deceased, the said James C. Gulick is entitled to a conveyance from the said Florence S. Housewright of one equal undivided fourth part of said tract of land in fee by virtue of said agreement between him and the said Florence S. Housewright.

Now this indenture witnesseth &c. in consideration of One Dollar have sold, assigned, transferred and set over unto the said John C. Gulick all my right, title and interest in said agreement between me and the said Florence S. Housewright to the extent of my right by virtue of the said agreement of contract to a conveyance of the undivided one fourth part of said tract of eighteen and twenty eight hundredths acres described in the deed above set forth and reserving to myself all other rights and interests under said agreement in the estate of the said Richard M. Gulick, deceased.

Exhibit P. 14.

To have and to hold the same unto the said John C. Gulick his heirs, executors, administrators and assigns for his and their use and benefit forever.

And I hereby authorize and empower the said John C. Gulick to demand and receive of the said Florence S. Housewright a deed of conveyance to himself in fee of the undivided one fourth part of said tract of land pursuant to said contract in the same manner to all intents and purposes and as fully as I might or could do if these presents were not executed.

And I do hereby make, constitute and appoint the said John C. Gulick my true and lawful attorney irrevocably in my name or otherwise but at his own proper costs and charges to take all legal measures which may be proper and necessary for the complete recovery and enjoyment of the assigned premises with full power of substitution as fully as I might or could do if these presents were not made.

Acknowledged by James C. Gulick, 2nd, March 3, 1915 before William H. Wolfrath, Jr. Notary Public, New York County. Seal.

Certificate of William F. Schneider, Clerk attached. Seal.

Exhibit P. 14.

Florence Stuart Housewright, unmarried	Deed dated Mar. 4, 1915
	Recorded Nov. 18, 1915
TO	Book 1009 page 348
John C. Gulick	Cons. $1.00 and other cons.

Grants, bargains, sells, aliens, releases, enfeoffs, conveys and confirms unto the said party of the second part and to his heirs and assigns forever,

All the equal undivided one fourth part of all that tract of land situate in the Township of Neptune on the northerly side of Shark River, containing eighteen acres and twenty eight hundredths of an acre more or less and being the same premises described in deed from Lynore Land Company body corporate to said Richard M. Gulick, Margaret A. McNulty recorded in Book 872 page 55.

Together &c.

Habendum in fee

Covenant against grantor

Acknowledged March 4, 1915 by Florence Stuart Housewright before Samuel C. Cowart, Master in Chancery of New Jersey.

Frances Margaret McNulty Tighe and James J. her hd.	Deed dated Feb. 15, 1916
	Recorded Mar. 14, 1916
TO	Book 1015 page 359
Inez H. McNulty	Cons. $1.00

Grants, bargains, sells, aliens, enfeoffs, releases and confirms unto the said grantee, her heirs and assigns,

All her the said Frances Margaret McNulty Tighe full equal undivided one half interest in

Exhibit P. 14.

lands in the Borough of Neptune City, containing eighteen acres and twenty eight hundredths of an acre. (Premises in Question).

Together &c.

Habendum in fee

General Warranty

Acknowledged by Frances Margaret McNulty Tighe and James J. Tighe November 15, 1916 before W. H. G. Gould, Foreign Commissioner of Deeds for New Jersey. Seal.

Search in the Monmouth County Clerk's Office for all Conveyances, Mortgages, Mechanics' Liens and Notices of Lis Pendens affecting the premises above described

AGAINST

Richard M. Gulick
from Jan. 11, 1910 to Jan. 1, 1912
Margaret A. McNulty
from Jan. 11, 1910 to Mar. 15, 1916
James C. Gulick, 2nd.
from Aug. 6, 1911 to Nov. 19, 1915
John C. Gulick
from Mar. 3, 1915 to Sept. 8, 1923
Florence S. Housewright
from Aug. 6, 1911 to Sept. 8, 1923
Frances Margaret McNulty Tighe
from Jan. 11, 1910 to Mar. 15, 1916
James J. Tighe
from Jan. 11, 1910 to Mar. 16, 1916
Inez H. McNulty
from Feb. 14, 1916 to Sept. 8, 1923

Exhibit P. 14.

And for Judgments, Attachments & Sheriffs Bonds

AGAINST

Richard M. Gulick
from Sept. 1, 1903 to Jan. 1, 1912
Margaret A. McNulty
from Sept. 1, 1903 to Mar. 15, 1916
James C. Gulick, 2nd.
from Sept. 1, 1903 to Nov. 19, 1915
John C. Gulick
from Sept. 1, 1903 to Sept. 8, 1923
Florence S. Housewright
from Sept. 1, 1903 to Sept 8, 1923
Frances Margaret McNulty Tighe
from Sept. 1, 1903 to Mar. 15, 1916
Inez H. McNulty
from Sept. 1, 1903 to Sept. 8, 1923

Search also for all Recognizances

AGAINST

John C. Gulick
from Sept. 1, 1917 to Sept. 8, 1923
Florence S. Housewright
from Sept. 1, 1917 to Sept. 8, 1923
Inez H. McNulty
from Sept. 1, 1917 to Sept. 8, 1923.

Exhibit P. 14.

Florence S. Housewright, widow and unmarried,	Mortgage dated Mar. 4, 1915
	Ackgd. Mar. 4, 1915
TO	Recorded Nov. 18, 1915
James C. Gulick	Book 506 page 128

COVERS

All the equal undivided one quarter of lands on the northerly side of Shark River, containing eighteen and twenty eight hundredths acres. Premises in Question.

Given to secure Five hundred and thirty three dollars and eighty four cents in three years from date with interest at six per cent per annum, payable semi-annually.

Edwin F. Bennett, Collector	Certificate of Tax Sale Dated Oct. 14, 1911.
	Ackgd. Oct. 14, 1911
TO	Recorded Jan. 23, 1912
H. S. Kinmonth	Book 428 page 317
	Cons. $122.89

Sells for taxes of 1910 assessed as the property of McNulty and Richard Gulick, acres eighteen and a quarter on the south side of Sylvania Avenue for the term of two years from date of sale. Time to redeem expires Oct. 14, 1913.

Exhibit P. 14.

Edwin F. Bennett, Collector.	Certificate of Tax Sale
TO	Dated Sept. 28, 1912
	Ackgd. Sept. 28, 1912
James D. Carton	Recorded Oct. 5, 1912
	Book 442 page 401
	Cons. $119.45

Sells for taxes of 1911 assessed to Gulick and others, acres eighteen and one quarter, Sylvania Avenue for the term of twenty years.

Time to redeem expires September 28, 1914.

Edwin F. Bennett, Collector	Certificate of Tax Sale
TO	Dated Nov. 22, 1913
	Ackgd. Nov. 22, 1913
James D. Carton	Recorded Dec. 18, 1913
	Book 465 page 473
	Cons. $153.37

Sells for taxes of 1912 all that property assessed to Richard Gulick and Margaret McNulty containing eighteen and one quarter acres between Sylvania Avenue and Shark River adjoining on the west property of Kelly Estate in fee simple. Time to redeem expires November 22, 1915.

James D. Carton	Assignment of Tax Sale
TO	Dated Nov. 22, 1915
	Ackgd. Nov. 22, 1915
James C. Gulick	Recorded Nov. 24, 1915
	Book 72 page 74
	Cons. $109.18

ASSIGNS

A certain certificate of Tax Sale bearing date November 22, 1913 made by Edwin F. Bennett,

Exhibit P. 14.

Collector on lands in the Borough of Neptune City to secure the payment of the sum of $136.50 for taxes assessed for the year 1912 to Richard Gulick and Margaret McNulty recorded in Book 465 of Mortgages page 473.

Edwin F. Bennett,	Certificate of Tax Sale
Collector	Dated Dec. 26, 1914
TO	Ackgd. Feb. 20, 1915
James D. Carton	Recorded Feb. 24, 1915
	Book 490 page 223
	Cons. $153.52

Sells for taxes of 1913 assessed as the property of Richard Gulick and Margaret McNulty, acres eighteen and a half, Sylvania Avenue in fee. Time to redeem expires December 26, 1916.

E. F. Bennett,	Certificate of Tax Sale
Collector,	Dated Dec. 28, 1915
TO	Ackgd. Jan. 5, 1916
James D. Carton	Recorded Jan. 10, 1916
	Book 508 page 292
	Cons. $170.42

Sells for taxes of 1914 assessed as the property of Richard Gulick and Margaret McNulty acres eighteen and a quarter, Sylvania Avenue in fee. Time to redeem expires December 28, 1917.

Exhibit P. 14.

Emelius M. Beutell, Collector	Certificate of Tax Sale
TO	Dated Oct. 23, 1916
James D. Carton	Ackgd. Oct. 23, 1916
	Recorded Nov. 21, 1916
	Book 524 page 401
	Cons. $184.92

Sells for taxes of 1915 eighteen and a quarter acres, Sylvania Avenue assessed as the property of Richard M. Gulick and Margaret McNulty in fee. Time to redeem expires twenty years after the purchaser has entered into open and continued possession of the property under this sale or the right will expire October 17, 1918 after written notice to redeem said property is served in accordance with the procisions of the statute aforesaid.

A. Frank Bennett Collector,	Certificate of Tax Sale
TO	Dated Mar. 24, 1919
James D. Carton	Ackgd. Mar. 24, 1919
	Recorded Mar. 26, 1919
	Book 555 page 297
	Cons. $217.75

Sells acres eighteen and a quarter assessed as the property of Inez McNulty in fee simple. Time to redeem expires twenty years after the purchaser has entered into open and continued possession of the property under this sale or the said right will expire March 22, 1921 after written notice to redeem said property is served in accordance with the provisions of said statute aforesaid or within sixty days before said date or after written notice is served as aforesaid at any time thereafter the right to redeem will expire sixty days after the date of such service.

Exhibit P. 14.

In Chancery of New Jersey

Between

Laura Biggar Bennett,
Complainant

and

James W. Piatt, Executor of Henry M. Bennett, dec'd.

Together with the Colonial Trust Company of Pittsburg, Admr. of Peter J. McNulty, a deceased Executor of Henry M. Bennett Estate.

And Mrs. Elsie Kortenbeutell, Administratrix of John W. Hawkins, also a deceased executor of Henry M. Bennett

And also for the specific performance and relief of complainant in relation to certain agreement entered into by the said complainant with the said Executors or some or one of them and other persons and also praying that the sale of lands at Avon belonging to the Estate of Henry M. Bennett to Richard M. Gulick, partners of said Peter J. McNulty Executors and bid off at Sixteen Thousand Dollars by James D. Carton, Attorney for the said Bennett's Executors and alleged to be transferred to a corporation composed of said Gulick, McNulty and Carton and called The Lynore Land Company, a defendant in said suit in relation to said transaction be

Exhibit P. 14.

set aside as fraudulent in equitable and inadequate in price and also praying an injunction against the said defendants and their agents and assigns to enjoyn and restrain them and each of them from conveying or parting with any property or moneys of or derived from said Bennett's Estate until the further order of this Court and for a receiver of said Bennett's Estate and property and to subject the same to the right and demands of complainant in said bill. That the lands and real estate in the State of New Jersey to be affected by said suit are described as follows:

being lands at Avon on the north side of Shark River immediately west of the Lipman property consisting on both sides of the road of one hundred acres standing of record in the name of Henry M. Bennett aforesaid in his lifetime.

Dated October 24, 1911.

William J. Leonard

Sol'r of Laura Biggar Bennett the complainant.
Received and recorded October 27, 1911.
Book 3 page 365.

Exhibit P. 14.

In Chancery of New Jersey

Between Morris Eichengreen, Complainant and Margaret A. McNulty and Florence Stuart Housewright Executors of Richard M. Gulick, dec'd. Defendants.	On Bill &c. Lis Pendens Dated Nov. 20, 1911 Recorded Nov. 20, 1911

The object of said suit is to enforce the specific performance of a certain agreement or option between Richard M. Gulick (whose legatee and devisee said defendant Florence Stuart Housewright is) and Margaret A. McNulty, parties of the first part and Morris Eichengreen, party of the second part whereby the said Richard M. Gulick and Margaret A. McNulty agreed to convey to Morris Eichengreen certain lands in the Borough of Neptune City for the sum of Eight Thousand Dollars. That the lands and real estate to be affected by said suit are as follows: being lands in Neptune City, containing nineteen and three hundredths of an acre.

Johnston and Conover,
Solicitors of Complainant.

Exhibit P. 14.

In Chancery of New Jersey

Between James C. Gulick, 2nd, Complainant and Florence S. Housewright James D. Carton and the Borough of Nepune City, Defendants	On Bill &c. Lis Pendens Dated Nov. 12, 1914 Filed and recorded Nov. 12, 1914 Book 4 page 25

Take notice that a suit entitled as above set forth is pending in the Court of Chancery; that the object of said suit is that the said Florence S. Housewright defendant may be decreed and ordered to convey to complainant by proper deed of conveyance in fee simple one undivided one fourth of a tract of eighteen acres and twenty eight hundredths of an acre situate in Neptune City of which the said Richard M. Gulick, died seized of the one undivided half part by virtue of a certain deed made and executed to him and Margaret A. McNulty by deed recorded in Book 872 page 55 &c.

Samuel Craig Cowart,
Sol'r. of Complainant.

This is to certify that I have searched the records of the Monmouth County Clerk's Office as requested in the above requisition and find none remaining of record against the persons named, during the times specified, except as above returned as shown by the indices, this

Exhibit P. 15.

Eighth day of September, Nineteen Hundred and Twenty three.

Edward Taylor.

EXHIBIT P. 15.

DURAND, IVINS & CARTON
COUNSELLORS-AT-LAW
ASBURY PARK AND OCEAN GROVE
BANK BUILDING
ASBURY PARK, NEW JERSEY

March 7, 1923.

Mr. Morris Eichengreen,

Dear Sir:

We duly received yours of the 5th inst. and while spring may have been coming the day you wrote the letter, it has not arrived here yet. We have a right decent sized blizzard on just at this time. I have not yet completed my matters sufficiently to enable me to take up with you the negotiations for the property about which you spoke with me, but hope to within a very short time.

With best regards,

Yours very truly,

James D Carton

JDC/H.

H

Exhibit D. 1.

EXHIBIT D. 1.

DURAND, IVINS & CARTON
COUNSELORS-AT-LAW
ASBURY PARK AND OCEAN GROVE
BANK BUILDING
ASBURY PARK, NEW JERSEY

September 12th, 1923.

MR. GERALD RONON,
2231 Land Title Bldg.,
Philadelphia, Pa.

Dear Sir:—

I am just in receipt of yours of the 11th inst. in the McNulty matter and to say the least am much surprised.

In view of the fact that I have been carrying this matter for all these years and have had the matter up with you for a long while, I am quite unable to understand how you justify your position in selling the interest of Miss McNulty to a stranger. My dealings with you, representing Miss McNulty, were prompted for the purpose of being fair with you and to see that Miss McNulty got something out of the property. They were all, however, made without prejudice to my rights in the matter, and I assumed that you, representing Miss McNulty, informed the purchaser of same that I hold title to the premises by a deed in fee, and will thank you, if you will do so, to let me know the name and address of the party to whom deed was given.

Yours very truly,

James D Carton

S

JDC.s

Exhibit D. 2.

EXHIBIT D. 2.

DURAND, IVINS & CARTON
COUNSELORS-AT-LAW
ASBURY PARK AND OCEAN GROVE
BANK BUILDING
ASBURY PARK, NEW JERSEY

May 9th, 1922.

MR. GERALD RONAN,
2231 Land Title Building,
Philadelphia, Pa.

Dear Sir:—

RE—MCNULTY ESTATE.

I duly received yours of the 27th ult. in the above matter.

I am enclosing herein to you memorandum of taxes and obligations to date as requested and wish you would take same up with your client at an early opportunity and let me hear from you.

Yours very truly,
James D. Carton
S

JDC/s
Enc.

Exhibit D. 3.

EXHIBIT D. 3.

DURAND, IVINS & CARTON
COUNSELORS-AT-LAW
ASBURY PARK AND OCEAN GROVE
BANK BUILDING
ASBURY PARK, NEW JERSEY

August 3rd, 1923.

MR. GERALD RONON,
Lincoln Building,
Philadelphia, Pa.

Dear Sir:—

If you still represent the McNulty interests, I wish you would take up with them at once some arrangement to close out the matter of the Avon property.

As I notified you some weeks ago, the property has now again been sold for taxes and there will soon be another sale for sidewalk and curbing assessments for a very considerable amount, and if some arrangement is not made to adjust this matter as per your suggestion sometime ago, I will have to foreclose my tax sale in order to get the property in such shape that I can convert it to get my money out of it, as I cannot afford to carry it any longer.

I wish you would take this up with your clients at once and let me hear from you.

Yours very truly,

James D. Carton

S

JDC/s

Exhibit D. 4.

EXHIBIT D. 4.

DURAND, IVINS & CARTON
COUNSELORS-AT-LAW
ASBURY PARK AND OCEAN GROVE
BANK BUILDING
ASBURY PARK, NEW JERSEY

April 18, 1922.

MESSRS MOORSHEAD & JOHNSON, Counselors-at-Law,
Bailey Building,
Philadelphia, Pa.

Gentlemen:— *Attention Mr. Moorshead.*

I am anxious to procure the address of Mrs. Margaret McNulty, or that of her daughters. I understand they live in or about Philadelphia. McNultys were formerly interested in a tract of land at West Avon, New Jersey and I had some correspondence with you in 1916 concerning the same.

I have before me your letter of June 15, 1916 in which you stated that Mrs. McNulty would sell her interest in the property for $4,000, less taxes and interest on taxes to date, etc.

The land is vacant and undeveloped and nothing has ever been done in the matter. I have been in possession of same for years under tax title and have been paying the taxes and have just now received the enclosed notice from the Borough Clerk of Neptune City requiring that a sidewalk be laid on Sylvania Avenue.

There is considerable frontage on Sylvania avenue and it would cost a lot of money to lay such a sidewalk.

I have been hoping that the property would come in the market for developing purposes but

Exhibit D. 5.

to date I have been unable to make any disposition of same.

Our particular anxiety is that a good portion of the property is under water. The Borough recently made some change in the street which had the effect of adding to the size of the pond or portion under water.

If you have Mrs. McNulty's address, I wish you would forward this communication to her or you get into communication with her and have her communicate with me.

It will be necessary to do something before the Borough attempts to put down a sidewalk, and if Mrs. McNulty still holds any interest in the property, I would like to hear from her and know just the lowest figure she would take for same.

Yours very truly,

JDC/s James D. Carton

S

EXHIBIT D. 5.

James D. Carton et ux to Borough of Neptune City

THIS INDENTURE, MADE the twenty-first day of November, in the year of our Lord, one thousand nine hundred and twenty one,

BETWEEN James D. Carton and Mary Carton, his wife of the City of Asbury Park in the County of Monmouth and State of New Jersey, parties of the first part;

AND Borough of Neptune City, a municipal corporation of the State of New Jersey, party of the second part;

Exhibit D. 5.

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of One dollar and other considerations lawful money of the United States of America to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents the receipt whereof is hereby acknowledged, have remised, released and forever Quit-Claimed and by these presents does remise, release, and forever Quit-Claim unto the said party of the second part, and to its successors and assigns forever,

ALL that certain plot or strip of land as shown of "Map showing lands to be acquired for the purpose of opening Winsor Avenue in Neptune City, Mon. Co., N. J., made by J. H. Emlen, Surveyor," November 16, 1921.

BEGINNING at a point where the center line of Windsor Avenue as now opened intersects with the southerly line of Sylvania Avenue; thence (1) in an easterly direction along Sylvania Avenue, twenty five feet and nineteen hundredths feet, (25.19′); thence (2) in a southerly direction eleven hundred and seventy eight feet and seven hundredths of a foot (1178.07′) to a stake at the northerly edge of Shark River; thence (3) in a westerly direction along the northerly edge of Shark River, twenty five feet and nineteen hundredths of a foot (25.19′) to a point; thence (4) in a northerly direction and along the center line of said Winsor Avenue and the continuation thereof southerly eleven hundred and sixty seven feet and fifty two hundredths of a foot (1167.52′) to the southerly side of Sylvania Avenue and point or place of Beginning.

The true intent and purpose of this deed is to quit claim and convey to the Borough of Neptune

Exhibit D. 5.

City, all the right, title and interest of the party of the first part, in and to said strip of land for the use of the public as a public street extending from West Sylvania Avenue to Shark River.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

AND ALSO all the estate, right, title, interest property, possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD, all and singular the above mentioned and described premises, together with the appurtenances unto the said party of the second part, is successors and assigns to its own proper, use, benefit and behoof forever

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

J. D. Carton (L. S.)
Mary Carton (L. S.)

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Frank Durand

Exhibit D. 5.

STATE OF NEW JERSEY }
COUNTY OF MONMOUTH } *ss.*

BE IT REMEMBERED, That on this 21st day of November in the year of our Lord, one thousand nine hundred and twenty one before me, the subscriber a Master in Chancery of New Jersey personally appeared James D. Carton and Mary Carton, his wife, who, I am satisfied are the grantors mentioned in the within Indenture, to whom I first made known the contents thereof and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

Frank Durand
M. C. C. of N. J.

Received and Recorded January 22, A. D. 1924, at 8 A. M.

Joseph McDermott, Clerk.

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

I, JOSEPH McDERMOTT, Clerk of said County, do hereby certify, that the foregoing copy of Deed James D. Carton et ux to Borough of Neptune City. is true and correct as the same remains of record in my office in Book 1246 of Deeds, page 276.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said County, this Twenty second day of May A. D. Nineteen Hundred Twenty five.

Joseph McDermott
CLERK.

(SEAL)

Exhibit D. 6.

COUNTY CLERK'S OFFICE,
Monmouth County,
New Jersey,

CERTIFIED COPY OF
Deed

James D. Carton et ux
to
Borough of Neptune City.

Recorded in Book 1246 of Deeds, page 276.

EXHIBIT D. 6.

DURAND, IVINS & CARTON
Counselors-at-Law
Asbury Park and Ocean Grove
Bank Building
Asbury Park, New Jersey

April 22, 1924.

Mr. Herbert Boggs,
Kinney Bldg.,
Newark, N. J.

Dear Sir:

Some time ago you wrote me concerning the claim of your client Morris Eichengreen that he had purchased some outstanding interest in property owned by me in the Borough of Neptune City. You will recall that shortly thereafter I called upon you in Newark and stated to you briefly my contention concerning Mr. Eichengreen's efforts to defraud me out of this property after having entered into an agreement to purchase it from me. You were then to take

Exhibit D. 7.

the matter up with Mr. Eichengreen informing him of my claim and if he was not satisfied you were to proceed to bring a suit in which event as I stated to you I would at once file counter suit &c. I have not heard from you from that time and wish you would let me know if you have taken this matter up with Mr. Eichengreen and what his position is concerning same.

Yours very truly,

James D. Carton
K.

JDC:K

EXHIBIT D. 7.

Agreement made this fourteenth day of February, 1911, by and between Richard M. Gulick, unmarried, of the City of Pittsburg, County of Allegheny, State of Pennsylvania and Margaret A. McNulty, widow, of the same place, parties of the first part and Morris Eichengreen of the City of New York, party of the second part. Witnesseth, that for and in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, the parties of the first part do hereby give and grant to the party of the second part an option to purchase all that certain piece or parcel of ground situated on the Shark River in Neptune City, County of Monmouth, in State of New Jersey, having a frontage along the Shark River of Six Hundred Fifty (650) feet, more or less, and extending back to West Sylvania Avenue, preserving substantially the same width throughout as more fully described in a deed from the Lynora Land Com-

Exhibit D. 7.

pany to the said parties of the first part hereto, upon the following conditions:—

First: That the parties of the first part will, on or before the first day of September, 1911, will by good and sufficient deed of general warranty, convey the said described property to the party of the second part.

Second: That the said party of the second part will upon such conveyance, pay to the said parties of the first part, the sum of Eight Thousand ($8,000) Dollars cash.

Third: That the party of the second part will negotiate with a certain AlexanderMorris for his right, title and interest to a certain portion of the above described premises, fronting on West Sylvania Avenue, as indicated in a map of the said property, made by Mart Rodgers and inspected by the parties hereto at the time of execution of this agreement; and the said party of the first part will pay the said Alexander Morris the amount necessary to procure the release of his interest therein, not to exceed One Hundred Fifty ($150.00) Dollars and the amount so paid by him whatever the sum may be, not exceeding the said sum, shall be allowed as a credit upon the consideration price mentioned herein and this option shall be performed forthwith upon the consummation of the said negotiation with the said Alexander Morris, or as soon thereafter as may be.

In witnesseth whereof, the parties thereto have set their hands and seals the day and year first above mentioned.

Richard M. Gulick (SEAL)
Margaret A McNulty (SEAL)
Morris Eichengreen (SEAL)

Exhibit D. 8.

Anna Epstein
as to Richard M Gulick

C. H. Bennett,
as to Margaret A. McNulty
& Morris Eichengreen

The above option is held to include a parcel of Seventy-Five Hundredths (75/100) of an acre on the north side of Sylvania Avenue.

EXHIBIT D. 8.

In Chancery of New Jersey.

To the Honorable Mahlon Pitney, Chancellor of the State of New Jersey:

Humbly complaining shows unto your Honor, your orator, Morris Eichengreen, of the City, County and State of New York, that on and previously to the fourteenth day of February, A. D. nineteen hundred and eleven, Richard M. Gulick (unmarried) and Margaret A. McNulty (widow), were the owners and possessors of the following described tract or parcel of land and premises, viz:

ALL that certain tract or parcel of land and premises, situate, lying and being in the Borough of Neptune City, (formerly Neptune Township), in the County of Monmouth and State of New Jersey.

BEGINNING at a point in the high water line of Shark River, where the same is intersected by the southeasterly boundary line of lands now or formerly of the Estate of Julius Lipmann, deceased, running thence (1) along said bound-

Exhibit D. 8.

ary line, north forty-three degrees and forty-five minutes east, five hundred and ninety feet more or less to a point in the centre line of Riverview Avenue; thence (2) continuing the same course, along said boundary line, and along the easterly line of Windsor Avenue, six hundred and ten feet, more or less, to a point in the public road, which is a continuation northwesterly of West Sylvania Avenue; thence (3) south fifty-one degrees thirty five minutes east in said public road, near the northerly line thereof, one hundred and sixty-two feet, more or less, to a point in the northwesterly boundary line of lands of Alexander Morris, nearly opposite the northwesterly corner of said public road and Ridge Avenue; thence (4) South thirty-six degrees thirty three minutes west, along said boundary line of lands of Alexander Morris, eighty-seven feet, more or less, to his southwesterly corner, thence (5) south fifty-two degrees east, along said Morris' southerly boundary line ninety-two feet and sixty hundredths of a foot to a corner; thence (6) north forty-four degrees and twenty-three minutes east, still along said Morris' boundary line forty-two feet and twenty hundredths of a foot to a corner; thence (7) south eighty-five degrees and fifty-three minutes east, still along said Morris' southerly boundary line, and crossing the said public road, four hundred and twenty-nine feet and fifty one hundredths of a foot to a stone in the northwesterly line of lands now, or formerly of Mrs. E. M. Bell; thence (8) south forty-four degrees and twenty-three minutes west along said last mentioned boundary line, two hundred and sixty feet, more or less, to a point in the centre line of West Sylvania Avenue; thence (9) continuing in the same course,

Exhibit D. 8.

and still along said boundary line six hundred and ten feet, more or less to a point in the centre line of Riverview Avenue; thence (10) continuing along the same course, and still along said boundary line, eight hundred and thirty feet, more or less, to high water mark of Shark River; thence (11) along high water mark of said Shark River, the various courses thereof, in a general northerly direction, six hundred and fifty feet, more or less, to the point or place of beginning. Containing nineteen acres and three hundredths of an acre.

Being the same premises conveyed to said Richard M. Gulick and Margaret A. McNulty, by deed from the Lynore Land Company.

And your orator further shows, that the said Richard M. Gulick and Margaret A. McNulty, being desirous of selling said premises, and your orator being minded to purchase the same, the said Richars M. Gulick and Margaret A. McNulty, on the day and year first aforesaid, entered into and signed a memoranda of agreement or option respecting the said sale and purchase, in the words and purport and effect following, that is to say, viz:

"Agreement made this fourteenth day of February, 1911, by and between Richard M. Gulick, unmarried, of the City of Pittsburg, County of Allegheny, State of Pennsylvania and Margaret A McNulty, widow, of the same place, parties of the first part, and Morris Eichengreen of the City of New York, party of the second part, Witnesseth, that for and in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, the parties of the first part do hereby give and grant to the party of the second part an option to purchase all that

Exhibit D. 8.

certain piece or parcel of ground situated on the Shark River, in Neptune City, County of Monmouth, in State of New Jersey, having a frontage along the Shark River of Six Hundred Fifty (650) feet, more or less, and extending back to West Sylvania Avenue, preserving substantially the same width throughout as more fully described in a deed from the Lynora Land Company to the said parties of the first part hereto, upon the following conditions:—

First: That the parties of the first part will, on or before the first day of September, 1911, will by good and sufficient deed of general warranty, convey the said described property to the party of the second part.

Second: That the said party of the second part will upon such conveyance, pay to the said parties of the first part, the sum of Eight Thousand ($8,000) Dollars cash.

Third: That the party of the second part will negotiate with a certain Alexander Morris for his right, title and interest to a certain portion of the above described premises, fronting on West Sylvania Avenue, as indicated in a map of the said property, made by Mart Rodgers and inspected by the parties hereto at the time of execution of this agreement; and the said party of the first part will pay the said Alexander Morris the amount necessary to procure the release of his interest therein, not to exceed One Hundred and Fifty ($150.00) Dollars and the amount so paid by him whatever the sum may be, not exceeding the said sum, shall be allowed as a credit upon the consideration price mentioned herein and this option shall be performed forthwith upon the consummation of the said negotiation with the said Alexander Morris, or as soon thereafter as may be.

Exhibit D. 8.

"In witnesseth Whereof, the parties thereto have set their hands and seals the day and year first above mentioned.

(signed)

Anna Epstein as to Richard M. Gulick (SEAL)
Richard M. Gulick " Margaret A. McNulty
C. H. Bennett as to (SEAL)
Margaret A. McNulty" Morris Eifhengreen
& Morris Eichengreen. (SEAL)

"The above option is held to include a parcel of seventy-five hundredths (75/100) of an acre on the north side of Sylvania Avenue."

as by the said memoranda of agreement or option, to which your orator craves leave to refer, when produced will appear.

And your orator further shows, that previously to the signing of said agreement or option, your orator paid unto the said Richard M. Gulick and Margaret A. McNulty, the sum of one dollar, named in said agreement or option in consideration of the making and giving to him of said agreement or option by said Richard M. Gulick and Margaret A. McNulty.

And your orator further shows, that after the execution and delivery of said agreement or option, the said Richard M. Gulick departed this life testate, in the City of Pittsburg, Allegheny County and State of Pennsylvania, leaving a last will and testament, of which the following is a true copy.

"I, Richard M. Gulick of the City of Pittsburgh, County of Allegheny and State of Pennsylvania, being of sound mind, memory and understanding do make and publish this as and for my last will and testament, hereby revoking any and all wills by me any time heretofore made.

Exhibit D. 8.

"And for the settlement of the succession to such means and estate as I shall die seized and possessed of, I do hereby devise, give and grant and bequeath the same as follows, to wit:—

"First: I give to my son James C. Gulick II the sum of $100.00 it being my deliberate intention that he shall not participate in my estate to any greater extent than the aforesaid sum.

"Second: All the rest, residue and remainder of my estate of whatsoever kind or wheresoever the same may be situated, I give devise, grant and bequeath unto Mrs. Florence Stuart Housewright now residing at No. 327 McKee Place in the City of Pittsburgh, aforesaid, to have and to hold unto her heirs, executors, administrators and assigns absolutely and forever. And I do appoint her Executrix of this my last will and testament.

"In witness whereof, I have hereunto set my hand and seal this fourth day of May 1911.

(Signed) Richard N. Gulick (SEAL)"

And your orator further shows, that said will was duly admitted to probate in the Prerogative Court of the County of Allegheny, in the State of Pennsylvania, as by said will, and the probate thereof, or certified copies thereof, to which your orator craves leave to refer, when produced will appear.

And your orator further shows, that after the death of the said Richard M. Gulick, and the probate of said will, the said premises were the property of said Florence Stuart Housewright and Margaret A. McNulty, as tenants in common.

And your orator further shows, that said option or agreement expired on the first day of September, A. D., nineteen hundred and eleven, and that before, and at the time of the expira-

tion thereof, your orator had determined to purchase said property, according to said agreement, and to exercise his said option to purchase said premises, and on said first day of September, A. D., nineteen hundred and eleven, he endeavored and attempted to exercise said option, and for that purpose, went to the residence of said Florence Stuart Housewright, #327 McKee Place, in the City of Pittsburgh, and endeavor to see said Florence Stuart Housewright, but was informed by one of the servants or inmates of said house, that said Florence Stuart Housewright was not in, and that they did not know when she would be in, and said servant shut the door abruptly in your orator's face; that your orator rang the bell repeatedly, and endeavored to obtain admission to said house, but no one responded, neither would any one admit him, and he was finally compelled to leave said house without seeing the said Florence Stuart Housewright.

And your orator further shows, that on said first day of September, A. D., nineteen hundred and eleven, the said Margaret A. McNulty resided in the City of Pittsburgh, as your orator was informed and believed, and has since ascertained to be the fact; that your orator while in Pittsburgh, on said last mentioned day, made inquiries of her attorney, Frank P. Patterson, at his office in the Frick Building, in said City, as to the residence and whereabouts of said Margaret A. McNulty, stating to her attorney that he desired to exercise his said option to purchase said premises under said agreement, and was ready with the money to pay for the same, providing they could make title according to said agreement, and was informed by said Frank P.

Exhibit D. 8.

Patterson, that the said Margaret A. McNulty resided at #321 Melwood Street, in said City of Pittsburg, but that she was then somewhere in the City of Philadelphia, Pennsylvania; that your orator then went to said #321 Melwood Street, and endeavored to find said Margaret A. McNulty, and was informed that she had moved the day before; that after making further inquiries in the neighborhood, without being able to find said Margaret A. McNulty, he returned to the office of said Frank A. Patterson, and said Patterson, not being in, he made inquiry of a clerk in said office, and was informed that said Margaret A. McNulty was not then in Pittsburgh, but was somehwere in Philadelphia; that your orator being able to find neither said Florence Stuart Housewright and Margaret A. McNulty, returned to his home.

And your orator further shows, that he has frequently applied to the said defendants hereinafter named, and to each of them, and requested them and each of them to perform said agreement, and to convey to him said premises, and that they and each of them have refused or neglected to do so.

And your orator further shows, that he has ever been ready and willing and still is ready and willing to carry out and perform his part of said agreement and option, and is desirous of exercising said option of purchasing said premises, and of having a good and sufficient of general warranty, conveying the said described property to him, and to pay the purchase price mentioned in said agreement; to wit, the sum of Eight Thousand Dollars to the said Margaret A. McNulty and Florence Stuart Housewright, and your orator hoped that said Margaret A. Mc-

Exhibit D. 8.

Nulty and Florence Stuart Housewright would have specifically performed their part of said agreement, as in justice and equity they ought.

But, now so it is, may it please your Honor, that the said Margaret A. McNulty and Florence Stuart Housewright and Florence Stuart Housewright, executrix of Richard M. Gulick, deceased, contriving and contending to *ag*rieve your orator in the premises, and to defraud him out of said land and premises, which they ought to convey to him as aforesaid, wholly refuse to comply with such reasonable request of your orator, as in justice and equity they ought to have done, and to justify their inequitable conduct, they set up and insist upon various unjust and untrue allegations and pretentions, giving out and pretending that they are unab*el* to make a good and sufficient deed of general warranty conveying the said described premises to your orator, whereas your orator charges that said defendants are able to make a good and sufficient deed of general warranty conveying said described premises to him, if they think proper so to do.

And your orator charges, that the whole of the purchase money for the premises has been ready and unproductive in his hands for completing said purchase from the time it ought to have been completed by the terms of said agreement; all of which actings and doings of the said defendant, are contrary to equity and good conscience and tend to the manifest injury and oppression of your orator.

In tender consideration whereof, and for as much as your orator is remediless in the premises at and *m*y the strict rules of the common law, and can only have adequate relief in this Honorable Court, where matters of this nature are properly cognizable and relievable:

Exhibit D. 8.

To the end, therefore, that the said Margaret A. McNulty and Florence Stuart Housewright, and Florence Stuart Housewright, executrix of Richard M. Gulick, deceased, may, but without oath, true, full, direct and perfect answer make to all and singular the matters and things hereinbefore stated, and that as fully and particularly as if the same were here again repeated, and they and each of them thereunto interrogated, paragraph by paragraph, and that the said Margaret A. McNulty and Florence Stuart Housewright, and Florence Stuart Housewright, executrix of Richard M. Gulick, deceased, and each of them, may answer and set forth why they did not make and execute a good and sufficient deed of general warranty conveying to your orator the said described premises, according to said agreement, and why they have not complied with, and performed said agreement, and whether they have rented, sold, or otherwise disposed of said premises, or any part thereof, and to whom, and for how much, and that they and each of them may be directed and decreed by this Honorable Court, to make and execute a good and sufficient deed of general warranty conveying the said described property, to your orator, and to specifically perform said agreement upon your orators paying said consideration or purchase price of Eight Thousand Dollars, and that they, or one of them may be decreed to pay unto your orator his costs and charges to be taxed in this suit; and that your orator may have such further or other relief in the premises, as the nature and circumstances of the case may require, and as may be agreeable to equity and good conscience.

Exhibit D. 8.

May it please your Honor, the premises considered, to grant unto your orator, a writ or writs of subpoena, issuing out of, and under the seal of this Honorable Court to be directed to the said Margaret A. McNulty and Florence Stuart Housewright, and Florence Stuart Housewright, executor of Richard M. Gulick, deceased, therein and thereby commanding them on a certain day, and under a certain penalty, to be and appear before your Honor, in this Honorable Court, then and there to answer the premises, and to stand to, abide by and perform such decree therein, as to your Honor shall seem meet and agreeable to equity and good conscience.

And your orator will ever pray &c.

Johnston & Conover
Solicitors for and of Counsel with
Complainant.

A true copy
Thomas Barber
Clerk

Exhibit D. 8.

34/262

IN CHANCERY OF NEW JERSEY

Between

Morris Eichengreen,

Complainant

and

Margaret A. McNulty, and
Florence Stuart Housewright,

Defendants.

On Bill &c.

BILL OF COMPLAINT.

Johnston & Conover, Solicitors
of Complainant,
Asbury Park, N. J.
Filed Nov. 18, 1911.

IN CHANCERY OF NEW JERSEY.

Between Morris Eichengreen, Complainant, and Margaret A. McNulty, et als., Defendants.	On Bill &c. AMEND- MENT TO BILL.

Complainant amends the bill of complaint filed in the above entitled cause as follows:—

By inserting the words "and Florence Stuart Housewright, executrix of Richard M. Gulick, deceased," after the words "Florence Stuart Housewright" where they appear in said bill as

Exhibit D. 8.

follows: in line three page 8, in line 30 page 8, line 4 page 9, and in line 27, page 9.

Johnston & Conover
Solicitors of Complainant.

A true copy
Thomas Barber
Clerk

34/262

IN CHANCERY OF NEW JERSEY

Between
Morris Eichengreen,
Complainant,
and
Margaret A. McNulty, et als.
Defendants.

On Bill &c.
AMENDMENT TO BILL.

Johnston & Conover, Solicitors of Compl't.

Asbury Park, N. J.
Filed Nov. 21, 1911.

STATE OF NEW JERSEY }
COUNTY OF MONMOUTH } *ss.*

CORNELIUS B. BARKALOW, Under sheriff of the County of Monmouth, being duly sworn according to law, on his oath says, that he has duly inquired for Margaret A. McNulty and Florence Stuart Housewright and Florence Stuart Housewright, Executrix, the defendants

Exhibit D. 8.

named in the within process for the purpose of serving them therewith, and has not been able to find them in his county, and this deponent is creditably informed and verily believes that the said defendants reside out of this State and that they reside at Pittsburg, in the State of Pennsylvania.

Cornelius B. Barkalow.

Sworn and subscribed at Freehold,
this Twenty-first day of November, A. D. 1911.
before me,

William R. O'Brien,
Commissioner of Deeds of N. J.

A true copy

Thomas Barber
Clerk

NEW JERSEY *to wit: The State of New Jersey* to Margaret A. McNulty and Florence Stuart Housewright and Florence Stuart Housewright Executrix of Richard M. Gulick deceased.

(L. S.)
(Copy)

GREETING: We command you, that you appear in manner and form required by law in our Court of Chancery, on the second day of December 1911 at Trenton, to answer to a bill of complaint exhibited against you in our said Court by Morris Eichengreen and to do further and receive what our said Court shall have considered in that behalf; and this you are not to omit, under the penalty that may fall thereon.

Exhibit D. 8.

WITNESS, his Honor, Mahlon Pitney, Chancellor of our said State, at Trenton, the 20th day of November in the year of our Lord one thousand nine hundred and eleven.

SAM'L K. ROBBINS.
Clerk.

Johnston & Conover Sol'r.

NOTICE.—The defendant is NOT required to appear at Trenton in person, at the return day, but if he intends to make a defence it is only necessary for him to answer, plead or demur to the bill within the time required by law.

SAMUEL K. ROBBINS
Clerk.

Exhibit D. 8.

34-262

IN CHANCERY OF NEW JERSEY.

Between

Morris Eichengreen

Compl't, Sub. ad Resp.

and

Margaret A. McNulty et al.,

Def'ts.

Ret'ble Dec. 2, A. D. 1911

Johnston & Conover Sol'r.
Asbury Park, N. J.

Filed Nov. 21, 1911

Defendants not found in my county.

Wilbert A. Beecroft.

Sheriff.

Cornelius B. Barkalow

Under Sheriff

Sheriff's Fees. 50/100

Received Nov 21, 1911.

Wilbert A. Beecroft Sher.

Exhibit D. 8.

IN CHANCERY OF NEW JERSEY.

Between Morris Eichengreen Complainant, and Margaret A. McNulty, et als Defendants.	34-262 Docket entries

Bill filed Nov 18,; Subpoena returnable Dec, 2, filed Nov 21, 3 non est, Monmouth and amendment to bill filed Nov 21, 1911.

A true copy
Thomas Barber
Clerk

(L. S.) I, Thomas Barber, Clerk of the Court of Chancery of the State of New Jersey, the same being a Court of Record, do hereby certify that the foregoing is a true transcript of Bill filed November 18, 1911, Amendment to Bill filed November 21, 1911, Subpoena filed November 21, 1911 and Docket entries filed in the cause wherein Morris Eichengreen is Complainant and Margaret A. McNulty, et als are defendants now on the files of my office.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seal of said Court, at Trenton this Twenty-second day of May A. D. nineteen hundred and twenty-five.

Thomas Barber
Clerk

Exhibit D. 9.

34-262

IN CHANCERY OF NEW JERSEY

Between

Morris Eichengreen

Complainant

and

Margaret A. McNulty, et als

Defendants.

TRANSCRIPT

Johnston & Conover
Sol'rs of Complainant
Asbury Park, N. J.

EXHIBIT D. 9.

In Chancery of New Jersey.

Between Morris Eichengreen, Complainant, and Margaret A. McNulty and Florence Stuart Housewright and Florence Stuart Housewright, Executrix of Richard M. Gulick, deceased. Defendants	On Bill &c. Notice of Lis Pendens

TAKE NOTICE, that a suit entitled as above set forth has been commenced and is pending in the Court of Chancery of the State of New Jersey.

Exhibit D. 9.

And that the general object of said suit is to enforce the specific performance of a certain agreement or option between Richard M. Gulick, (whose Legatee and devisee said defendant, Florence Stuart Housewright is) and Margaret A. McNulty, parties of the first part, and Morris Eichengreen party of the second part, therein, wherein and whereby said Richard M. Gulick and Margaret A. McNulty agreed to convey to said Morris Eichengreen, certain land and premises, situate in the Borough of Neptune City, Monmouth County, N. J., on or before September 1, A. D. 1911, for the consideration of eight thousand dollars. That the lands and real estate to be affected by said suit, are described as follows; to wit:

All that certain tract or parcel of land and premises, situate, lying and being in the Borough of Neptune City, (formerly Neptune Township), in the County of Monmouth and State of New Jersey.

Beginning at a point in the high water line of Shark River, where the same is intersected by the southeasterly boundary line of lands now or formerly of the estate of Julius Lipman, deceased, running, thence (1) along said boundary line, north forty three degrees and forty five minutes east five hundred and ninety feet more or less to a point in the centre line of Riverview Avenue; thence (2) continuing the same course, along said boundary line and along the easterly line of Windsor Avenue, six hundred and ten feet, more or less, to a point in the public road, which is a continuation northwesterly of West Sylvania Avenue; thence (3) south fifty one degrees thirty five minutes east in said public

Exhibit D. 9.

road, near the northerly line thereof, one hundred and sixty two feet, more or less to a point in the northwesterly boundary line of lands of Alexander Morris, nearly opposite the northwesterly corner of said public road and Ridge Avenue; thence (4) south thirty six degrees, thirty three minutes west along said boundary line of lands of Alexander Morris, eighty seven feet, more or less to his southwesterly corner; thence (5) south fifty two degrees east along said Morris' southerly boundary line ninety two feet and sixty hundredths of a foot to a corner; thence (6) north forty four degrees and twenty three minutes east, still along said Morris' boundary line forty two feet and twenty hundredths of a foot to a corner; thence (7) south eighty five degrees and fifty three minutes east still along said Morris' southerly boundary line and crossing the said public road, four hundred and twenty nine feet and fifty one hundredths of a foot to a stome in the northwesterly line of lands now or formerly of Mrs. E. M. Bell; thence (8) south forty four degrees and twenty three minutes west along said last mentioned boundary line two hundred and sixty feet more or less to a point in the centre line of West Sylvania Avenue; thence (9) continuing in the same course and still along said boundary line six hundred and ten feet more or less to a point in the centre line of Riverview Avenue; thence (10), continuing along the same course and still along said boundary line eight hundred and thirty feet more or less, to high water mark of Shark River; thence (11) along high water mark of said Shark River, the various courses thereof, in a general northerly direction, six hundred and fifty feet more or less to the point or place of

Exhibit D. 9.

Beginning. Containing nineteen acres and three hundredths of an acre.

Dated November 20, 1911.

Johnston & Conover,
Silicitors of Complainant.

Received, filed and recorded November 20th, A. D. 1911 at 4 P. M.

Joseph McDermott, Clerk.

I, Joseph McDermott, Clerk of the County of Monmouth by virtue of a special Warrant of Attorney to me directed duly acknowledged and signed by Morris Eichengreen complainant do acknowledge that the matters in dispute have been settled and this Lis Pendens is discharged. April 25, 1924.

Joseph McDermott, Clerk.

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

I, JOSEPH McDERMOTT, Clerk of said County, do hereby certify, that the foregoing copy of Notice of Lis Pendens Morris Eichengreen and Margaret A. McNulty et als is true and correct as the same remains on file in my office, and on record in book 3 of Notice of Lis Pendens, page 368.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the (SEAL) official seal of said County, this Twenty second day of May A. D. Nineteen Hundred Twenty five.

Joseph McDermott
Clerk.

Exhibit D. 10.

COUNTY CLERK'S OFFICE,
Monmouth County, New Jersey,

Certified Copy of
Notice of Lis Pendens

Morris Eichengreen
and
Margaret A. McNulty, et als

Filed and recorded on November 20, 1911 in Book 3 of Notice of Lis Pendens, Page 368.

EXHIBIT D. 10.

MORRIS EICHENGREEN
229 W. 42nd Street
Bryant 9136

New York, October 28, 1921.

Mr. Gerald Ronon,
Dear Sir:—

Sometime ago I spoke to you and Miss McNulty in regard to some property that she was interested in at Avon, New Jersey. You promised to call and see me in regard to same within two weeks from the time I spoke to you, which is now several months. I have moved back to New York for the winter and would like to hear from you sometime in regard to same.

Yours truly,
Morris Eichengreen.

ME/L

Exhibit D. 11.

EXHIBIT D. 11.

THIS INDENTURE,

Made the eleventh day of September in the year of Our Lord One Thousand Nine Hundred Twenty-three BETWEEN EDWIN A. BRADLEY, of the Town of Montclair, County of Essex and State of New Jersey, MILLICENT G. CRISSMAN AND FRANK CRISSMAN, her husband, of Beverly Hills, California and JAMES C. GULICK, unmarried of the Borough of Brooklyn in the County of Kings and State of New York of the First Part; AND IRMA KLOPHAUS of the City of Newark in the County of Essex and State of New Jersey of the Second Part: WITNESSETH, That the said party of the first part, in consideration of the sum One Dollar and other valuable considerations, lawful money of the United States of America, to them in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm, unto the said party of the second part, and to her heirs and assigns forever, ALL the right, title and interest of the parties of the first part in the tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Neptune City in the County of Monmouth and State of New Jersey

BEGINNING at the low water mark at the Southwest corner of lands formerly belonging to Mrs. E. M. Bell, now deceased, about 55 Feet

Exhibit D. 11.

southwardly from a marble monument on the top of the bank along Shark River; thence (1) by and along the Westerly line of said land North 44 Degrees and 23 Minutes East 1433 Feet more or less to the middle of a public road or highway leading from Hamilton to Avon aforesaid; thence (2) along the middle thereof North 31 Degrees and 30 Minutes West 192.6/10 Feet; thence (3) continuing along said road North 51 Degrees and 45 Minutes West 75.8/10 Feet to the line of the lands belonging to Alexander Morris; thence (4) along said line North 85 Degrees and 53 Minutes West 86 Feet; thence (5) South 44 Degrees and 23 Minutes West 42.2/10 Feet; thence (6) North 51 Degrees and 57 Minutes West 92.6/10 Feet; thence (7) North 36 Degrees and 33 Minutes East 89.5/10 Feet to the centre line of the road or highway aforesaid; thence (8) along the centre line thereof North 51 Degrees and 45 Minutes West 159 Feet to the Easterly line of an Avenue 50 Feet in width, known as Windsor Avenue; thence (9) along the Easterly line of said Avenue and the prolongation thereof south 43 degrees and 45 minutes West 1205 Feet more or less to the edge of Shark River; thence (10) Southeasterly along the several courses of said river 660 Feet more or less to the place of BEGINNING, and containing 18 and 28/100 acres.

John C. Gulick died seized of a one-quarter interest in said premises, leaving a Last Will and Testament dated July Tenth, Nineteen Hundred and Fourteen, and probated in the County and State of New York, wherein he devised his interest in said premises equally to Marianna G. Bradley, Millicent Crissman, James I. Gulick and James C. Gulick; the said Marianna G.

Exhibit D. 11.

Bradley having since died, leaving any interest she might possess in said premises to Edwin A. Bradley, one of the parties of the first part.
TOGETHER with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of said party of the first part, of, in, or to the above described premises and every part and parcel thereof, with the appurtenances, TO HAVE AND TO HOLD, all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, her heirs, and assigns forever, to the only proper use, benefit and behoof of the said party of the second part, her heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered
in the presence of

J. F. Crane as to

Edwin A. Bradley (L. S.)
Millicent G. Crissman (L. S)
Frank Crissman (L. S.)
James C. Gulick (L. S.)

Witness as to signature
of James C. Gulick

Thomas C. Patterson

(Documentary stamp attached.)

Exhibit D. 11.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.

BE IT REMEMBERED, That on this 11th day of September, 1923 before me a Notary Public in and for the County of New York, State of New York, personally appeared JAMES C. GULICK, who, I am satisfied is one of the grantors mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

Thomas C Patterson
(SEAL) Notary Public,
Bronx Co. No. 55, registered No. 140.
Certificate filed New York County Clerk's No. 336, Register No. 4263.

State of New York, }
County of New York, } ss.:

No. 59742 Series B

I, JAMES A. DONEGAN, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said county,

DO HEREBY CERTIFY, That said Court is a Court of Record, having by law a seal; that Thomas C. Patterson whose name is subscribed to the annexed certificate or proof of acknowledgment of the annexed instrument was at the time of taking the same a NOTARY PUBLIC acting in and for said county, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's Office of the

Exhibit D. 11.

County of New York a certified copy of his appointment and qualification as Notary Public for the County of Bronx with his autograph signature; that as such Notary Public, he was duly authorized by the laws of the State of New York to protest notes; to take and certify depositions; to administer oaths and affirmations; to take affidavits and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this state; and further, that I am well acquainted with the handwriting of such Notary Public and verily believe that his signature to such proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 24 day of Sept 1923.

James A Donegan
Clerk.

(SEAL)

State of California
County of Los Angeles } ss.

BE IT REMEMBERED, That on this 9th day of October in the year of Our Lord One Thousand Nine Hundred and twenty-three before me, M. C. Bond a Notary Public for Los Angeles County, State of California personally appeared Millicent G. Crissman and Frank Crissman, her husband, who, I am satisfied, are the grantors mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein

Exhibit D. 11.

expressed: And the said Millicent G. Crissman being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, FREELY, without any fear, threats or compulsion of her said husband.

M C Bond
(SEAL) Notary Public in and for County of Los Angeles, State of California.
My Commission Expires August 28, 1923.

STATE OF CALIFORNIA, }
County of Los Angeles, } ss

I, L. E. LAMPTON, Clerk of the County of Los Angeles, and Clerk of the Superior Court in and for said County, do hereby certify that the said Court is a Court of Record; that M. C. Bond, whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, was at the time of taking the same a Notary Public in and for said County and State, duly commissioned and sworn, and qualified to act as such; that as such Notary Public he was at the time of taking such acknowledgment duly authorized by the laws of the State of California to take the acknowledgments and proof of deeds or conveyances for land, tenements or hereditaments in said State of California; that I am well acquainted with the handwriting of said M. C. Bond and verily believe his signature to the same is genuine.

Exhibit D. 11.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed
(SEAL) the seal of said Court, at Los Angeles, in said County of Los Angeles, this 29 day of Oct 1923.

(SEAL) L E Lampton Clerk.

STATE OF NEW JERSEY }
COUNTY OF ESSEX } ss.

Be it remembered, that on this 22nd day of September, 1923, before me an Attorney at Law of New Jersey personally appeared EDWIN A. BRADLEY, who, I am satisfied is one of the grantors mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

T. F. Crane
Attorney at Law of New Jersey.

Exhibit D. 12.

DEED.

Edwin A. Bradley, Millicent G. Crissman and Frank Crissman, her husband, and James C. Gulick,

To

Irma Klophaus

Dated September 11th 1923

Received in the Clerks Office of the County of Monmouth on the 7th day of November A. D., 1923, at 9.20 o'clock, in the forenoon and recorded in Book 1241 of Deeds for said County, on pages 87 &c.

Joseph McDermott
Clerk

Compared

Charles Jones,
738 Broad St.,
Newark, N. J.

EXHIBIT D. 12.

THIS INDENTURE,

Made the Twelfth day of September in the year of Our Lord One Thousand Nine Hundred Twenty-three BETWEEN FLORENCE S. JOHNSON, (widow) formerly known as Florence S. Housewright, of the City of Mount Vernon in the County of Westchester and State of New York of the First Part; AND IRMA KLOPHAUS, of the City of Newark in the County of Essex and State of New Jersey of the Second Part: WITNESSETH, That the said party of

Exhibit D. 12.

the first part, in consideration of the sum One Dollar and other valuable considerations, lawful money of the United States of America, to her in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey and confirm, unto the said party of the second part, and to her heirs and assigns forever, ALL the right, title and interest of the party of the first part in and to the tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Neptune City in the County of Monmouth and State of New Jersey

BEGINNING at the low water mark at the Southwest corner of lands formerly belonging to Mrs. E. M. Bell, now deceased, about 55 Feet Southwardly from a marble monument on the top of the bank along Shark River; thence (1) by and along the Westerly line of said land North 44 Degrees and 23 Minutes East 1433 Feet more or less to the middle of a public road of highway leading from Hamilton to Avon aforesaid; thence (2) along the middle thereof North 31 Degrees and 30 Minutes West 192.6/10 Feet; thence (3) continuing along said road North 51 Degrees and 45 Minutes West 75.8/10 Feet to the line of the lands belonging to Alexander Morris; thence (4) along said line North 85 Degrees and 53 Minutes West 86 Feet; thence (5) South 44 Degrees and 23 Minutes West 42.2/10 Feet; thence (6) North 51 Degrees and 57 Minutes West 92.6/10 Feet; thence (7) North 36

Exhibit D. 12.

Degrees and 33 Minutes East 89.5/10 Feet to the centre line of the road or highway aforesaid; thence (8) along the centre line thereof North 51 Degrees and 45 Minutes West 159 Feet to the easterly line of an Avenue 50 Feet in width, known as Windsor Avenue; thence (9) along the Easterly line of said Avenue and the prolongation thereof South 43 Degrees and 45 Minutes West 1205 Feet more or less to the edge of Shark River; thence (10) Southeasterly along the several courses of said river 660 Feet more or less to the place of BEGINNING and containing 18 and 28/100 Acres.

BEING the same premises, a one-half interest of which was devised to the party of the first part by the Last Will and Testament of R. M. Gulick, and this deed is to convey out of the party of the first part any interest not heretofore conveyed.

TOGETHER with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of said party of the first part, of, in, or to the above described premises and every part and parcel thereof, with the appurtenances, TO HAVE AND TO HOLD, all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, her heirs, and assigns forever, to the only proper use, benefit and behoof of the said party of the second part, her heirs and assigns forever.

Exhibit D. 12.

IN WITNESS WHEREOF, the said party of the first part has hereunto set her hand and seal the day and year first above written.

Florence S Johnson (L. S.)

Signed, Sealed and Delivered
in the presence of

Thomas C Patterson

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.

BE IT REMEMBERED, That on this twelfth day of September in the year of Our Lord One Thousand Nine Hundred and Twenty-three before me, a Notary Public in and for the County of New York, State of New York personally appeared FLORENCE S. JOHNSON, (widow) formerly known as Florence S. Housewright, who, I am satisfied is the grantor mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.

Thomas C. Patterson
(SEAL) Notary Public

Bronx Co. No. 55, Register's No. 140.
Certificate filed in New York County Clerk's No. 336, Register's No. 4263

Exhibit D. 12.

State of New York, }
County of New York, } ss.:

No. 59741 Series B

I, JAMES A. DONEGAN, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said county,

DO HEREBY CERTIFY, That said Court is a Court of Record, having by law a seal; that Thomas C. Patterson whose name is subscribed to the annexed certificate or proof of acknowledgment of the annexed instrument was at the time of taking the same a NOTARY PUBLIC acting in and for said county, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's Office of the County of New York a certified copy of his appointment and qualification as Notary Public for the County of Bronx with his autograph signature; that as such Notary Public, he was duly authorized by the laws of the State of New York to protest notes; to take and certify depositions; to administer oaths and affirmations; to take affidavits and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this state; and further, that I am well acquainted with the handwriting of such Notary Public and verily believe that his signature to such proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 24 day of Sept 1923

James A Donegan
Clerk.

(SEAL)

Exhibit D. 13.

DEED.

Florence S. Johnson (Widow) formerly known as Florence S. Housewright,

To

Irma Klophaus

Dated September 12th 1923

Received in the Clerks Office of the County of Monmouth on the 25 day of October A. D., 1923, at 1 o'clock, in the afternoon and recorded in Book 1238 of Deeds for said County, on pages 256 &c

Joseph McDermott
Clerk

Charles Jones
738 Broad St.,
Newark, N. J.

Compared

EXHIBIT D. 13.

THIS INDENTURE,

Made the Seventh day of September in the year of Our Lord One Thousand Nine Hundred Twenty-three BETWEEN INEZ H. McNULTY, (Single) of the City of Philadelphia in the County of Philadelphia and State of Pennsylvania of the First Part; AND IRMA KLOPHAUS, of the City of Newark in the County of Essex and State of New Jersey of the Second Part: WITNESSETH, That the said party of the first part, in consideration of the sum One

Exhibit D. 13.

Dollar and other valuable considerations lawful money of the United States of America, to her in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey and confirm, unto the said party of the second part, and to her heirs and assigns forever, ALL that certain undivided one-half interest of the party of the first part in the tract or parcel of land and premises, hereinafter particularly described, situate, lying and benig in the City of Neptune City in the County of Monmouth and State of New Jersey

BEGINNING at the low water mark at the Southwest corner of lands formerly belonging to Mrs. E. M. Bell, now deceased, about 55 Feet southwardly from a marble monument on the top of the bank along Shark River; thence (1) by and along the Westerly line of said land North 44 Degrees and 23 Minutes East 1433 Feet more or less to the middle of a public road or highway leading from Hamilton to Avon aforesaid; thence (2) along the middle thereof North 31 Degrees and 30 Minutes West 192.6/10 feet; thence (3) continuing along said road North 51 Degrees and 45 Minutes West 75.8/10 Feet to the line of the lands belonging to Alexander Morris; thence (4) along said line North 85 Degrees and 53 Minutes West 86 Feet; thence (5) South 44 Degrees and 23 Minutes West 42.2/10 Feet; thence (6) North 51 Degrees and 57 Minutes West 92.6/10 Feet; thence (7) North 36 Degrees and 33 Minutes East 89.5/10 Feet

Exhibit D. 13.

to the centre line of the road or highway aforesaid; thence (8) along the centre line thereof North 51 Degrees and 45 Minutes West 159 Feet to the Easterly line of an Avenue 50 Feet in width, known as Windsor Avenue; thence (9) along the Easterly line of said Avenue and the prolongation thereof south 43 Degrees and 45 Minutes West 1205 Feet more or less to the edge of Shark River; thence (10) Southeasterly along the several courses of said river 660 Feet more or less to the place of BEGINNING, and containing 18 and 28/100 acres.

TOGETHER with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of said party of the first part, of, in, or to the above described premises and every part and parcel thereof, with the appurtenances, TO HAVE AND TO HOLD, all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, her heirs, and assigns forever, to the only proper use, benefit and behoof of the said party of the second part, her heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set her hand and seal the day and year first above written.

Inez H. McNulty (L. S.)

Exhibit D. 13.

Signed, Sealed and Delivered
in the presence of

John V Martin
Gerald Ronon

(SEAL)

(Documentary stamps attached.)

STATE OF PENNSYLVANIA,
COUNTY OF PHILA. } ss.

BE IT REMEMBERED, That on this Seventh day of September in the year of Our Lord One Thousand Nine Hundred and Twenty-three before me, a Notary Public for the Commonwealth of Pennsylvania, Residing in the City of Philadelphia, personally appeared INEZ H. McNULTY, (Single) who, I am satisfied is the grantor mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed:

John V Martin
(SEAL) Notary Public
Commissioner Expires February 27, 1925

Exhibit D. 13.

Acknowledgment (Notary).

STATE OF PENNSYLVANIA
County of Philadelphia, ss.

I, WILLIAM M. BUNN, Prothonotary of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following Certificate, do by my second deputy, Benton S. Bunn, authorized by Act of Assembly of May 24, 1917,

CERTIFY, That John V. Martin Esquire, whose name is subscribed to the certificate of the acknowledgment of the annexed Instrument and thereon written, was at the time of such acknowledgment a NOTARY PUBLIC for the Commonwealth of Pennsylvania, residing in the County aforesaid, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of Deeds or Conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said NOTARY PUBLIC and verily believe his signature thereto is genuine, and I further certify that the said instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania.

The impression of the seal of the Notary Public is not required by law to be filed in this office.

Exhibit D. 13.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed (SEAL) the seal of said court, this 7th day of September in the year of our Lord one thousand nine hundred and twenty-three (1923).

WILLIAM M. BUNN, Prothonotary.
Benton S. Bunn 2nd Dep. Prothonotary.
Durante Absentia, Secundum Legem.

DEED.

Inez H. McNulty (Single)
To
Irma Klophaus

Dated Sept. 1923

Received in the Clerks Office of the County of Monmouth on the 25 day of October A. D., 1923, at 1 o'clock, in the forenoon and recorded in Book 1238 of Deeds for said County, on pages 254 &c

Joseph McDermott
Clerk

Charles Jones,
738 Broad St.,
Newark, N. J.

Compared

Exhibit D. 14.

EXHIBIT D. 14.

THIS INDENTURE,

Made the 15th day of September in the year of Our Lord One Thousand Nine Hundred Twenty-three

BETWEEN JAMES I. GULICK & Nellie Marigold GULICK, his wife, of the City of Los Angeles in the County of Los Angeles and State of California of the First Part;

AND IRMA KLOPHAUS, of the City of Newark in the County of Essex and State of New Jersey of the Second Part:

WITNESSETH, That the said party of the first part, in consideration of the sum One Dollar and other valuable considerations, lawful money of the United States of America, to them in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm, unto the said party of the second part, and to her heirs and assigns forever, ALL the right, title and interest of the parties of the first part in the tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Neptune City in the County of Monmouth and State of New Jersey

BEGINNING at the low water mark at the Southwest corner of lands formerly belonging to Mrs. E. M. Bell, now deceased, about 55 Feet Southwardly from a marble monument on the top of the bank along Shark River; thence (1) by and along the Westerly line of said land

Exhibit D. 14.

North 44 Degrees and 23 Minutes East 1433 Feet more or less to the middle of a public road or highway leading from Hamilton to Avon aforesaid; thence (2) along the middle thereof North 31 Degrees and 30 Minutes West 192.6/10 Feet; thence (3) continuing along said road North 51 Degrees and 45 Minutes West 75.8/10 Feet to the line of the lands belonging to Alexander Morris; thence (4) along said line North 85 Degrees and 53 Minutes West 86 Feet; thence (5) South 44 Degrees and 23 Minutes West 42.2/10 Feet; thence (6) North 51 Degrees and 57 Minutes West 92.6/10 Feet; thence (7) North 36 Degrees and 33 Minutes East 89.5/10 Feet to the centre line of the road or highway aforesaid; thence (8) along the centre line thereof North 51 Degrees and 45 Minutes West 159 Feet to the Easterly line of an Avenue 50 Feet in width, known as Windsor Avenue; thence (9) along the Easterly line of said Avenue and the prolongation thereof south 43 Degrees and 45 Minutes West 1205 Feet more or less to the edge of Shark River; thence (10) Southeasterly along the several courses of said river 660 Feet more or less to the place of BEGINNING, and containing 18 and 28/100 acres.

TOGETHER with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof,

AND ALSO, all the estate, right, title interest, property, possession, claim and demand whatsoever, as well in law as in equity, of said party of the first part, of, in, or to the above described premises and every part and parcel thereof, with the appurtenances, TO HAVE

Exhibit D. 14.

AND TO HOLD, all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, her heirs, and assigns forever, to the only proper use, benefit and behoof of the said party of the second part, her heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

James I. Gulick (SEAL)
Nellie Marigold Gulick (SEAL)

Signed, Sealed and Delivered in the presence of

Thomas A Sanson

(Documentary Stamp Attached)

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } *ss.*

BE IT REMEMBERED, That on this fifteenth day of September in the year of Our Lord One Thousand Nine Hundred and Twenty-three before me, Thomas A. Sanson, a Notary Public, personally appeared JAMES I. GULICK and Nellie Marigold GULICK, his wife, who, I am satisfied are the grantors mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed: And the said Nellie Marigold GULICK, being by me privately examined, separate and apart from her husband, she acknowledged that she signed,

Exhibit D. 14.

sealed and delivered the same as her voluntary act and deed, FREELY, without any fear, threats or compulsion of her said husband.

Thomas A Sanson
(SEAL) Notary Public
In and for the County of Los Angeles,
State of California.
My Commission Expires October 22nd, 1926

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES, } ss

I, L. E. LAMPTON, Clerk of the County of Los Angeles, and Clerk of the Superior Court in and for said County, do hereby certify that the said Court is a Court of Record; that Thomas A. Sanson, whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, was at the time of taking the same a Notary Public in and for said County and State, duly commissioned and sworn, and qualified to act as such; that as such Notary Public he was at the time of taking such acknowledgement duly authorized by the laws of the State of California to take the acknowledgments and proof of deeds or conveyances for land, tenements or hereditaments in said State of California; that I am well acquainted with the handwriting of said Thomas A. Sanson and verily believe his signature to the same is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Los Angeles, in said County of Los Angeles, this 29 day of Oct 1923

L E Lampton Clerk.

Exhibit D. 14.

DEED.

JAMES I. GULICK and
GULICK, his wife,

TO

IRMA KLOPHAUS,

Dated September 15th 1923

RECEIVED in the Clerks Office of the County of Monmouth on the 7th day of November A. D., 1923, at 9:20 o'clock, in the forenoon and recorded in BOOK 1241 of DEEDS for said County, on pages 90 &c.

Joseph McDermott
Clerk

COMPARED

Charles Jones,
738 Broad St.,
Newark, N. J.

Exhibit D. 15.

EXHIBIT D. 15.

Year	Tax	Cost & Int.	%	J. D. Carton	Int. to Date	Total
1911	107.25	12.20	12	9/28/12	160.40	280.09
1912	136.50	16.87	12	11/22/13	184.84	338.21
1913	Tax Certificate was assigned by Carton to Gulick					
1914	155.12	15.30	12	12/28/15	162.75	333.17
1915	169.05	15.87	8	10/17/16	105.80	290.72
1916	169.96	13.61	8	12/11/17	88.11	271.68
1917	195.23	22.52	8	3/22/19	81.77	299.52
1918	188.15	26.49	8	7/23/20	57.95	272.59
1919	155.48	27.36	8	1/20/21	42.37	225.21
1920	199.53	30.22	8	8/26/22	23.74	253.49
1921	266.94	44.56	8	7/30/23	9.35	320.85
						2885.53

Gave to Frank Bennett (Collector of Taxes) of the borough of Nep. City Monmouth Co. N. J. certified check Dec. 13/23 for the total amount $2885.53

Received Dec. 12/23 of Eichengreen Land Co. Inc. a check in the amount of $2885.53 to cover taxes as above, the same received without any obligation to the Collector of borough of Nep. City, to be tendered to purchaser of tax sale for his acceptance (Signed A. Frank Bennett, Coll.)

Year	Tax	Int.	Paid to	Ass. to	Int.	Paid by	Total
1922	356.30	8%	Nep. City	McNulty	38.00	Eichengreen Land Co., Inc.	394.30
1923	361.80	8%	"	"	9.65	"	371.45

Paid Dec. 27th/1923 $765.75

Recd from Eichengreen Land Co check as above stated

A Frank Bennett Jr
Collector

Exhibit D. 16.

EXHIBIT D. 16.

EICHENGREEN LAND CO., INC.
229 West 42nd Street
New York

December 21, 1923

Mr. A. Frank Bennett, Jr.,
Avon-by-the-Sea, N. J.

Dear Sir:

On December 13, 1923, I paid you in behalf of the Eichengreen Land Co., Inc. $2885.53 in full payment of all taxes and in full redemption of all tax sales made to James D. Carton for taxes for the years 1911, 1912, 1914, 1915, 1916, 1918, 1919, 1920 and 1921.

We notice that your receipt reads "without any obligation to the collector." This is to put myself on record that this money was paid to you, as I stated to you at the time, in full payment of these taxes, and I gave you the money because Mr. Carton refused it. Under the statute, you are o*g*liged to receive it and hold it for the benefit of the purchaser of the tax sale, and after payment of the money to you in this manner, the premises now owned by the Eichengreen Land Co., Inc. are free and clear from the lien of these taxes. I am writing you this because I did not notice that the receipt read as it apparently does.

Yours truly,

EICHENGREEN LAND CO., INC.

Pres.

Exhibit D. 17.

EXHIBIT D. 17.

EICHENGREEN LAND CO., INC.
229 West 42nd Street
New York

December 27, 1923.

Mr. A. Frank Bennett,
Collector of Delinquent Taxes,
Borough of Neptune City, N. J.

Dear Sir:

Pursuant to Section 57 of "an Act to provide for assessment and collection of taxes approved April 8, 1903, and as subsequently amended by chapter 273 of the laws of 1916." We are sending you herewith, certified check for $259.83, to pay for the taxes on property known as Block 37, Plot 2, south side of Sylvania Avenue, 18.25 acres, assessed to Inez McNulty, which property was sold October 14, 1911 for the taxes for the year 1910 to H. S. Kinmonth.

I have made inquiries of the devisees of H. S. Kinmonth, and they seem to know nothing about this sale, and at any rate have not possession of the original certificate, I have been informed by you that James D. Carton claims to hold an assignment of this tax certificate. I have heretofore offered to pay to James D. Carton the amount of any lien, together with interest that he has on these premises, and he has refused either to give me a statement or accept payment. We are therefore, pursuant to the statute, sending you a check, certified in order that the above land may be relieved of these taxes.

Yours truly,
EICHENGREEN LAND CO., INC.

President.

Exhibit D. 18.

Year	Tax	Cost & Int.	%	Sold to H. S. Kinmouth	Int. to Date	Total
1910	95.00	10.63	12	10/14/1911	154.20	259.83

Paid 12/27/23 to Frank Bennett—Collector of Taxes

10

EXHIBIT D. 18.

EICHENGREEN LAND CO., INC.
229 West 42nd Street
New York

June 12, 1924.

Mr. James D, Carton,
Asbury Park, N. J.,

Sir:—

20

I handed your notice of the 10th inst., to council, in view of fact, that we hold a title policy guaranteeing that our company holds a title in fee, free and clear of any claim or incumbrance whatsoever, your threat concerns them more than it does us.

You may take such action as you may be advised to take, but in view of the above, it might be well to keep in mind that you will be the trespasser.

30

Yours truly,

EICHENGREEN LAND CO INC.,
Morris Eichengreen President.

40

New Jersey Court of Errors and Appeals

Between

JAMES D. CARTON,
Complainant-Appellant,

and

MORRIS EICHENGREEN and EICHENGREEN LAND COMPANY, INC.,
Defendants-Respondents.

On Appeal from Decree In Chancery Dismissing Bill of Complaint.

BRIEF FOR APPELLANT

ROBERT H. McCARTER,
Counsel for Complainant-Appellant.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

NOTE WITH REFERENCE TO EXHIBITS.

Exhibits C. 1 and C. 2 are abstracts of title to the property in dispute, admitted in evidence by consent (page 44), in lieu of the deeds and documents therein referred to.

Exhibits C. 3, from pages 291 to 315; C. 4, from pages 315 to 331, and C. 5, from pages 331 to 353, are letters produced and offered by the complainant, C. 3 being correspondence between the complainant and representatives of the McNulty interest in the property; C. 4 being correspondence between the complainant and representative of the Gulick interest in the property, and C. 5 being correspondence between the complainant and Mrs. Housewright or her attorney, Cunningham.

The complainant, page 68, before any question as to the completeness of these files, volunteered the information that he had been unable to find all the letters. See also page 102. On his cross examination the complainant's attention was directed to the fact that the letter of Mr. Ronon of September 11, 1923 (included in Exhibit C. 3) referred to complainant's letter of September 6th, which was not produced. A more thorough search instituted by complainant over night, among his letter books in the cellar of the building where his office is located, resulted in the production (page 122) of two letters which the defendants' counsel had produced on his cross examination, and also the missing letter of September 6th above referred to, which is of great importance to the complainant.

Exhibit C. 11 contains some of the tax deeds to the complainant, which are also exhibited in P. 14 (page 397), the title search procured by the defendant, and offered in evidence by the complainant (page 160).

New Jersey Court of Errors and Appeals

Between JAMES D. CARTON, *Complainant-Appellant,* *and* MORRIS EICHENGREEN and EICHENGREEN LAND COMPANY, INC., *Defendants-Respondents.*	*On Appeal from Decree In Chancery Dismissing Bill of Complaint.*

BRIEF FOR APPELLANT.

This is an appeal from a decree of the Court of Chancery, advised by Vice-Chancellor Backes, directing the dismissal of the bill filed by the well-known lawyer, Mr. James D. Carton of Asbury Park, seeking to have it adjudged that the title to lands in Monmouth County, standing in the name of the Eichengreen Land Company is held in trust for him, and seeking a conveyance thereof from the company to himself.

The property in question, a tract of about eighteen acres of unimproved land, part of which is wooded, formerly belonged to one Henry M. Bennett, who died in 1902, leaving a will admitted to probate in Monmouth County, by which a power of sale was bestowed upon his executors. By virtue of this power, the executors sold the property to one Richard M. Gulick, and thereafter the title, by mesne conveyances, finally, by deed dated January 12, 1910, reached Richard M. Gulick, and Margaret A. McNulty, as tenants in common. The complainant looked after the legal matters in con-

nection with these conveyances, and the formation of a corporation known as the Lynore Land Company, to which, by deed dated August 17, 1903, the property was conveyed, and which in turn was the grantor to Richard M. Gulick and Margaret A. McNulty (p. 246) above referred to. The complainant likewise, in association with the late Edmund Wilson, vigorously defended in the courts an attack made by one Laura Biggar upon the management of the Bennett Estate, including the transfer of the *locus in quo* by Bennett's executors. The Biggar litigation went to this court. The case is reported in 85 New Jersey Equity 436 and 602. The affirmance here was on the 6th of March, 1916. On October 14, 1911 (p. 364) the Township Collector sold the *locus in quo* to one Kinmonth, and the latter in turn, on December 30, 1911, quit claimed his interest by quit claim deed (p. 363) to the complainant. This deed was recorded on the 23rd of January, 1912, in Book 920 of Deeds, page 415. The complainant later purchased the property when sold for subsequently accruing taxes. Most of these tax deeds are recorded. The property adjoined other lands owned by the complainant, and after the latter's acquisition of these tax titles, he exercised acts of ownership by cleaning up the underbrush, and thereby the complainant says (p. 93) the public probably gained the idea that he was the owner of the property. The complainant from time to time expended nearly $4,000 in the acquisition of these tax titles, and was never paid by the Gulick interest in the property for his services in connection with the Biggar litigation.

It is conceded that early in 1922, Eichengreen approached the complainant expressing a desire to buy the property of him. A difference exists between the evidence of the complainant and defendant respectively, respecting what occurred at these negotiations. Eichengreen admits he offered the complainant $20,000 for the property and offered to put up $500 earnest money, and that the complainant refused to accept the money or give a deed because, as Eichengreen contends, the complainant said there was a small interest outstanding, title to which the complainant had not yet acquired. Carton on the other hand, contends that he explained to Eichengreen what indeed he knew, that the only interest he, Carton, had in the premises was derived from the tax deeds, and that until he acquired a complete title, either by foreclosing the tax titles, or acquiring deeds from the owners, he was unwilling and unable to say or do more than verbally agree to sell the property to Eichengreen for $25,000 when his title was perfected.

It is conceded by Eichengreen, that Carton undertook to acquire the outside interests, and that during the year and a half that elapsed before the rupture between the parties, Eichengreen was frequently urging the complainant to hasten in his acquisition of a complete title to the property, so that the arrangements could be closed. In the latter part of August 1923, Eichengreen met Carton, and again a sharp difference exists between them as to what then occurred. Carton contends that being taunted by Eichengreen with reference to the delay, he explained the reason therefor to Eichengreen, and laid before him a letter dated August 16, 1923 (p. 323) from Mr. Lawrence, the attorney of the Gulick interest, to Carton, in which was fully

disclosed the names of the then owners of the Gulick interest, as well as abstracts of the last wills of former owners of that interest; and that at the same time he told Eichengreen that if he thought he could make more speed than he, Carton, had succeeded in accomplishing with the owners, he, Eichengreen, was at perfect liberty to do so, and to that end gave him the names and addresses of the attorneys respectively representing the Gulick and McNulty interests.

The theory of the bill of complaint is that Eichengreen, thus apprised by Carton of the whereabouts of the owners for the purpose of accelerating the consummation of the arrangement between Carton and Eichengreen, immediately went to those owners and surreptitiously obtained deeds for those interests. Some months later, while the complainant was still endeavoring to acquire title, he learned of the fact that Eichengreen had, as the bill claims, thus improperly acted, and the complainant relying upon the principle established by this court in the case of *Rogers* v. *Genung,* 76 New Jersey Equity 306, to the effect that where one is authorized, or undertakes to act for another in any matter of trust or confidence, he shall not in the same matter act for himself against the interest of one relying upon his integrity. Eichengreen, on the other hand, disputes these facts with reference to the interview, and the disclosures there made, and claims that he became disgusted at the delay and acquired, from independent sources, the necessary information, which enabled him to procure the deeds.

Before examining carefully the evidence for the purpose of concluding who is telling the truth about this very important matter, it might be well to advert briefly to the law which, I

think, applies. The theory on which this bill is filed is, as before stated, that enunciated by this court in *Rogers* v. *Genung,* 76 N. J. Equity 306. There Genung, a real estate agent, had been employed by Rogers to secure, if possible, title to two pieces of land in Morris County, both of which Rogers was anxious to secure. During the course of these negotiations, Genung took title in his wife's name to one of these tracts, which he sought to hold against Rogers. Rogers filed his bill against Mr. and Mrs. Genung, on the theory that notwithstanding Genung had used his wife's money in the acquisition of the property, he had, under the circumstances, no right to acquire title therein, either for himself or his wife, adverse to that which Rogers desired, and it was decreed that upon his being reimbursed for the money for the outlay of the wife, he should convey her title to Rogers. The opinion says:

> "The general rule is that he who undertakes to act for another in any matter of trust or confidence shall not in the same matter act for himself against the interest of one relying upon his integrity. *Gardner* v. *Ogden,* 22 N. Y. 327, and cases there cited. *Davoue* v. *Fanning,* 2 Johns. Ch. 260. 'So if an agent employed to purchase for another, purchases for himself, he will be considered as the trustee of his employer.' *Story Eq. Jur.* §316.
>
> "As was said by Vice Chancellor Dodd, in *Wright* v. *Smith,* 23 N. J. Eq. (8 C. E. Gr.) 106: 'The rule extends to all cases in which confidence has been reposed, and applies as strongly to those who have gratuitously or officiously undertaken the management of another's property, as to those who are engaged for that purpose and paid for it.' In that case the complainant was anxious to purchase an interest in certain mineral lands, and the fee of other lands, and made known his wishes to Smith, the defendant, and told him what sums he would be willing, if necessary, to pay. Smith undertook, as a friend to negotiate for their purchase, because it was thought he could buy to a better advantage than the complainant, who was to take title through Smith if he purchased. Smith purchased at a much less price than Wright had said he was willing to pay if necessary, but led Wright to believe that he had paid the highest sum he had intimated he was willing to give, and the bill was filed to bring Smith to an account. In holding the defendant to an accounting the vice chancellor said, that the fact that Smith was not formally constituted an agent

> with authority to bind the complainant, or that his agreement to act for him was not formally made, 'are points, which, if true, are of no sort of importance, nor is it important that no agreement was made to compensate him for his services. It is sufficient that he accepted and held a situation of trust in reference to procuring the lands: Every man has a trust to whom a business is committed by another. Every man is a trustee whose office is to advise or to operate, not for himself, but for others.' Therefore, if Genung had made the contract in his own name, his relations with the complainant were such that complainant had a right either to affirm or repudiate the contract, and if he manifests his desire to affirm his agent cannot refuse to transfer it to him."

This court, from whose opinion the foregoing is taken, reversed the decree of Vice-Chancellor Stevens in this case. His opinion is found in 75 N. J. Equity 13. The Vice-Chancellor, referring to some early New Jersey cases by which he felt bound, notwithstanding the modern English rule, held to the contrary.

In *Harrop* v. *Cole,* 85 N. J. Equity 32, the facts as found by the Vice-Chancellor were:

> "I find that the complainants verbally employed the defendant to negotiate on their behalf the purchase of a parcel of land in Passaic County. The defendant thus charged with this business in which he had the confidence of his employers, violated his duty, purchased the land with his own money and took a deed thereof to himself."

Vice-Chancellor Stevenson said:

> "In such a situation the defendant became a constructive trustee for the principal's benefit upon the payment of the price, and that in such a case the principal might establish a constructive trust by showing a verbal agency contract, or a written contract, or no contract at all, since the trust arises from the agent's representative status and the confidence necessarily reposed in him by the principal."

Relying upon *Rogers* v. *Genung,* a decree was entered in accordance with these views, which decree was affirmed by the Court of Errors and Appeals in 86 N. J. Equity 250. See also *Nagel* v. *McCoy,* 94 N. J. Equity 790 (E. & A.)

The cited case is only illustrative of the rule. The principle applicable is, quite independently of any relation of principal and agent out of which the responsibilities of trusteeship often

arise, and is to the effect that where, owing to the relation of the parties, an advantage is taken and rights acquired injurious to the one imposing confidence, the Court will hold that property rights thus acquired in fraud of the party, will be deemed to be held in trust for him.

Thus in Vol. 1, *Pomeroy's Equity Jurisprudence, Section* 155, speaking of trusts arising by operation of law, the author says:

> "If one party obtains the legal title to property, not only by fraud or by violation of confidence or of fiduciary relations, but in any other unconscientious manner, so that he cannot equitably retain the property which really belongs to another, equity carries out its theory of a double ownership, equitable and legal, by impressing a constructive trust upon the property in favor of the one who is in good conscience entitled to it, and who is considered in equity as the beneficial owner."

The same author in Vol. 3, Section 1044, speaking of constructive trusts, says:

> "Constructive trusts include all those instances in which a trust is raised by the doctrines of equity for the purpose of working out justice in the most efficient manner, where there is no intention of the parties to create such a relation, and in most cases contrary to the intention of the one holding the legal title, and where there is no express or implied, written or verbal, declaration of the trust. They arise when the legal title to property is obtained by a person in violation, express or implied, of some duty owed to the one who is equitably entitled, and when the property thus obtained is held in hostility to his beneficial rights of ownership. As the trusts of this class are imposed by equity, contrary to the trustee's intention and will, upon property in his hands, they are often termed *trusts in invitum;* and this phrase furnishes a criterion generally accurate and sufficient for determining what trusts are truly 'constructive.' An exhaustive analysis would show, I think, that all instances of constructive trusts properly so called may be referred to what equity denominates fraud, either actual or constructive, as an essential element, and as their final source. Even in that single class where equity proceeds upon the maxim that an intention to fulfill an obligation should be imputed, and assumes that the purchaser *intended* to act in pursuance of his fiduciary duty, the notion of fraud is not invoked, simply because it is not absolutely necessary under the circumstances; the existence of the trust in all cases of this class might be referred to constructive fraud. This notion of fraud enters into the conception in all its possible degrees. Certain species of the constructive trusts arise from actual fraud; many others spring from the violation of some positive fiduciary obligation; in all the remaining instances there is, latent perhaps, but none the less real, the necessary element of that un-

> conscientious conduct which equity calls constructive fraud. Courts of equity, by thus extending the fundamental principle of trusts—that is, the principle of a division between the legal estate in one and the equitable estate in another—to all cases of actual or constructive fraud and breaches of good faith, are enabled to wield a remedial power of tremendous efficacy in protecting the rights of property; they can follow the real owner's specific property, and preserve his real ownership, although he has lost or even never had the legal title, and can thus give remedies far more complete than the compensatory damages obtainable in courts of law. The principle is one of universal application; it extends alike to real and to personal property, to things in action, and funds of money. Salutary and efficient as the principle is, however, many of the constructive trusts which it creates are only trusts *sub modo;* they have little resemblance, in their essential nature, to express trusts. In applying this principle, care should be taken to distinguish between actual trusts and those relations which are only trusts by way of metaphor; between persons who are true trustees holding the legal title for a beneficial *owner*, and those who simply occupy a position which is analogous in some respects to that of a trustee. The use of these terms to designate relations and parties which have no essential element in common with actual trusts and trustees can only produce confusion and inaccuracy."

In *1 Perry on Trusts,* Section 166, the rule is thus stated:

> "If a person obtains the legal title to property by such arts or acts or circumstances of circumvention, imposition, or fraud, or if he obtains it by virtue of a confidential relation and influence under such circumstances that he ought not, according to the rules of equity and good conscience as administered in chancery, to hold and enjoy the beneficial interest of the property, courts of equity, in order to administer complete justice between the parties, will raise a trust by construction out of such circumstances or relations; and this trust they will fasten upon the conscience of the offending party, and will convert him into a trustee of the legal title, and order him to hold it or to execute the trust in such manner as to protect the rights of the defrauded party and promote the safety and interests of society. Such trusts are called *constructive* trusts. They differ from other trusts in that they are not within the intention or contemplation of the parties at the time the contract is made from which they are construed by the court, but they are thrust upon a party contrary to his intention and against his consent."

In *Carr* v. *Craig,* (Ia), 116 Northwestern Reporter 720, there was no relation of principal and agent, but a mere intimate friendship between the parties. One of them taking advantage of information derived by a confidence imposed in his friendship, acquired, as against the other, rights in property which the court re-

stored to the other. The court, after adverting to the well settled rule that equity will convert a person taking advantage of his relationship with another and acquiring as against him, and in fraud of his rights, interests in property, said:

> "Confidential relations between the parties are not essential to give rise to such constructive trust, although they are often referred to as the means by which the fraud is perpetrated. The breach of confidence which a court of equity will construe as constituting fraud is the procurement of title, by the consent of another and to the latter's prejudice, on a fraudulent promise as to the disposition which will be made of the property after title is procured, and the violation of the agreement thus made in attempting to hold the title free from such constructive trust."

A comprehensive discussion of the whole subject is found under the title "Trusts" in 39 *Cyc.* page 172, section 6, *et seq.* Reference is also made to 15 American and English Encyclopedia of Law, Second Edition, page 1187, under the title "Implied Trusts." It is there stated:

> "Where there existed between the parties a confidential relationship *aside from the mere employment of the one as agent to purchase for the other*, so that the latter was warranted in confiding in the honor of the former, a constructive trust has been enforced."

I contend that the proofs demonstrate that in the interview of August 20, between the complainant and defendant, the former, being taunted concerning the slowness with which he was progressing, and in the acquisition of the desired title, was led to disclose to the latter, the names and addresses of the owners of the title, or the persons representing them, for the purpose, if the latter desired, of enabling him to accelerate matters and bring about the end which both desired. The defendant availed himself of that information, which would never have been disclosed had there not existed the closeness which a year and a half had engendered between them touching this matter. Suppose the defendant had said he was through and withdrew from the relation? Can it be imagined for

a moment that Carton would have shown his hand? Eichengreen was apprised of the situation and was authorized, if he thought he could accelerate it, to go and do so, with, of course, but one purpose and object. He not only did not before the disclosure do anything to arouse in the mind of Carton the idea that their relations of a year and a half had suddenly terminated, but he left and at once, without notice to Carton, availed himself of the information thus acquired in hostility to Carton, without at any time putting an end to the relations or informing Carton of what he was doing, and it was not until months after the thing had been consummated that Carton, learning from other sources of what had occurred, confronted the defendant with the facts.

The relations between the complainant and defendant during the year and a half that elapsed from March, 1922, until September, 1923, were more than friends working with a common desire, and for a desired end. They each had relations which the law recognizes in the property. Carton was the owner of tax titles thereof, which could ripen into complete titles. Eichengreen had so definite an arrangement with reference to the land as that he had offered to pay down $500 earnest money, had begged for a deed, and had assumed acts of ownership and possession. This very co-relationship forbade Eichengreen, as against Carton, from violating the trust arising therefrom and acquiring any interest in hostility to his co-tenant. The responsibility of the parties with relation to the property was analogous to that which the law imposes on co-tenants, or all persons who jointly claim interests of any kind

in the same property. In *Rothwell* v. *Dewees*, 69 U. S. (2 Black) 613, Mr. Justice Miller says:

> "A purchase of an outstanding title or interest in property by a person sustaining certain relations to others interested in the same property, should, at the option of the latter, inure to their benefit."

There the Supreme Court found that there was sufficient community of interest between the husband of one tenant in common and another tenant in common, to prevent the husband from acquiring an interest adverse to the other tenant in common. A leading case is *Van Horne* v. *Fonda*, 5 Johns. Chy. Reports 407, decided by CHANCELLOR KENT holding that one tenant in common cannot, as against his co-tenant, acquire an adverse interest shown not to be based upon equality of the estates between the two co-tenants but "on a community of interest in a common title which created such a relation of trust and confidence between the parties that it would be inequitable to permit one of them to do anything to the prejudice of the other in reference to the property so situated." Again, in 1 *Spence's Equitable Jurisdiction* *page 512, we find:

> "Upon a principle analogous to that which prevails as to trustees, if a person having a limited interest in leasehold property under a settlement avails himself of the situation, in which the settlement has placed him, to renew the term on his own account, he will be held to be a trustee for the benefit of all the persons interest in the old lease."

This rule was held in *Booker* v. *Crocker*, 132 Federal Reporter 7, by the Circuit Court of Appeals of the 8th Circuit, to apply to co-bondholders secured by the same mortgage; and in *Turner* v. *Sawyer*, 150 U. S. 578, the purchaser under a judgment against the owner of an interest in a mine, whose rights had not yet ripened into legal tenancy in common, was, nevertheless, held by the Supreme Court of the United States, to occupy such a position with reference

to the other as that in analogy to the principle prevailing among co-tenants, he could acquire no interest adverse to that of the other.

In *Silverman* v. *Sun Rise Pictures Corporation,* 273 Federal Reporter 909, the Circuit Court of Appeals held that the relation between the next of kin of a deceased owner of a copyright was such under this rule as to prevent one or more of the next of kin acquiring adverse interests to the other in the copyright.

In equity, Carton and Eichengreen were tenants in common of the property. Each had rights therein which could ripen into legal estates, and neither, as against the other, could acquire interests adverse to the other, but would necessarily be held by the Court as trustee thereof for the other. In *Nestor* v. *Gross,* 66 Minn. 371, 69 Northwestern Reporter 39, the Court held:

> "If one party obtains the legal title to property not only by fraud, or by violation of confidence, or of fiduciary relations, but in any other unconscientious manner, so that he cannot equitably retain the property which really belongs to another, equity carries out its theory of a double ownership, equitable and legal, by impressing a constructive trust in favor of the one who is in good conscience entitled to it, and who is considered in equity as the beneficial owner, whenever one person is placed in such relation to another by the act or consent of that action, or the act of a third person, or of the law, that he becomes interested for him, or interested with him."

We will now turn to the proofs bearing upon the transactions that occurred in the month of March, 1922, giving rise to this litigation. It must be rememberd that it is undisputed that Eichengreen and Carton both had summer homes in the immediate neighborhood of this property (p. 45) and that a somewhat intimate acquaintance had grown up between them, and (p. 55) that in these talks with Eichengreen, reference was often made to this property, the latter always asking Carton when he was going to clean it up, and

why he did not develop it, to which Carton replied he was not yet in a position to develop it, as he had not yet acquired the title.

Carton's testimony may be abstracted as follows:

On page 56, he swears that the defendant came to his office in March, 1922, and definitely proposed to buy the property, offering him $20,000 cash, and that he replied he could not sell it; that he had not completed his title, and even if he could, he would not sell it for that sum; that later Eichengreen increased his offer to $22,500, to which he made the same response, whereupon Eichengreen desired to know what he would sell for, and Carton replied that after he had completed his title, the lowest he would take would be $25,000, reserving a small piece 200 feet by 300 feet on the southeast corner. Carton says he (Eichengreen), agreed to pay him this sum.

"I told him that I couldn't enter into any written agreement with him at that time and it could only be a conditional agreement, depending on my either foreclosing my tax title or getting the deed from the two interests that I was then negotiating for. He insisted that would be all right, wanted to pay me $500 right there. I told him that he could not pay me anything nor would I enter into any written contract with him, that I hoped at that time to soon be able to get these two interests which I had been negotiating for and if I did not I would foreclose my tax title that I had been carrying then for some ten or twelve years and upon getting title he could have it for $25,000, less this 200 feet. He was to pay $10,000 cash at the time, and mortgage with release clauses in for $15,000. He wanted to know if he could bank on that and I told him he could. He wanted to shake hands on it and we did shake hands on it." (Pages 56 and 57.)

Carton says (p. 57):

"Q Where was this? A In my office.

Q What time, now? A My best recollection is that it was the latter part of March, 1922—in March sometime.

Q Anything said about his taking possession? A Yes, sir; the understanding was—he was very anxious for me to close it up—the understanding was that he would take possession, that he wanted to have a survey made at once, and he did have a survey made; that he wanted to get it cut up, trim up the brush on it and make some arrangements for draining, because a lot of work had to be done in draining and he did take possession in having a survey made and doing some trimming.

Q Do you know who made the survey? A Mr. Naughright Rogers made a lead pencil sketch for him showing the layout. I know that certainly. Mr. Eichengreen came to me with this sketch sometime during that summer of 1922 to get my consent to change—he was laying out a street—he was laying out a street at right angles to the main road—the borough was then about putting down a sidewalk and curb in front of it on the main road and I remember meeting him there one day with this sketch—he had this sketch prepared by Rogers showing where a street went and asked me if that would be agreeable—and the street was laid showing that opening, and it is there yet, of a proposed street in this field.

Q You didn't hire Rogers? A No.

Q And you didn't pay him? A No.

Q When do you say this conversation was when he undertook to have a survey made and so forth? A That was—he started to have his survey made immediately after our agreement in March, 1922, because he saw me several times thereafter during that summer, importuning me all the time to hurry the matter up, that he wanted to start the development going."

On page 59, Carton further swears that during the following summer, he met Eichengreen and some other parties upon the premises, and that the object of the interview (p. 59) was to get his consent to the layout that Eichengreen had had made of the property and shown on the map, with particular reference to a proposed street; that Eichengreen frequently visited him between March, 1922, until August, 1923:

"to see how I was getting along—to see what I had heard from the people I was corresponding with, and when I was going to be able to take care of the matter, and criticized me on two or three occasions for waiting for these people, and suggesting that I do what we originally suggested, foreclose the tax title and have done with it, which I hesitated doing. (P. 60.)

"Finally he came to my office in—I think about the middle or latter part of August, 1923, and he came there for a show-down, apparently. He says I must close this up within a month or the thing would be off, and I was—didn't want to be hurried on the matter. I told him if he wanted the thing off, it could be off right then. I wasn't anxious to sell. He insisted he wanted to carry out his arrangement by his contract with me and I had to carry it out. I had to do something. The land had gotten valuable then. He was developing next door and he wanted it for part of his development. He first threatened me and then importuned me to get the matter closed up within a month. I had then about completed my arrangements with both the other interests and I told him I thought I could clean it up within a month. At that time I told him what I was doing; told him of the efforts I had been making, and when he criticized me for being slow, said he had waited a year and a half. I told

him that if he could do any better be could go on and see if he couldn't hurry the thing up for me, and on that—I had a letter on my desk at that time from some of these attorneys, Mr. Moorsehead and Mr. Lawrence, telling me what he was doing—the difficulty he was having in getting his parties together, and told him that Mr. Lawrence was representing one interest, the Gulick interest, and Mr. Ronon was representing the McNulty interest and told him exactly what I was doing.

Q Perhaps that is the letter (handing witness paper). A Yes, sir; that is the letter.

Q Now, have you before you a letter which it is your recollection you showed him on this occasion? A Yes, sir.

Q You are referring to the letter from whom to whom and in what package of exhibits—package of Exhibits C. 4? A It is a letter dated August 16, 1923, from John J. Lawrence to James D. Carton, and it has relation to the title to this property.

Q And that letter contains the names of the people? A The names of those interested—the names of those holding the Gulick interest.

Q Well, what occurred? A He stated that he might hurry the matter. He took the name of Mr. Lawrence and his address and the name of Mr. Ronon and his address—I told him that. He suggested he might see them. I told him it wasn't necessary to go see them, that I had about concluded the matter, but I did tell him during the conversation if he could do any better, if he could hurry the thing faster, go on and hurry it up himself, and it turned out after that that is exactly what he did.

Q The letter you have alluded to is this letter from John J. Lawrence to James D. Carton, dated 342 Madison avenue, New York City, August 16, 1923? A Yes, sir."

This letter is found on page 323 and should be read in full, together with the extracts of the several wills attached to it. Such a perusal will disclose the fact that a chain of title of the property had previously been sent the writer, Mr. Lawrence, by the complainant, which chain showed the title of the Gulick interest in the name of John C. Gulick; that the latter had died and had left four heirs who are named, one of whom had died leaving a will by which her husband was her beneficiary; and the residences of the others are given and the statement made that a Mrs. Housewright and James C. Gulick have an interest in the property. Mr. Lawrence, the writer, inquires if Carton will give $2,500 for the half interest in the property, adding:

"Let me know your views on the subject, and if they coincide with the above, I will send the deeds to you for

> approval and then dispatch them forthwith to the respective parties for execution, for they are expecting some word from me relative to this matter at any time."

On page 62 Carton says he continued his negotiations with these people and on August 17th, he wrote to Mr. Lawrence (p. 328) accepting the proposition to pay $2,500, adding:

> "I wish you would take the matter up with a view to whipping it into shape as speedily as possible."

Meantime, on April 10, 1923, Carton wrote Gerald Ronon, the Philadelphia attorney of the McNulty (the other half) interest, calling his attention to previous negotiations between them, and expressing a desire that he would take the matter up with his client and let Carton know "what they wished to do, one way or the other" (p. 308). On August 10, 1923, Ronon replies to a letter of August 3rd, which apparently had been written, but is not produced (p. 309):

> "At the present time, Miss Inez H. McNulty, one of the McNulty heirs, is away on a vacation and will not return until the 20th instant, when I will take up the matter with her and communicate with you at once,"

to which, on August 13th (p. 309), Carton had replied:

> "I will be obliged if you will then take the matter up with her and communicate with her at once, as it is imperative that something be done to close the matter out."

The foregoing was, of course, written before Carton's interview the latter part of August with Eichengreen before referred to. On August 22nd, shortly after such interview, Ronon writes Carton (p. 310) to the effect that the property had been conveyed by Mrs. McNulty to Inez McNulty's sister Frances, who later had conveyed the property to Inez. He also inquires what sum Carton would pay Miss McNulty for a quit-claim deed, or for what price he would transfer the property to her. On August 23rd, Carton replies (p. 311) he is willing to offer $2,000. On August 29th (p. 312), Ronon writes Carton saying he had endeavored to phone him without suc-

cess, and requesting that Carton, upon his return to the office, call Ronon on the phone so that "we may come to some definite arrangement."

Carton testifies (p. 111), that in the meantime he had a telephone talk with Mr. Ronon in which he raised his offer to $2,500 for the McNulty interest, and points to a memorandum in lead pencil on the original Ronon letter to him of August 29th "deed $2,500" as his memorandum of the interview. On September 6th he wrote Ronon:

> "As I am very anxious to get this matter closed out so that I can arrange for funds to adjust the taxes and outstanding assessment liens, I wish you would get your deed in shape and have it executed at your earliest opportunity and arrange an appointment with me for closing."

On September 11th, Ronon replies that Miss McNulty had sold the property to someone else (meaning, of course, Eichengreen). Carton replies (Exhibit D. 1, p. 416) next day expressing his surprise and indignation, and on November 8, 1923 (p. 313), he again writes inquiring for the name of the party to whom Miss McNulty had sold. This letter confirms Carton's statement that Eichengreen concealed the fact of his purchase (early in September) from Carton.

Carton was doing everything in his power to bring matters to a head with the counsel of the two owners, and the correspondence between him and both Ronon and Lawrence in the latter part of August shows how untrue are the statements of Mr. Jones in his evidence (pp. 199 and 211) to the effect that both Lawrence and Ronon in their interviews with him on behalf of Eichengreen, claimed they could make no progress with Carton.

The correspondence already quoted is better evidence of the facts in that regard than the hearsay testimony of Mr. Jones, who is the zealous counsel of Eichengreen. No one reading this

correspondence can question Carton's belief that his relations with Eichengreen still persisted.

Carton further swears (p. 62), that after taking a short trip to Massachusetts, he was informed in October or November, that Eichengreen had bought this property. He adds:

> "I immediately went out for him and met him on the street just in front of my office and asked him if it was true. He said it was, he had gotten tired of fooling with me. I felt rather warm about the matter and took him up in my office. We went up in my office. I took occasion to tell him what I thought about his conduct and he told me that he had been waiting a year and a half for me and took some pleasure in stating that he had done in one month what I didn't do in a year and a half; he had gone to see those parties, and he had cleaned the whole title up inside of a month and that he had paid them exactly the same sum I had agreed to pay them—$2,500 each. I told him it made no difference what he did, that he had a contract with me—he got this information from me; he knew this was my matter, that I was dealing with it, and that was my property. I told him whatever he paid for it I would return to him, but he should turn that deed over to me, that that was my property and I was going to have it. He was very cocky about the matter at first; then finally he said well, he would pay me my taxes. Of course, I laughed at that. Then he suggested that I had some trouble with the thing and had gone to some expenses with the thing and he would make some adjustment with me, which, of course, I did not listen to, and finally threw him out of the office."

In November following, Herbert Boggs, Esquire, wrote to Carton concerning the matter on behalf of Eichengreen. Some interviews and correspondence followed this, between Boggs and Carton (pp. 355 and 125). Later an interview took place between Eichengreen and Carton (p. 64) in which Carton said:

> "I made a demand for my property and told him what he had done, the advantage he had taken of the information I gave him, and that he was not to go to any expense; that that was my property and he should do nothing with it."

Carton's testimony on cross examination is found on page 89 and is important. He says, referring to the interview in March:

> "He had prior to that time spoken to me on several occasions casually about the property, asking me why I didn't develop it and clean up my title so that the property could be developed, and it would help the community there—help him. Then he came in on this occasion,

which I think was late in March, 1922, and wanted to buy it and I recalled the situation, which he knew, that I couldn't sell it, that I had never foreclosed my tax title, that there were these two outstanding interests that I hadn't taken over yet, and that I didn't want to foreclose the tax title. I wanted to get rid of those interests in some way; I didn't think they had much in it, but I wanted to give something to them, and he then made this offer. He said, 'That will be all right.' He said I could give him a deed and it would look better—he would start to develop it. I told him how utterly foolish that would be to give him a deed or for him to act under it, because it would be six months or a year or two years, if I didn't get the title, before I could get my tax title closed out.

Q How did the conversation come about, about giving a deed at that time; who suggested that? A Mr. Eichengreen suggested that, and suggested in every conversation after that to give him a deed for the property.

Q Did you tell him that you didn't have any right to give a deed under any circumstances? A I certainly did. I told him I didn't have any right any more than the tax right which wouldn't mean anything in taking title to develop a piece of property.

Q Did you tell him that you had nothing but a tax lien upon that property? A I told him I had a tax lien, which he well knew from prior conversations I had with him, and I told him I was under negotiations with both ends of the families that owned the fee, to get title from them.

Q Did you tell him that that was the only interest you had in that property?

Mr. McCarter: What?

Mr. Lane: A tax lien.

Witness: I told him that I had the tax lien; I said I was in possession of the property and had been for some ten or eleven years at that time and that I had negotiations under way to take care of the two outstanding interests; I told him there were two outstanding interests. I don't know if I told him who the interests were at that time. I did later on. He insisted that I should give him a deed. He says, 'You can clean that thing up.' He says, 'If you want to get the deed that way you can foreclose your tax title' and called me a fool for not doing it years before. His first offer was twenty thousand dollars cash. I said, 'There is no use of talking about twenty thousand dollars; I can't do anything at this time and won't deal with you until I get this thing cleaned up.' He then made the offer there that day or the next day.

The Court: We had all this. Do you want it again?

Mr. Lane: No.

Q Did you tell him that the interest you had in that property was solely that of holder of the tax sale? A I told him that I had—(interrupted).

The Court: Answer it, please.

Witness: I do not think a yes or no answer would answer it, your Honor. I told him I had that and told him I had these other two interests I just suggested to you, the interest of these other two that I was negotiating with them.

Q Did you tell him that you had that interest or a contract to purchase those interests? A No, sir; I did not tell him anything of the kind.

Q Then so far as anything was said between you two at that time the communication to Eichengreen was that you had nothing in this property and no right in that property except that of the tax title, so far as your right, was concerned? A I don't think he could get that impression from my conversation, because I had had prior to that time, the old 1914 contract which we were trying to renew after various parties died. He knew I had that and he knew from my negotiations at that time that I could close this title up and get these two interests.

Q Well, the fourteen contract to which you refer is the contract which you had drawn and sent to counsel and never was consummated? A Had been signed by Mrs. Housewright and myself.

Q Never delivered? A It was delivered so far as we were concerned, but never signed by the third party.

Q And never became an operating contract? A As between us two it became an operating contract and was so understood, as the correspondence shows, by both Mrs. Housewright and her attorney.

The Court: Between us two, who do you mean?

Witness: As between Mrs. Housewright and myself." * * *

"Q Did you tell Eichengreen as a matter of fact you were not the owner of that property, that you had no right in that property except the tax title, so far as legal right was concerned, and all that had preceded were negotiations by which you were hoping to acquire the property at some time? A I told him exactly what the situation was, just as I have told you, that I had the legal right to be in possession of it. I think I told him that, which I did, under my tax titles, and was in possession of it, but told him I could not sell it; I could not give title, that there were two outstanding interests of owners that I was negotiating with and I would either have to get that interest or if I couldn't get it by negotiation I would have to foreclose my tax title, before I could sell to him or anybody else.

Q Did you tell him that the outstanding interest was the ownership of another fee? A Yes, sir; I told him the McNulty and Gulick interests—(interrupted).

Q Did you tell him as to what you were going to pay for the outstanding interest or what your contract was? A I did not.

Q Did he ask you? A He did not.

Q And he made the offer to you of twenty thousand dollars without regard to what you might have to pay to the outstanding owners of the fee and without making any inquiry as to what your negotiations were? A He evidently did.

Q And you told him that you wouldn't sell for less than twenty five thousand dollars? A Yes, sir.

Q You acted to him as if you had the control of the sale of that property, didn't you? A No, I did not. And did not tell him so. I told him I wouldn't. He wanted me to put this in writing—wanted to give me five hundred right there; and he must have known when I wouldn't put it in writing or wouldn't take his money what the situation was. I told him I couldn't do that, because I

hadn't the title yet in shape where I could do that, that I had to get—either foreclose that tax title or I had to buy the two outstanding interests.

Q Notwithstanding the fact that you declined to make a contract which would be enforceable, nevertheless you had a contract; is that right? A I wouldn't make any written contract with him as he wanted, but the understanding was and the agreement was, and he wanted to shake hands to it and did. I was his friend, and when I got them in shape where I could sell, I would sell it to him for twenty-five thousand dollars, and that was the agreement, and I did shake with him on it, and all my efforts thereafter was to get it in shape so I could carry out the agreement with him.

Q If that is so and he made this offer of twenty-five thousand dollars, why didn't you put that contract in writing so it would be enforceable as between you two? A I wouldn't put any contract in writing with anyone to sell them something I didn't have complete title to yet—something might happen—I might never be able to do it. Something might happen that I couldn't take care of the tax foreclosure—I wouldn't do such a thing. He knew about it and we talked about it."

The cross examination continues:

"Q Before we go to that, what he said was that you were delaying it and he was tired of the delay and there was no reason for the delay and unless it would be closed at once it would be off? A No, he said—never said anything about there was no reason for the delay.

Q What did he say? A He came in and said to me that I had been carrying this thing along about a year and a half now and he was in doubt as to whether he was going to get this property or not, and he wanted this thing closed up; I had promised him from time to time that I would have it closed up and was there any reason why it shouldn't be closed up in a month. I at that time took up in detail with him what my troubles were—what my difficulties were—and told him if he could make these people work any faster he could see them himself and gave him—told him who the people were and gave him their names and addresses of these two attorneys, not thinking that he would do so, even to help me, but I did tell him that because I didn't want him to think I was fooling him. I told him what I was doing.

Q What was it about 'off'? A I don't know whether it was at that occasion or not. Likely it was. I know on two or three occasions when he would talk to me about these things I would tell him I didn't want to be bothered with it, I was busy with other things, if he didn't want to carry out his agreement we would abandon the thing; I would take my own time to fix it up. I may have said something on that occasion if he didn't want to carry out his agreement the thing would be off as far as he was concerned, but he never wanted it off."

On page 102, line 29, upon cross examination, Carton testifies as follows:

"Q Now, at this talk that you had with Mr. Eichengreen in August of 1923, or whenever it was, that he expressed dissatisfaction, what information did you give him? A With regard to the interest in this property?

Q Yes. A I gave him the names and addresses of the two attorneys with whom I was dealing, the names of Mr. Ronon and Mr. Lawrence.

Q Did he tell you that he knew Mr. Ronon at the time you gave him his address? A He did not.

Q Did he tell you in 1921 he had received a letter from Mr. Ronon? A He did not.

Q Did he express any thought that he knew Mr. Ronon in connection with the McNulty heirs? A Didn't indicate that he knew him at all.

Q Did you tell him what your arrangement with the McNulty heirs was? A I did not.

Q Did you tell him what your arrangements with the Gulick heirs were? A No, sir.

Q But you did tell him that he could go on and negotiate if he thought proper to do so? A I told him if he could speed the matter up, get them to move any faster than I had been able to, he could go try himself.

Q What was the idea? A It was to answer his criticism that I was not acting fast enough, that I was taking care of my own business and not attending to this.

Q So far as you knew he had no idea as to who the parties with whom you were negotiating was; you knew that he had no idea what your previous negotiations had been, and yet he was to speed the negotiations of which he had no knowledge. Now, how could he do that? A There was no agreement he was to do anything of the kind nor did he agree to do it. I simply suggested if he could speed this up and make those people move faster than I am 'you can do it yourself.'

Q Was any suggestion made as to how he could accomplish that thing? A That was the end of that incident. I think I did show him a letter that has been referred to here, showing him the difficulties, that some woman had left her husband, couldn't get a deed from him; someone else in California—I showed him those to justify the time I had been taking in getting this closed up—letter from one of the attorneys. I forget which one.

Q What I am trying to get at is whether you expected he would leave that office to go out and do anything? A Certainly not.

Q So that the expression that if he could speed the matter up he might do so, meant nothing? A Meant nothing any more than to appease him or satisfy him.

Q Why did you give him the address of the lawyers? A He wanted to know. He pinned me down and wanted to know with whom I was dealing and about how long it was going to take me to clean this thing up.

Q Did he write down the addresses? A I do not recall. I remember getting a letter from Mr. Lawrence. And I think I had that letter on my desk at the time. I remember giving him the name of John J. Lawrence, Madison avenue, New York.

Q Did he make a note of it? A I couldn't say.

Q Was he to call on these people? A Oh, no, he was not to call on them. I showed him that to indicate to him that I was on the job and was trying to clean this thing up so I could carry out my agreement with him.

Q Didn't you tell him he might call on them? A No. I told him if he could speed the matter up he might go try it himself. I made that foolish remark.

Q What did you mean by that? A Simply to let him know I was doing the best I could and that he nor anybody else could make it any faster.

The Court: With asperity?

Witness: I think I did, your Honor.

Q What names did you give him? A I gave him the name of John J. Lawrence, 342 Madison avenue, New York; and Clarence Ronon, Land Title Building, Philadelphia.

Q Did you give him any other names? A I don't think so. I gave him the names of the parties in interest on this letter with which Mr. Lawrence was dealing with and who he had to get deeds from, but the two names I gave him were the names of the two attorneys." * * *

"Q So that there was no attempt so far as you knew of his going to see the parties and hurrying the matter up? A I had no intention that he would do anything of the kind or that there was any intention of doing it."

It is contended by Eichengreen that this evidence indicates that Carton did not believe that Eichengreen would act upon his permission to undertake to finish up the matter. The state of mind of the complainant at the time upon that phase of the case is immaterial. The information was disclosed with the permission to avail himself of it for the purpose of accelerating the consummation of the matter if he desired. The confidence in Eichengreen was imposed by Carton, and it makes absolutely no difference whether the complainant really believed that Eichengreen would or would not act upon it. The court below erred in supposing that an actual relation of agency must be established in order to fasten the rule of *Rogers* v. *Genung* upon a person. Vice-Chancellor Dodd, in *Wright* v. *Smith*, 23 N. J. Equity 106, used language which was quoted with approval by this court in *Cook* v. *Genung*. He said:

"The rule extends to all cases in which confidence has been reposed, and applies as strongly to those who have gratuitously or officiously undertaken the management of another's property, as to those who are engaged for that purpose and paid for it."

As will appear, Eichengreen, immediately after the interview of August 20th, started out upon a campaign to secure these titles, resulting in the deeds that he later obtained in the name

of the corporate defendant. Practically all of Mr. Carton's evidence upon this branch of the case has been quoted, and I submit that if it be the correct version of what occurred, under the authorities cited, Mr. Carton would be entitled successfully to claim that any title Eichengreen, or his *alter ego,* the company, obtained in the premises would thereafter be held by it, or him, in trust for the complainant.

Let us now turn to Eichengreen's version of what occurred. He (p. 129) claims that he has been acquainted with the property for a long time; that in 1911, he had an option upon it (p. 425), to enforce which he later filed a bill in the Court of Chancery, which was never prosecuted; that in October, 1921, he called upon Mr. Ronon, the attorney for Miss McNulty, with reference to securing the property in question (p. 131), but that nothing came of that interview, and later, on October 28, 1921, he wrote to Ronon (Exhibit D. 10, p. 448) to which he received no reply. He states that early in 1922, he called upon Carton with reference to the property, because:

> "I knew that Mr. Carton had given a deed for twenty-five feet front by twelve hundred and fifty feet deep to the Borough in order to use it for a street."

that at that time (p. 133) he believed Carton was the owner of the property, and he thus describes his conversation with Carton at that time:

> "I asked Mr. Carton, 'Do you own this property?' And he said, 'Yes.' I said, 'Well, what do you want for it?' He said, '$25,000.' I says, 'I will give you $20,000.' He said, 'I will tell you, Eichengreen; come in next week when you are down here.' I said, 'All right.' Next week I came down. I went into his office. I said, 'What have you got to say?' He said, 'Well, I will tell you, Eichengreen: I will sell you this property, but I am not in a position now to give you title.' He says that, 'I have acquired all the interest except one very small interest, and I will have that within thirty days, and if you come in here in thirty days then we will make a deal and close it up.' At the end of thirty days— (interrupted).

Q Let me ask you there: Did he tell you where that interest was located at that time? A No, sir.

Q What was the next time you saw him? A At the end of thirty days I went into the office, Mr. Carton's office, and asked him if he had acquired that interest and he told me no, but 'I will have it in two weeks.' He said 'Come in.' I kept doing that for about eight or nine months.

Q Well, now, wait a moment. Let us go back first. Was there any time at any one of these conversations, was anything said about the making of a contract and a deposit? A No, sir; no, sir. Never got to a contract. Never made any terms.

The Court: About depositing $500 as a down payment?

Witness: Yes, sir.

The Court: Was that so?

Witness: At that time; no, sir.

Q When was there a conversation about a down payment of $500? A About six months after that, Mr. Carton told me, he said, 'There is a real small interest in that business that I have not acquired.' I said, 'Have you the McNulty interest?' He said, 'Yes. I have had that long ago.' So, 'I will have it, Eichengreen, in a couple of weeks. The lawyer is out of town on a vacation. He has got the papers and everything and he does not get them signed.' I said, 'Well, let me give you $500 to bind the bargain,' and he said, 'No, I would not take any money.'

Q Now, how often did you see Mr. Carton with respect to this transaction prior to August, 1923? A Every two to three weeks, either saw him or telephoned. (Answer repeated by the stenographer.) Because he put me off from two weeks to two weeks.

Q Did you finally? Was there any conversation finally with him in which the location of this interest was referred to other than Massachusetts? A In the latter part of August, 1923. After going there for a year and a half—two years pretty near—he said, 'Eichengreen, I haven't got that interest yet.' He said, 'They live in California.'

Mr. McCarter: What is that?

A 'They live in California.' So I told Mr. Jones—(interrupted).

Mr. McCarter: I object.

Witness: All right. That's all.

Q Can you fix about the date that that occurred? A The latter part of August, 1923, just the date—away back to nearly the 1st of September."

He then says (p. 136) he went to Freehold at the advice of Mr. Jones and had the title searched by a Mr. Taylor, and saw that there was no property in the name of Carton, adding:

"So he gave me the name that it was in and I told him it must be a mistake that Carton owned that property, or most of it, and he looked it up again and he said 'There is nothing in his name. The only way he can own it is if he has the deeds and never filed them.' "

He denied being told by Carton that the tax titles was all he had, and on page 137, he testifies:

> "Q Did Mr. Carton in any one of his conversations with you show you a letter which had been received either from Mr. Lawrence or Mr. Ronon (I have forgotten which) or anyone else interested in this property? A No, sir.
>
> Q Did Mr. Carton at any time prior—at the time of any of these conversations with you, tell you who the persons interested in this property were or who their representatives were? A No, sir.
>
> Q Was there a conversation between you and Mr. Carton in which you said that the matter was to be closed within thirty days or within some short space of time, or it was off, to which Mr. Carton replied that it could be off, and that if you could do any better or make it any quicker you could go out and do it, or words to that effect? A No, sir.
>
> Q Did you say that you could go out and clean it up; you could do it quicker or any words to that effect? A When he told me at one time that he had everything but a very small interest in Massachusetts and he kept putting it off from month to month, I said to him, 'Why don't you let me go down there, Carton; I will spend my own money; maybe I can get that fellow to get the signature.' He said, 'No, keep out of it'; that is all that was ever said in regards to that.
>
> Q At that time or any other time did he give you the name of that interest in Massachusetts? A No, sir.
>
> Q Or who represented that interest in Massachusetts? A No, sir; he would not."

He pretends (p. 138), after having seen Taylor at Freehold, he again saw Jones, and the next morning went to Philadelphia to see if he could find Miss McNulty, who appeared by Taylor's statement to own the McNulty half interest. This alleged Taylor "statement" was never produced. He found her home address and was told she would be home at six o'clock that night, whereupon he phoned Mr. Jones, in Newark, and asked him to come right over, and it is conceded that Jones went the same night to Philadelphia and interviewed Miss McNulty at her house. Eichengreen then claims (p. 139) to have gotten in touch with Mrs. Housewright and learned that her counsel was Mr. Lawrence, and procured his address. The next day he asked Jones to see Lawrence, who went immedi-

ately and purchased the Gulick interest from him.

The purpose of this evidence, if it is trustworthy, is to overcome the application of the rule upon which we rely and to establish the claim that Eichengreen had been dealing for a long time with Carton without success, and then on his own hook looked up the owners, and through his counsel bargained independently with each, without relation or responsibility to Mr. Carton. Which of these stories is correct? What is the truth about the matter? Neither Taylor, the searcher, nor Ronon, nor Miss McNulty is called; so as far as what transpired at the admitted conference at the end of August 1923 is concerned, we are left entirely to judge between the veracity of Mr. Carton and that of Mr. Eichengreen, together with such side lights as can be gained from the whole situation.

In the first place, on the one side is Mr. Carton, a lawyer of the highest character and standing, whose word, I think, has always been considered as good as his bond. On the other side is this land operator, whose story is not only unnatural, but contains on its face, blatant inconsistencies that cast discredit both upon it and him. Remember that Eichengreen admits that he was, as late as August, 1923, still pushing Carton to complete his title. He then, without notice to Carton, makes up his mind to throw him overboard. The only reason he gives for this conclusion is the claim that whereas Carton had previously told him the owner of one of the outstanding interests lived in Massachusetts (this is denied by Carton); at the interview at the end of August, Carton had told him that one lived in California, thereby confirming Carton's statement that he showed the Lawrence letter to

Carton, which indicates that one of the owners did live in California.

Why would such a statement, if true, have justified Eichengreen's conduct? He had an office in Asbury Park, and was in a way to see or communicate every day with Carton. If he had concluded to cut off their relations, whatever they were, would he not naturally have told him so? He does not pretend either to have done this, or to have notified Carton after he did acquire title, of the fact. Is it likely that a man who had for a year and a half been seeking to get title to this property, for which he was willing to pay $20,000 or $25,000, offering to deposit earnest money, begging for deeds and writing the letter in which he speaks of having "purchased" the property; ordering a surveyor to make a sketch, going upon the land and arranging for streets to be laid out in accordance with the sketch, should finally switch from his position and repudiate Carton without a word to indicate his sudden change of intention? Why this secrecy on the part of Eichengreen? In this connection the question naturally arises, if, as Eichengreen admits, Carton stated there were outstanding interests, to be acquired, how Eichengreen could have supposed Carton was "the owner."

Eichengreen (p. 157) speaking of the interview, says:

> "A This was the last of August. He had been telling me for a year and a half that the interest was in Massachusetts, and all of a sudden the last of August, 1922, he said to me, 'Eichengreen, this small interest is in California'; so I didn't say a word to him, but I went down to see my attorney."

Again notice the great haste on the part of both Eichengreen and Jones. Immediately after the interview of August 23, Eichengreen sees

Jones, Jones to save time sends Eichengreen personally to Freehold with a letter to Taylor (this was the latter part of August, p. 153) and after Eichengreen returns with the Taylor memorandum, he sends him a second time to order the search, page 201, "because that would be quicker." He says (*ibid*) "there was great need for haste," although he cannot say why. On page 202, "I deemed haste very important." Eichengreen swears, page 138, he saw Jones after getting the information from Taylor, and next morning he went to Philadelphia to see if he could find Miss McNulty. He found that she would be home at six o'clock that night, just as Ronon had stated in his letter of August 10, 1923. He says, page 138, he found Miss McNulty's home address, and learned that she would be home that night, when he at once telephoned Jones in Newark, telling him where she lived; that she would be home at six that night, and asked him to come right over. Jones admits he reached Philadelphia shortly after six that evening, page 20, leaving Newark so as to arrive there that time. On page 208 he cannot explain why he went that very evening and what the reason for his haste was. He claims he went, page 209, to ascertain whether she owned the property, and was in position to deal. He claims he told Miss McNulty that he represented a client who had been negotiating with Carton, who claimed to own the property; that a search recently made disclosed that that was a mistake, and that he had come (thus hurriedly) to Philadelphia to ascertain if she still owned the property "*and was in a position to sell;*" and "*whether* (p. 210) *she had gone so far with Carton as that she could honorably deal with him.*"

It is obvious from this that Jones, whose only source of information was Eichengreen, must have been told of Carton's negotiations with Miss McNulty, and the question at once arises what about the California story? Both Eichengreen and Jones claim that Eichengreen supposed, until the Taylor informal search was made, that Carton owned the premises, notwithstanding the year and a half that Carton had been "stringing Eichengreen along" while he was engaged in securing title. How this supposition that Carton owned the property could exist when both Eichengreen and Jones knew of the alleged outstanding interest in Massachusetts, later transferred, according to them, to California, Jones cannot explain.

Eichengreen says (p. 158) that Taylor went over the records twice on the occasion of Eichengreen's first visit to Freehold, and reported that Carton's name didn't appear in connection with this property, and that he could not find Carton's name. Also (p. 136) "Taylor said that none of the property was in the name of Carton." I told him that must be a mistake. Taylor's reply was: "There is nothing in his name. The only way he can own it, is if he has the deeds and never filed them."

Remember the interview with Taylor was the latter part of August, 1923. Jones says, page 210, that at his Philadelphia visit, he told Miss McNulty that he was informed, so far as the records were concerned, Carton had no interest in the property. How this statement can be true, in the face of the deed from Kinmonth to Carton (p. 363), part of Exhibit C. 11, which is the quitclaim deed from Kinmonth to James D. Carton, dated December 30, 1911, and recorded January 23, 1912, in Book 920, page 415 of Deeds

for Monmouth County, I fail to see. In fact, the abstract of title which we offered in evidence, Exhibit C. 2, shows not only this deed, but the several other tax titles as existing and recorded; and Exhibit P. 14, a formal search made by Taylor for Eichengreen, shows the same thing.

Again on page 137, Eichengreen, upon his direct examination says:

> "When he (Carton) told me at one time that he had everything but a very small interest in Massachusetts, and he kept putting it off from month to month, I said, to him, 'Why don't you let me go down there, Carton, I will spend my own money, maybe I can get that fellow to get the signature,' "

to that extent confirming in a remarkable way, the testimony of Carton with reference to the interview. On cross examination (p. 155) he confirms this statement.

It will be remembered that there is no pretense that Eichengreen, previous to the important conference that Carton, the latter part of August, 1923, had had any relations whatever with the Gulick interests, since his option of February 14, 1911 (p. 425) which was signed by Richard M. Gulick, who was then alive and resided in Pittsburgh. He had later died. There had been the litigation over his estate, maintained by his former housekeeper, Mrs. Housewright, and the long series of events consequent thereupon, which are now displayed by the abstract of title, Exhibit C. 2, resulting in the devolution of the Gulick interest in John C. Gulick. He was a resident of New York City, and had himself died and left a will that was probated there. Mr. Lawrence's letter of August 16, 1923, disclosed much of this information, including a reference to the will of John C. Gulick, and the names of his legatees. Eichengreen, denying that he had any knowledge of the contents of the Lawrence

letter of August 16, 1923, claims (p. 168) he learned from Taylor of the interest of John C. Gulick, but he cannot remember how he knew that Gulick was dead. His testimony upon this point is very important and significant (p. 167).

"Q Now you stated on your direct examination that you saw the copy of the will of James C. Gulick, and learned from that who the devisees were? Did you? A Yes, sir.

Q Where did you see that? A At the Surrogate's office. I think that's what they call it; in New York.

Q In New York? A Yes, sir.

Q When did you see that? A I saw that on the very first part of September, 1923.

Q Who told you to go there? A Mr. Jones.

Q Oh, Mr. Jones? A Yes, sir.

Q Had you ever been to the Surrogate's office before? A Never in my life.

Q Did you go alone? A Went alone.

Q And innocent and young as you are? A Yes, sir.

Q And devoid of knowledge of records of things you were able to hunt up and find the will? A No, sir.

Q What? A I went to the man who was in charge. I said I would like to find this man's will. 'Will you look it up for me? I will make it all right for you.' He looked it up for me and he brought me the book and laid it before me and I handed him two dollars and thanked him and he thanked me.

Q That was before you had been to Taylor? A No; after.

Q After you had been to Taylor? A Oh, yes. The first time.

Q What? A After I had been to Taylor; yes, sir.

Q After you had been to Taylor? A Yes, sir; I then knew his interest, then; see?

Q Oh, yes; oh, yes. And then you learned Mr. Gulick's interest? A Yes, sir. Well, he was dead.

Q What? A He was dead.

Q How did you know that? A Why I found out he was dead.

Q How did you learn that? A I don't remember.

Q You don't remember? A How I found out he was dead. I will tell you.

Q You sort of intuitively knew that? A No.

Q Who told you he was dead? A I will tell you. How I know he was dead?

Q What? A How—I will tell you how I know he was dead. Several years ago I was investigating that property, when Mrs. McNulty was alive, after she—after the first transaction was passed, and she told me that he was dead.

Q Now, just wait a minute. In 1911 you had an option, didn't you? A Yes, sir.

Q May I see that? A May I just correct that statement?

Q No. You answer my questions. A I will answer you any questions.

The Court: What did you want to correct?

Q Did you want to correct something? A Yes, sir; I would like to correct this statement I just made, this last statement. In addition to this here—

Q What 'here'? A In addition to what Mrs. McNulty told me that one of the Gulicks was dead I afterwards—when I came to look this up, Mr. Jones told me to find Gulick. I knew Gulick was an attorney. I didn't know just where to go and I was looking for the Gulicks in the telephone numbers for a lawyer and they told me that Mr.— (interrupted).

Q Who told you? A A man by the name of Gulick who I rang up on the telephone in New York City told me that the Gulick I was looking for had been dead ten years.

Q Yes. Now you have got it right? A Yes, sir.

Q Have you corrected what you wanted to correct? A Yes, sir.

The Court: Mrs. McNulty did not tell you?

Witness: Yes, sir; Mrs. McNulty told me also; yes, sir.

The Court: Supplementing that.

Q This option you had on this property, dated the 14th of February, 1911, Exhibit D. 7, seems to have been made by Richard M. Gulick and Margaret McNulty and Mrs. Eichengreen, wasn't it? A Mrs. Eichengreen?

Q And Morris Eichengreen? A Yes, sir; yes, sir.

Q At that time Gulick was alive, wasn't he? A That is a different Gulick; yes, sir. This Gulick was alive. This is a different Gulick we are speaking of. You understand that, don't you?

Q When was that that Mrs. McNulty told you that same Mr. Gulick was dead? A About several years after they didn't—after I didn't acquire the property on that option I heard that— (interrupted).

Q You what? A After I didn't acquire the property on that option I heard that Mrs. McNulty was living in Philadelphia instead of Pittsburgh, where she used to live, and I went over there to see her and I was talking to her and she told me that Mr. McNulty—Mr. Gulick, one of those Gulicks had died in New York, a lawyer, because I had known him and she said he is dead.

Q That was not Richard Gulick? A Richard Gulick has been dead for years.

Q That was not Richard Gulick? A No, sir.

Q How did she happen to tell you the same Mr. Gulick was dead? A Because we were talking about the Gulicks. This man had—that is on that option, died during the life of that option.

Q I understand. I am wanting to inquire—(interrupted). A Yes.

Q —how she happened to tell you the same Mr. Gulick was dead? A We were talking about the Gulicks and she said that is Mr. Gulick's father. I said I knew Mr. Gulick the attorney in New York. His office was right next door to mine in Nassau street, and she said he is dead now.

Q When was that? A That was about ten or eleven years ago.

Q Why did you hunt him up in the telephone book if his office was right next to you and you had been told ten or eleven years ago he was dead? Why did you look him up in the telephone and seek information about his

whereabouts? A Because I wanted to find out if there was any of those Gulicks. Maybe he had a son or somebody that could give me the information of where these people were.

Q You told us a little while ago you rang him up to see if you could see him and you learned from some Mr. Gulick he was dead? A Yes, I looked the Gulicks up in the book.

Q Which Gulick did you ring up? A I don't know which Gulick. Their name was in the telephone book. I rang up three or four.

Q Can you give us any other reason why, having been told by Mrs. McNulty this Gulick was dead, you looked in the telephone book to get his name and you rang up some Gulicks and was told that he was dead? A Not to see if he was dead; some of the heirs were there.

Q That is what you say now? A I did say that from the start, to find out where any of them were. I thought he may have had a son or brother.

Q When was this? A This was before I went to the Surrogate's office to look up his will."

In view of these facts, can we believe Eichengreen's story that he, unattended and utterly inexperienced, went to the Surrogate's office in the City of New York and secured the information there that he desired? Bear in mind he shifts his story, and (p. 139) claims that after the McNulty interest had through Jones been acquired, he went to Mt. Vernon to look up Florence Housewright, whom he found after considerable trouble, and was by her referred to Mr. Lawrence, the New York attorney, with whom Jones dealt in procuring the deeds for the Gulick interest. Neither Mrs. Housewright, who is now Mrs. Johnson, nor Mr. Lawrence, is called as a witness. Why the foolish visit to the Surrogate's office in New York, if it be true that it was she who gave Eichengreen the address of Mr. Lawrence in the Canadian Pacific Building in New York, which information Eichengreen also claims he at once disclosed to Jones, who went "immediately" to see Lawrence, who, of course, as his letter of August 16th discloses, knew all about the death of John C. Gulick and the residence of his legatees. Eichengreen swears that his trips to Freehold and to Mt. Vernon were made within

a week of the August 23rd meeting with Carton, and that his visit to the New York Surrogate's office was in September. It is significant also that Eichengreen told Bentell (p. 117) and Gouldy (p. 118) that he had secured the property for $5,000 which Carton had *agreed to sell him* for $22,500. While making these boasts to outsiders, he carefully refrained from giving any information whatever to Carton until after Snyder had told Carton of it in October or November, and Carton then confronted Eichengreen with the statements (p. 86).

Notwithstanding Eichengreen's statements to Bentell and Gouldy as to the amount he actually paid, which amount coincided with the sum that Carton had agreed to pay for the McNulty and Gulick interest; Jones, who conducted the negotiations on behalf of Eichengreen with Ronon and Lawrence and claims to have been entirely ignorant of Carton's negotiations (p. 216) offered $2,500 to Ronon, which sum he says "simply suggested itself." He "just hit on that sum" (p. 219). The Court's attention is particularly called to the testimony of Mr. Jones, pages 196, 197, 208, 209, 210, 211, 215, 217 and 218.

II.

The weight of the evidence is that the minds of the parties met in March, 1923, and that a positive agreement to be consummated on certain conditions, had been reached upon which Eichengreen acted, took possession of the property and exercised other acts of ownership thereunder.

The discussion of the evidence already had, presents the contentions of the respective parties

as to what transpired in March, 1922, when Eichengreen proposed that Carton sell him the property. It will be recalled that Eichengreen claims no agreement whatever was made, although he concedes he offered to pay down $500, wanted Carton to give him a deed, and for a year and a half was beseeching Carton to gather in the title. Carton swears that after the verbal arrangement was made, Eichengreen asked if he could bank on it, to which Carton replied in the affirmative "and we shook hands about it"; that Eichengreen was to take possession, trim up the brush, make arrangements for draining and have a survey made, which he did do; that Mr. Rogers made a lead pencil sketch, which was brought to Carton by Eichengreen, which sketch showed the location of a proposed street through the property; that Eichengreen, Carton and an official of the Borough, visited the property with the Rogers map before them, and the layout of the proposed street on the sketch was pointed out and assented to, and that after the agreement was made Eichengreen "trimmed up all the trees along the east side of the property adjoining his own land" (p. 59).

Of course, Eichengreen denies all of this, but on cross examination (p. 151) he reiterated that he had no arrangement of any kind with Carton about the purchase of the property; that he had procured the sketch from Rogers, at Carton's suggestion, without any explanation (p. 151) of why he wanted it, and notwithstanding that for eighteen years previously the property had lain dormant, all of a sudden, Mr. Carton wanted a layout; that there was no doubt about this, and no doubt (p. 152) that he ever made any suggestion or statement to Carton about the property, or his interest, or Eichengreen's own in-

terest in it. He was then confronted with a letter written to Carton on March 28, 1922, a few days after the conference, reading as follows:

"March 28th, 1922.

Mr. James D. Carton,
Asbury Park,
New Jersey.

My dear friend:

I saw Niat Rogers last Saturday and he promised to look over the property *purchased* from you last Saturday and promised to take the matter up immediately and let me know this coming week end the best way to drain the water off the land, and also a sketch of the way to lay it out in lots for development. I told him he could call on you for any information that he might need. If you don't mind, I think the best way for us to handle this proposition is for you to give a deed and take back a mortgage with release clauses, say, four hundred dollars for each fifty feet of land front, and one thousand dollars for each fifty feet of river front lots. This will be ample protection for you. You can also add any contract that you wish to it. I think by having a deed for the property will give the public more confidence in purchasing same, but if this is not agreeable to you, use your own judgment in the matter. I will be at your office next Saturday morning, so kindly have the papers ready so that I can go ahead and order the streets put in and also other things that must be done for the development of the property. April is the best selling month of the year, so I want to get busy. Kindly date all papers April 1st.

With kindest regards, I am,

Yours very truly,
Eichengreen Land Company, Incorporated
Morris Eichengreen, President."

With this letter in evidence, Eichengreen was asked: (P. 181)

"Q And what were you offering to put up $500 for if you had no bargain? A Because Mr. Carton told me that he had all the interests in this property except one very small interest and that when he got that he would consider selling it to me.

Q Consider selling it to you? A So I said, 'Do you want a deposit of $500?' And he said, 'No; not until I get the interest.' And you come in here in thirty days and then we will make some kind of a deal.

Q You wanted to put up $500 before there was any deal at all? A Yes, sir.

Q What? A Yes, sir.

Q Just on general principles? A Yes, sir; I was anxious to get that property.

Q Very anxious? A Because it adjoined mine.

Q Were you telling the truth when you said in this letter of March 28, 1922, 'I think by having a deed for the property will give the public more confidence in purchasing same.' Did you say that? Was that accurate? A Yes.

Q What? A We hadn't come to any—(interrupted).

Q I did not ask you whether you had come to anything. A Yes, sir; yes, sir; I meant that.

Q Why, if there was no bargain, and no deal, did you in this same letter say, 'I will be at your office next Saturday morning, so kindly have the papers ready so that I can go ahead and order the streets put in?' A Because Mr. Carton told me to come in that Saturday and that he would probably have this interest which he told me he had to acquire. He told me he probably would have it by then.

Q You just said a little while ago he said thirty days. A Yes; about thirty days.

Q This was next Saturday? A What day is that letter?

Q This letter is dated March 28th. A That is thirty days. We were in there the 1st of February.

The Court: 1st of February?

Witness: Middle of February is when I made the deal with him. I was in there February, 1922.

The Court: What deal?

Witness: No; didn't make a deal. When I went to see him and talk over the property he told me to come back in thirty days and he would then acquire that interest.

Q Now, on March 28th—(interrupted). A Yes, sir.

Q —he had not acquired the interest yet? A No, sir; I didn't know. I was in New York when I wrote that letter.

Q What? A I was in New York when I wrote that letter.

Q Yes, you say in this letter, 'I think by having a deed for the property will give the public more confidence in purchasing the same.' A Yes, sir.

Q 'But if this is not agreeable to you, use your own judgment in the matter. I will be at your office next Saturday morning, so kindly have the papers ready.' Yes, sir.

Q 'So that I can go ahead and order the streets put in.' A Yes, sir.

Q No bargain? A No, sir.

Q Nothing done? A Nothing was done.

Q No agreement was reached at all? A It shows there there was no agreement.

Q You were prepared to put up $500? A Yes.

Q With Carton? A Yes; I took Mr. Carton's word he owned the property; he told me he owned the property except a small interest; and I was willing to give Mr. Carton five hundred or five thousand." * * *

"The Court: When was it you purchased that property as you said?

Witness: I never purchased it from him really except that he told me if he got it in thirty days he would then close the title and we would make a deal, in other words. We would make a deal then. It shows in my—(interrupted).

The Court: Your letter pre-supposes you had made a purchase?

Witness: I probably didn't write the letter legally. I wrote it myself.

The Court: You know what a 'purchase' is?

Witness: Yes; but when you purchase anything there is terms to it. This shows that we had no terms. Agreed to nothing. When we purchase something there must be some terms.

The Court: If there were no terms why did you use the word 'purchase'?

Witness: I probably used the wrong term.

The Court: 'Purchased' and 'buy' mean the same thing.

Witness: Yes.

The Court: Don't they?

Witness: 'Purchase' and 'buy' probably mean the same thing.

The Court: Why didn't you use the word 'buy' then?

Witness: What is that?

Q 'I saw Niat Rogers last Saturday and he promised to look over the property purchased from you last Saturday and promised to take the matter up immediately.' That is the language? A Yes.

The Court: Did you say that to tie Carton down?

Witness: I tried to tie Carton down—(interrupted).

The Court: I say did you use that—(interrupted).

Witness: I don't know, no I didn't tie Carton down, because he never gave me any letters or anything.

The Court: I am asking you whether you used the word 'purchase' for the purpose of tying down Carton to something he never did.

Witness: Well, I wouldn't say that, no, sir.

The Court: What other explanation have you got then?

Witness: I haven't any explanation except that I probably used the wrong word in saying 'purchased.'

Q Yes. A That is all I can say.

Q Why did you say this then in the letter: 'If you don't mind I think the best way for us to handle this proposition is for you to give a deed and take back a mortgage with release clauses say, four hundred dollars for each fifty foot land front, and one thousand dollars for each fifty foot of river front lots. This will be ample protection for you. You can also add any contract that you wish to.' Why did you say this? A When Mr. Carton told me after he got this property, after he got the other interest in the property then we would make a deal, so I just suggested those terms as being the right terms if we—if he got that and we would make the deal.

Q And is this the time you suggested putting up the five hundred dollars also? A Around that time.

The Court: A mortgage for part.

Witness: Well, there was no mortgage. There was no price.

The Court: You suggested giving back a mortgage.

Witness: But there was no price, no terms.

The Court: How much?

Witness: There wasn't any agreement made as to terms, price, mortgage or anything. Didn't even—nothing. There was no such as mortgage, price or terms. We didn't get to any terms. He said, 'After

I get this interest which I have in Massachusetts we will get together and make a deal.'

Q Now, Mr. Eichengreen— A That is just what—(interrupted).

Q Now, Mr. Eichengreen, April is the best selling month down there, isn't it? A Well, I thought it was at that time.

Q It is a good selling month? A No answer.

Q That was your view then? A Well, I thought it was at that time. It is a good selling month.

Q That was your view then? A Yes.

Q So you added a last clause to this letter: 'I think by having a deed for the property will give the public more confidence in purchasing the same.' A Yes, sir.

Q 'But if this is not agreeable to you, use your own judgment in the matter.' 'I will be at your office next Saturday morning, so kindly have the papers ready.' A Yes, sir.

Q 'So I can go ahead and order the streets put in and also other things which must be done for the development of the property.' A Right.

Q April is the best selling month in the year and I want to get busy.' A Yes, sir.

Q And yet there was never anything reached? A Never; he never got that interest and he put it off from week to week.

Q And you waited, although you were anxious to get that property? A Yes, sir.

Q And willing to pay him twenty thousand dollars for it on the assumption he owned it? A Yes, sir.

Q You waited until the following August a year? A Yes, sir.

Q Before you did a thing? A Yes, sir.

Q Except pursue him. A Yes.

Q To get that interest? A Yes, sir.

Q Knowing all the time he had the tax titles? A I knew he was paying taxes on it, if that is what you mean.

Q And then you heard California from him? A Yes, sir.

Q And you started out on your own hook? A Yes, sir."

Eichengreen admits that Carton told him not to spend much money on the property before he completed his title, and on March 5, 1923, he wrote (Exhibit C. 6, p. 353):

"Spring is coming on now and wish you could get that property ready for me if possible as I would like to get in there and *have a lot of work done.*"

The inevitable conclusion from the foregoing is that the minds of the parties had met, and that under the conditional arrangement which was to be consummated when title was perfected, Eichengreen became vendee in possession of the property. In such a situation, it is well settled

that the vendee cannot dispute the title of the vendor, or deny the title under which he entered. *Wanser* v. *Messler,* 29 N. J. Law 256; *Tindell* v. *Conover,* 21 *Id.* 651. It follows as a necessary sequence that under such circumstances, he cannot acquire and assert as against his vendor, any adverse title to the property. In such a case, it is settled that the property so acquired will inure to the benefit of the vendor, and the vendee will only be entitled to reimbursement for his outlay. See authorities collected from all the states under the note to the principle as thus laid down in 39 Cyc., page 1617.

III.

At the time the complainant was negotiating with the representatives of the Gulick and McNulty interests for the acquisition of their title, he occupied no position of trust or confidence toward them.

One of the defenses of the defendant in the Court below and here asserted, is that the correspondence between Carton and the Gulicks and McNultys, or their representatives, indicates that he failed to disclose, in seeking to acquire their interest, the fact that he had the arrangement with Eichengreen, and that at the same time he stood in such a relation to them as to require such disclosure.

There are two answers to this proposition. First, there was no relation of trust or confidence; and secondly, if there were, Eichengreen cannot raise the point.

An examination of the evidence must convince the Court that the Vice-Chancellor's conclusion that no such relation existed between Carton

and either the McNultys or the Gulicks, was entirely correct.

The property in question, with many other tracts, belonged, as we have seen, to one Henry M. Bennett, who died leaving a last will and testament probated in Monmouth County in 1902, bestowing upon his executors a power of sale.

By deed dated July 7, 1903 (Exhibit C. 1), the executors sold and conveyed the property to one Richard M. Gulick. Richard M. Gulick and Catherine, his wife, by deed dated August 7, 1903 (Exhibit C. 1), conveyed the said premises to the Lynore Land Company.

Some time about 1910 (evidence, p. 47) one Laura Biggar commenced litigation against the Bennett executors, both in the Orphans' Court, and in this Court, questioning their conduct as executors, and involving among other things, the propriety of the above mentioned sale by them to Richard M. Gulick. This litigation continued until 1917 or 1918. Mr. Carton, the complainant, was associated with the late Edmund Wilson as counsel for the executors. He also (p. 46) incorporated the Lynore Land Company, to which Gulick, as we have seen, conveyed the property in question with other lands, for $20,000. The complainant continued, until the termination of the suit against the executors, to represent them. He had no professional relations with the owners of the property after it passed to the Lynore Land Company, except his employment by a Mrs. Housewright in a distinct suit in which she became later involved, to which allusion will hereafter be made.

The Lynore Land Company by deed dated January 12, 1910 (Exhibit C. 1) sold the property to Richard M. Gulick and Margaret A. McNulty. The complainant had nothing to do with

this transaction, the deed having been prepared and executed in Pennsylvania. Meantime, the property had been sold for taxes and bought in by one Kinmonth, and on December 30, 1911 (Exhibit C. 11) Carton took an assignment of the Kinmonth interest, by quitclaim deed recorded in the Clerk's Office of Monmouth County January 23, 1912, in Book 920 of Deeds, page 415. The fact of this purchase was at once made known to Frank B. Patterson, Esq., counsel for the McNulty interests, and to Mr. Cunningham, counsel for the Gulick interests (p. 48). On page 49 Carton swears that he requested reimbursement for this investment, as well as for the amount expended by him in the acquisition of tax titles for several years thereafter, thinking "that when the Biggar litigation was settled they would want to take the title over." No effort whatever was made by the purchasers to reimburse Carton for this outlay.

Richard M. Gulick, one of the grantees above named died on the 6th of August, 1911 (Exhibit C. 2), leaving a last will, by which everything except $100 was devised to his housekeeper, Florence S. Housewright, who was also made executrix of the will. Litigation followed touching this disposition of Mr. Gulick's property (Exhibit C. 2), with the result that a settlement was effected between his son, James C. Gulick 2nd, and Mrs. Housewright, which included an agreement (Exhibit C. 2) by which Mrs. Housewright agreed to convey a half interest in all of the Gulick property to the son, she retaining this property (Exhibit C. 1; evidence p. 48). Carton had nothing to do with the litigation which was in Pennsylvania. Litigation ensued between James C. Gulick 2nd and Mrs. Housewright touching this agreement. Samuel C. Cowart

(evidence p. 48) represented Gulick, and Mrs. Housewright retained the complainant. The suit was settled, and on March 4, 1915, as a part of the settlement, Mrs. Housewright conveyed a half interest in the premises to John C. Gulick, the brother of Richard (evidence p. 48). This is the professional employment of Carton by Mrs. Housewright above referred to. It related solely to the dispute between her and James C. Gulick 2nd, with reference to their respective rights in the interest of Richard M. Gulick in the *locus in quo*.

This left, save as to tax titles, the title of the *locus in quo*, one-half in Margaret McNulty, and one-half in Mrs. Housewright and John C. Gulick (evidence p. 49). The correspondence between the complainant and Mrs. Housewright, or her attorney, Mr. Cunningham, is in evidence as Exhibit C. 5. It discloses two things—first—the employment of Carton as counsel for Mrs. Housewright in the litigation commenced by Cowart as attorney for John C. Gulick in this Court; and second, correspondence between the complainant and Mr. Cunningham, who evidently had been associated with Mr. Patterson of Pittsburgh, Pa., as counsel for Mrs. Housewright, in general charge of her interests, and with particular reference to a purchase by the complainant of her interest, as well as that of Mrs. McNulty in the *locus in quo*. The correspondence shows that Carton prepared an agreement (Exhibit C. 10) between Mrs. McNulty, Mrs. Housewright and himself, which Cunningham, as counsel for Mrs. Housewright, modified in some respects and secured Mrs. Housewright's signature, but Mrs. McNulty never signed it. (See p. 50.) See also letter from Cunningham to Carton, dated December 3, 1914 (in package Exhibit C. 5). See

also the letter of January 7, 1914, from Carton to Mrs. Housewright in which he suggests her handing the tax notice to Mr. Cunningham that Carton, under date of January 3, 1914, had sent to Mrs. Housewright.

> "In order to get the matter again before Mr. Cunningham, it might be well for you to forward the notice which you received, as he is the attorney, and it might be well to take it up with him."

The same correspondence file contains a letter from Cowart to Carton, dated May 28, 1915, in which Cowart, as attorney for John C. Gulick inquiries about the taxes upon the property that had been paid by Carton. This was doubtless the result of a notice sent to John C. Gulick by Carton, similar to that sent to Mrs. Housewright. Nothing seems to have come of the proposition of Cowart to pay, and in the meantime, September 19, 1916, Mrs. Housewright informs Carton, by letter, of the death of John C. Gulick. This file (Exhibit C. 5) discloses that Mrs. Housewright's general attorney in charge of her affairs was Cunningham, who was associated with Mr. Patterson of Pittsburgh, Pa., and that Mr. Cowart represented John C. Gulick. The Cowart suit was adjusted, and the only other relation that Carton had with Mrs. Housewright was his retainer to protect her interest in the Biggar litigation, which ended in 1917 or 1918. Meantime (evidence p. 51), the complainant had lost sight of Margaret McNulty, the owner of the other half interest. Exhibit C. 3 contains the correspondence between Carton and the counsel for Mrs. McNulty. The second letter, dated November 4th, 5116 Regent street, Philadelphia, announces to Mr. Carton the retainer by Mrs. McNulty of Mr. Frank A. Moorshead of Philadelphia as her counsel. On December 15, 1915,

Carton writes to Moorshead (package Exhibit C. 3) with reference to this property,

> "in which you say Mrs. McNulty is interested as one-half owner of the eighteen acre tract, and which interest she is desirous of selling."

The letter then speaks of the Housewright agreement which had been aborted; then refers to the Biggar litigation and shows how, until that is out of the way, it is impossible to give good title. It shows how the Housewright agreement had been on the basis of the payment of $8,000 for the two interests, less taxes, interest etc.; calls attention to the fact that he has been paying the taxes since then, and adds:

> "because of the uncertainty of the proposition, I have been in some doubt as to the advisability of continuing further to take care of the taxes, but if your client wishes to enter into a contract for her one-half interest (if she holds a one-half interest in the property at this time) along the lines as above indicated, I will enter into such a contract and take care of the tax sale on the twenty-sixth instant.
>
> I was only moved to make this proposition at the time, because of the fact that there was some proposition from the owners to sell the property to some Hebrew for the purpose of using the property for a Jewish settlement. While I have absolutely no use for the property whatever, and was only interested for the purpose of preventing such use of the property, because it would practically destroy the value of the other property, which I endeavor to rent in the summer time, and which has been a very heavy load ever since I have had it, yet, under the circumstances, I made the proposition at that time, and am still willing to carry it out."

Moorshead, as counsel for Mrs. McNulty, on the 7th of March, 1916, writes to Mrs. Housewright saying:

> "There is a prospect of our being able to sell the entire property if you and Mrs. McNulty join in the sale. Will you kindly let me know what you want for your interest?"

On April 23, 1916, Mrs. McNulty writes Carton asking what he would give for the McNulty interest, stating that her daughter, Inez, holds the deed, and had requested her to communicate with him. Carton's reply has not been preserved, but on May 3, 1916, Mrs. McNulty acknowledges its receipt and adds:

"I was under impression since the street was piped for water and the bed of Shark River raised that these improvements had enhanced the value of the holdings. I think four thousand clear, the buyer assuming the back taxes, would be a clearer solution. However, think it over."

On May 5, 1916, Moorshead, on behalf of Mrs. McNulty writes Carton saying:

"Mrs. McNulty doesn't care to whom she sells, as long as her interest is disposed of to her advantage. Kindly let me know what you will give for Mrs. McNulty's interest as it stands."

On May 17, 1916, Mrs. McNulty on her own behalf also writes to Carton inquiring if he wishes to purchase the property, and asking for a statement of just how it stands with regard to taxes. A statement of the taxes was evidently sent, for on June 9, 1916, Moorshead writes acknowledging the receipt by Mrs. McNulty of the statement, and making some inquiries with reference to the amount she would be compelled to pay in order to be relieved of the tax title. On June 15, 1916, Moorshead writes:

"Mrs. McNulty will sell her interest, an undivided one-half interest in this property for $4,000, less the taxes and interest on taxes to date, her share of which would be approximately $525."

The reply of Carton is not preserved, but is referred to in Moorshead's letter of June 21st, 1916, and Mrs. McNulty's letter immediately preceding that in the file. From both of these, it is evident that Carton was unwilling to make a positive offer for the property until the Biggar litigation was settled.

Surely, there is no possible basis from the foregoing correspondence, to indicate that Carton was in any way professionally, or otherwise, tied up to Mrs. McNulty or her interest. She had her own lawyer who was zealously looking after her rights, and she knew exactly the situation and was sorry that the pendency of the Biggar litigation prevented a purchase at the

rate of $4,000 for the one-half interest, with credit for taxes and other expenses.

Let us turn now to the Gulicks—the other half interest—in connection with Mrs. Housewright. On page 54 of the evidence, Mr. Carton testifies to having had many conferences with Mr. Lawrence, the New York attorney representing the Gulick interests, as well as later the Housewright interest; that Mr. Lawrence had been to Carton's office to see him concerning the matter, and went over the property with him. On March 17, 1921 (Exhibit C. 4 batch of letters) Carton writes Mr. Lawrence explaining his inaction upon the matter because of his illness and expressing an intention to see him shortly. Lawrence replies under date of March 18th giving Carton his changed address, and on June 21, 1921, Lawrence writes Carton that Gulick is quite anxious concerning the property, and suggests

> "that while he is in the present frame of mind it would be a good time and advantageous time to close a deal."

He also says that Mrs. Housewright is in a disposition to sell. It appears from this letter that Lawrence is now acting as counsel for both Mr. Gulick and Mrs. Housewright, and the letter indicates that Lawrence, as well as Mrs. Housewright and Gulick are anxious to dispose of the property to Carton.

On March 15, 1922, Carton writes Lawrence explaining his inability to have seen him at his office and asking the lowest amount the half interest can be purchased for

> "so that I may take it up with the others interested and see if I cannot complete the same and get the matter out of the way.
>
> "The property is standing idle, doing no one any good and running up a tax bill each year, which puts its in bad shape."

On page 81 of the evidence, it is sought to have it appear that this letter was untruthful, because

at the time it was written it was claimed the arrangement with Eichengreen had been made. This is, however, an error. The letter, as we have seen, is dated March 15th. On page 57 Carton testifies that the verbal agreement, when he shook hands with Eichengreen, was in the latter part of March, and on page 82, he declines to accede to Mr. Lane's proposition that this letter of March 15th was written after the agreement. The date, however, is absolutely indentified by plaintiff's Exhibit P. 13, introduced into the record on page 151 of the evidence, where the letter of March 28th, 1922, from Eichengreen to the complainant appears. This letter says:

> "I saw Niart Rogers last Saturday, and he promised to look over the property purchased from you *last Saturday.*"

Reference to a calendar for 1922 discloses that the next preceding Saturday to March 28th, 1922, was the 25th of March, so that the letter of March 15th was written ten days in advance of the oral agreement with Eichengreen. Defendant's counsel in claiming that the matter is cleared up in favor of his view, by the admission of Mr. Carton's *evidence* (p. 228) that the negotiations referred to in the letter, marked Exhibit P. 15, were those referred to herein, overlooks the fact that that letter is dated March 7, 1923, a year later.

The next letter is from Lawrence, dated April 11, 1922, after the making of the verbal agreement with Eichengreen, and states he has not yet had an opportunity to take the matter up with his clients. The next day Carton writes Lawrence urging speed. On August 17th he again writes Mr. Lawrence, the counsel for the Gulicks, dwelling upon the expense the property is being subjected to and saying:

> "I would like to either sell my interest, or buy whatever other interest there may be, and I wish you would let

me know just what interests you represent, and let me know their very lowest selling figure. If they wish to buy let me know. We should get together and make some disposition of the matter one way or the other at our very earliest opportunity."

On September 14, 1922, Carton again addresses Lawrence urging action and suggesting a joint conference between the McNulty and Gulick interests and himself.

It will be noted that there is not the slightest foundation for the claim that Carton occupied any relation of attorney to the Gulick family, or any trust relation whatever. On the contrary, the Gulicks had their own attorney, Mr. Lawrence, who zealously represented them, as well as Mrs. Housewright after she finished up with the litigation with the Gulicks commenced by Mr. Cowart. This litigation, as we have seen, had terminated years before the correspondence we are now looking at. The Biggar litigation had been closed in 1917 or 1918, and during the intermediate years, not a shred of evidence exists to show that Carton occupied any position of trust or confidence whatever toward the persons interested in this property. On April 12, 1923 (batch of Exhibits C. 4), Carton sends to Lawrence a chain of title, and is interested in the question of title, and on August 16th, 1923 (batch of Exhibits C. 4) Lawrence writes Carton referring to his request for copy of the will, and to the information contained in the abstract, and discloses the present owners of the Gulick interest with their addresses, and states:

"It will be necessary to secure quitclaim deeds from each of the four heirs."

He adds:

"Your old contract price was $6,000. The taxes you have paid have amounted to a substantial sum through all these years, and then there are the assessments, comprising no doubt a considerable amount also. However, these items will be partly compensated for *in the advance* value of the property during the past few years.

> Will you agree to pay $2,500 for the half interest in the property if I am able to secure quitclaim deeds to you from the heirs (naming them). Of the $2,500 the sum of $500 would have to go to me as a fee etc. This would leave $2,000 to be divided between Mrs. Housewright and James C. Gulick and pay the others for the trouble incurred. Let me know your views on the subject, and if they coincide with the above, I will send the deeds to you for approval, and then dispatch them forthwith to the respective parties for execution, for they are expecting some word from me relative to this matter at any time."

Attached to this letter are copies of the wills of Richard M. Gulick and John C. Gulick. It is this letter, and the information therein contained, that Carton displayed to Eichengreen immediately after seeing which the latter started on his journey to get the deeds from the persons whose names he now, for the first time, was acquainted with.

Meantime, and on April 18, 1922 (Exhibit D. 4) Carton had written to Moorshead & Johnson inquiring for the address of Mrs. Margaret McNulty, and recalling Moorshead's letter of June 15th, 1916, in which Moorshead had stated that Mrs. McNulty would sell her interest for $4,000, less taxes and interest. He adds:

> "I have been hoping that the property would come in the market for developing purposes, but to date I have been unable to make any disposition of same."

This is literally and actually true, for as the evidence amply shows, Carton, although offered an earnest fee of $500, had positively declined to make any written agreement or give any deed because of the insufficiency of his own title. On April 20, 1922 (batch of Exhibits C. 3) Moorshead replies that Mrs. McNulty is dead, but states that the interests of her family are represented by Gerald Ronon, Esq. Ronon evidently wrote Carton the next day, for Carton replies acknowledging receipt of his of the 21st of August, and expresses a willingness to see him.

On page 54 of the evidence, it appears that Ronon came and went over the property, and I judge that visit was on April 26th, because in Ronon's letter of April 27th (batch of Exhibits C. 3) he refers to the conversation of yesterday, and asks for a proposition at Carton's earliest convenience. On May 9th (Exhibit D. 2) Carton writes the letter, which is also in batch of Exhibits C. 3, enclosing a memorandum of taxes and other charges paid by him, aggregating $3,681.13. This is followed by Carton's letter of May 11, 1922 (batch of Exhibits C. 3), in which the matters are particularized. On July 25, 1922, Carton writes Ronon (batch of Exhibits C. 3) referring to Ronon's recent visit and his statement that he was going to take up with his parties just what they wished to do in the matter. He urges haste.

From all of this it appears that not only the McNultys had Mr. Ronon as their lawyer, who, on their behalf had visited the property and seen its exact situation, but they had from the complainant a statement, fully particularized, of the money he had already put into the property, and an urgent request that they put a value upon their interest. On August 10th, Carton writes Ronon (batch of Exhibits C. 3) referring to Ronon's letter of the 8th instant, which is not produced,

> "in which you ask what I would be willing to pay for the McNulty interest knowing that your clients are not in a position to purchase."

He then asks for information as to exactly what interest his clients have, upon learning which he agrees to make an offer. On April 10, 1923, apparently nothing having in the meantime transpired, he again writes Ronon (batch of Exhibits C. 3) stating something must be done

to close the matter out one way or the other, and referring to his letter of the previous summer. On August 3, 1923 (Exhibit D. 3) Carton writes urging action, and stating something will have to be done at once. Ronon replies to this on August 10th (batch of Exhibits C. 3) stating that Miss McNulty, who holds the title, is on her vacation, but will return on the 20th instant. To this Carton replies, under date of August 3rd, urging Mr. Ronon to take the matter up with her immediately upon her return (batch of Exhibits C. 3).

Meantime, the letter from Lawrence of August 16, 1923 (batch of Exhibits C. 4) had been received, and on August 23, 1923 (batch of Exhibits C. 3), Carton writes Ronon acknowledging receipt of his letter of the 22nd of August immediately preceding in the batch, and referring to the information he just received with reference to the Gulick interest. He adds:

> "I would be willing to make Miss McNulty an offer for her interest, which coupled with the Gulick and my own interest would enable me to make a marketable sale of the property so that I could get my money out of it. The property has again been sold for taxes, and will very shortly be put up for resale to pay for the curbing and sidewalk assessment, which is a very considerable one, and someone has got to raise the money to take care of these items, and as I say, my concern is about clearing up the title in such a way in order to get something out of it.
>
> However, and without prejudice, I am willing to make your client an offer of $2,000 for her one-half interest in the property."

On August 29, 1923 (batch of Exhibits C. 3) Ronon writes Carton expressing regret that he has not been able to reach him by phone, and asking him to call him up

> "so that we may come to some definite arrangement. I realize the necessity of immediate action, and will do everything I can to assist in coming to a settlement."

Carton insists he had that telephone talk (page 71) in which Ronon stated he could get his client to accept $2,500 and "I agreed to it."

The letter of August 29, 1923, above referred to, has in lead pencil "deed $2,500" written thereon. On pages 112 and 113 he adheres to this statement on cross examination, and Ronon is not called to contradict him. Carton (page 105) fixes the conversation with Eichengreen, in which he showed him Lawrence's letter of August 16th and told Eichengreen he could go and hurry matters up if he desired, as having occurred between the 20th and 25th of August. Eichengreen, page 134, puts the interview the latter part of August, and states (page 135) he then saw Jones. Jones (page 195) claims the matter was brought to his attention the latter part of August. On September 6, 1923 (Exhibit P. 12) Carton acknowledges the receipt of Ronon's letter of the 29th and says:

> "I wish you would get your deed in shape and have it executed at your earliest opportunity and arrange an appointment with me to close it."

The cross examination of Jones (pages 208 to 212) shows that the same day that Eichengreen had gone to Philadelphia and learned that Miss McNulty would be at her house, Jones went to Philadelphia—the latter part of August—and inquired whether she owned the property and was in a position to deal. He saw Ronon and told him he represented a client who had been attempting to make a deal "on some property at Avon." He claims that Ronon stated he could do nothing whatever with Carton. He claims that Ronon stated he would get in touch with Carton, and for him to call him up within a week, and that (page 213) he called him up on the 6th or 7th, might have been the 5th, and Ronon agreed to sell it to him. Ronon's letter of September 11th follows (batch of Exhibits C. 3), in which he says:

> "I regret that you were not in town when I telephoned you on Friday, August 31st, for the reason that Miss

McNulty was offered a considerably larger price for her property than you offered. The party making the offer to Miss McNulty was ready to close immediately, and in view of the fact that Miss McNulty had no interest in the matter other than to obtain what she could for herself and sister, she accepted the offer and executed a deed covering her interest such as it might be."

The statement in this letter that a higher offer was made, is untrue, for, as we have seen, Carton agreed to pay $2,500, and his letter of September 6th shows he proposed to close at once. The sum of $2,500 was paid by Jones for Eichengreen (page 216)

"which sum simply suggested itself."

I have quoted the evidence, including the correspondence, at length, to indicate that there is no basis whatever for the contention that the complainant occupied any position of trust or confidence toward the other owners of this property, and that no foundation therefore exists for the claim that he was under any obligation to disclose to them the fact that he had an offer of $25,000 for the property from Eichengreen, any more than Jones, who knew that Eichengreen had offered $20,000 for the property (page 218) was obliged to disclose that fact to Ronon or Lawrence, and only offered $2,500, the sum that Carton was willing to give for the McNulty interest.

Before passing to another subject, a word may be said with reference to the persistent insinuations of defendant's counsel to the effect that Mr. Carton had purposely suppressed letters. On pages 102 and 114 of the evidence, it appears that during the course of his examination, and before any emphasis had been placed upon the fact that some letters were missing, the complainant frankly conceded that he had not been able to find all of the letters. In fact, the files (batch of Exhibits C. 3, C. 4 and C. 5) which

he had preserved, themselves indicated that this was true. On page 123, it appears that a more extended search resulted in his producing three of the missing letters, including the important one—quite favorable to him—of September 6, 1923 (Exhibit P. 12). Lack of efficiency in the preservation of letters covering a period of over ten years in a large office, and a similar lack of efficiency in finding such letters on the part of young clerks, are too common to justify in this Court the suggestion that lawyers of character and standing have sought to gain a point by suppressing correspondence. This case cannot be won by arguments of that kind.

The complainant in the thirteenth paragraph of his bill says that because of his not having been paid for his services in the Orphans' Court, and later in this Court, in the Biggar litigation, his interest in the property was kept alive; and so, when he learned Mr. Kinmonth had purchased a tax title thereof, he took an assignment from Kinmonth. The same motive prompted his acquisition of the later tax titles and the case shows that due notice was sent to all interested, of such purchases, with requests for reimbursement, which met with constant refusals.

Great stress is made by defendants' counsel concerning the allegation at the close of paragraph 15 of the unverified bill of complaint, to the effect that the complainant was in possession of said premises, as well as holding said tax titles for the benefit of the owners of the land. Mr. Carton (Evidence, p. 72) denies this and claims that his counsel is responsible therefor; and it is because of the recognized freedom of counsel in drafting unverified bills of complaint that Courts attach no importance what-

ever to their allegations, deeming them "mere flourishes of the draftsman's pen."

Vanneman v. *Sweedesboro Bank,* 42 N. J. E. 263;

Gresley's Evidence in Equity, page 323;

Papsco v. *Novak,* 94 N. J. E. 642;

Kocher's Chancery Practise, 387.

This allegation is only one of many in the bill that are incorrect and escaped the attention of Mr. Carton, if he, in fact, read the bill before it was filed, as to which he is uncertain (Evidence, p. 74). For example see the allegation of the bill that Carton had never been paid by anyone for his legal services in the Biggar litigation (p. 6, §13). Carton in his evidence (p. 85) corrects this.

Mr. Carton swears that after 1914, when he had the first agreement to purchase the property (Ex. C. 10, p. 356), any intention to hold the property for their benefit (which does not appear ever to have been made known to them) ceased; and, thereafter, he always reserved his rights under his tax titles in any negotiations he had with the parties, for the purchase or sale of the property. Many of the letters contain the words, "without prejudice," which was his way of flying his flag under his tax titles (Evidence, p. 73). In reaching the figure of $8,000 for the purchase of the two interests, the complainant and the other parties agreed that the amount paid for the taxes should be deemed a part of the $8,000 (p. 49).

Exhibit C. 10 is a copy of this proposed agreement, between Mr. Carton, Mrs. Housewright and Margaret McNulty. It is dated the 19th of March, 1914, and if read, will be found to have, in several instances, especially reserved the rights of Carton in the premises by reason of his tax

titles. It recites that the parties of the first part are the owners of the premises and that they will probably be able, within a reasonable length of time

> "except for the tax titles herein elsewhere mentioned, to convey a good and marketable title to the said tract * * * AND WHEREAS, the said land has heretofore been sold for the taxes for the year 1910 to Dr. Hugh S. Kinmonth, and the said party has taken over, or will forthwith take over the tax deed of said Kinmonth, and has himself taken a tax deed to the said land for the taxes for the year 1911 * * * AND WHEREAS, there are other taxes in arrears against said land and still other taxes may be assessed against the same before the said parties of the first part shall be in a position to convey a good title to said land, free of encumbrances, as aforesaid. AND WHEREAS, it does not suit the said parties of the first part to put up the moneys needed, to provide for the taxes upon the said land, and they wish to induce the said party of the second part to take care of such taxes and to protect their interests in said property."

Carton therefore, covenanted that he had or would thereafter pay the taxes and that any and all sums so paid and expended by him under the agreement shall be applied on account of the purchase price thereunder. The agreement further provides:

> "And it is also understood, and agreed by and between the parties hereto, that, in case the said parties of the first part, or either of them, shall not become able to make good and marketable title, to said premises and property and thus to carry out the terms of this agreement * * * in such an event, the said party of the second part, does not waive any rights that he now has, or that he may hereafter acquire to the title to said land and premises, by virtue of the matter of taxes and the Morris Tract, herein elsewhere referred to, or otherwise."

It appears (Evidence, p. 49) that this agreement was first drafted by Mr. Cunningham, counsel for the Gulick and Housewright interests. It was signed by Mrs. Housewright and Mr. Carton and sent to Mrs. McNulty for her signature. The letter of December 3, 1914, from Cunningham to Carton (batch Exhibit C. 5) shows that Mrs. McNulty and her attorney, Mr. Paterson, both saw this agreement, but for some reason, the former refused to sign it. Therefore, all of the parties were by this document,

made aware of the fact that Carton claimed to hold adversely under the tax titles, in the event that the agreement did not go through.

As already stated, it nowhere appears that these parties had been apprised of Carton's original intention, previous to this proposed agreement, to hold the tax titles for their benefit. A mere intention to hold in trust, unexpressed by act or deed is insufficient to constitute the relation of beneficiary and trustee. As shown in 2 *Pomeroy Eq. Juris,* Sec. 997, there are three ways by which a person holding property, real or personal, and intending to make a voluntary disposition thereof for the benefit of another, may do so:

> "(1) He may make a conveyance or assignment directly to the donee. (2) He may make a transfer of it to a third person upon trusts declared in favor of the donee. (3) He may retain the title *and declare himself a trustee for the donee and thus clothe the donee with a beneficial estate,* * * * If the donor adopts the second or third mode, he need not use any technical words, or language in express terms creating or *declaring a trust, but he must employ language which shows unequivocally an intention on his part to create a trust in a third person or to declare a trust in himself.*"

This language is approved by the Court of Errors in *Janes* v. *Falk,* 50 Eq. 471. See also *Smith's Estate,* 22 Atl. (Pa.) 916. See also *1 Perry on Trusts,* §96; *Welch* v. *Henshaw,* 49 N. E. Reporter (Mass.) 661.

It thus appears that the mere mental process that actuated the complainant in the acquisition of the early tax titles, undeclared and unmanifested, amounted to nothing and the only declaration or manifestation with respect to the tax titles that we have, is contained in the proposed agreement of 1914, which was never consummated in and after which his rights were always reserved.

IV.

But even if it were true that such a relation of trust and confidence existed between the complainant and the present Gulick and McNulty interests, which required on the part of Mr. Carton a more frank disclosure to them of the facts with reference to his negotiations with Eichengreen, the defendant in this suit is in no position to avail himself thereof.

If one thing be settled in New Jersey, it is that a party may have relief in equity as to a transaction in itself untainted, although his title to the subject matter may have originally grown out of his wrongful acts not connected with the present controversy. The mere fact that one has treated a third person, not complaining, wrongfully, or illegally, does not disentitle him to equitable relief against a third person, arising out of a transaction distinct from and utterly disconnected with such prior improper conduct.

Woodward v. *Woodward,* 41 N. J. Equity 224;

Wright v. *Wright,* 51 *Id,* 475;

Shotwell v. *Stickle,* 83 N. J. Equity 188, where Vice-Chancellor Howell says:

"that by making the agreement of March 6th, 1901, with his brothers and co-executors, Joseph P. Stickle and Philip Stickle, touching the disposition of the lands of which his father died seized, he committed a fraud upon his brothers and sisters, and that this was intensified by the provision in the agreement that he should only pay $7,000 for the farm, no matter what the highest bid was. It may well be that under certain circumstances he might have been called to account for these irregular transactions, the principle being that no trustee shall be allowed to purchase at his own sale. *Smith* v. *Drake,* 23 N. J. Equity 302; *Marr* v. *Marr,* 73 N. J. Eq. 643. But it will be observed that this is not a proceeding on behalf of the devisees under the will of Isaac Stickle, but is an entirely separate and distinct cause of action. Possibly the heirs of Isaac Stickle might have set aside the transaction, but it appears by the evidence that they knew all about it, acquiesced in it and accepted their respective shares of the purchase money. This is a condonation of the maxim of equity appealed to and estops them from obtaining any decree adverse to the transac-

> tion; but the maxim does not reach so far. It must be understood to refer to willful misconduct in regard to the matter in litigation, and not to misconduct, however gross, which is unconnected therewith and with which the opposite party in the cause has no concern. 1 *Pom. Eq. Jur.* §399, *Sm. Eq. Man.* §39; *Wilkinson* v. *Fowkes*, 9 Hare 592; *Gibson* v. *Goldsmid*, 5 D, M. & G. 757. It is obvious that the cause of action to which that maxim might apply is a cause of action in favor of the Stickle heirs and devisees, and not a cause of action which relates to the estate of which Martha Stickle died seized; hence the maxim has no application to the case in hand."

The Court of Appeals adopted the same views in *Munn & Co.* v. *Americana Co.*, 83 N. J. Equity 309-313. The same principle was recently reannounced in this Court by Vice-Chancellor Griffin in *Costello* v. *Cusack Co.* 96 N. J. Equity 95-118.

Of course, the distinction is, as pointed out by Vice-Chancellor Griffin in the case last cited, between the doctrine of *Prindiville* v. *Johnson*, 93 N. J. Equity 425, where the illegal taint applies to the very scheme sought there to be enforced or to be avoided, and one utterly disconnected therewith.

Thus New Jersey has always adhered to the limitation of the clean hands doctrine referred to in *Pomeroy's Equity Jurisprudence*, §399, as follows:

> "The maxim, considered as a general rule controlling the administration of equitable relief in particular controversies, is confined to misconduct in regard to, or at all events connected with, the matter in litigation, so that it has in some measure affected the equitable relations subsisting between the two parties, and arising out of the transaction; it does not extend to any misconduct, however gross, which is unconnected with the matter in litigation, and with which the opposite party has no concern. When a court of equity is appealed to for relief it will not go outside of the subject matter of the controversy, and make its interference to depend upon the character and conduct of the moving party in no way affecting the equitable right which he asserts against the defendant, or the relief which he demands."

See also *Grand Valley Water Users Association* v. *Zumbrunn*, Circuit Court of Appeals 8th Circuit, 272 Federal Reporter 943-947.

Brooks v. *Martin*, 2 Wallace 70;

Western Union Telegraph Company v. *Union Pacific R. R. Co.,* 3 Federal Reporter 423;

Primeau v. *Granfield,* 180 Federal Reporter 847;

Grant v. *Fletcher,* 283 Federal Reporter 243-270;

Kinner v. *Lake Shore & Michigan Southern Ry. Co.,* 69 Ohio State 339;

Phalen v. *Clark,* 19 Conn. 421;

Pitzele v. *Cohn,* (Ill.) 75 N. E. Reporter 392;

Gibson v. *Goldsmid,* 5 DeG, McN & Gordon 756.

The case of *Pendleton* v. *Gondolf,* 85 N. J. Equity 308, upon which defendant relies has, of course, no application, because there the complainant sought relief against a co-conspirator with regard to the very nefarious matter in which both had been, by agreement, engaged.

In *Rogers* v. *Genung,* 75 N. J. Equity 13, cited at length *supra,* Vice-Chancellor Stevens had referred to the fact that the alleged improper conduct of Genung

> "if it injured anyone, injured the vendors, and they do not complain."

Vice-Chancellor Stevenson in *Harrop* v. *Cole,* 85 N. J. Equity 32, cited *supra,* correctly (on p. 35) states the basis upon which the Court of Errors reversed Vice-Chancellor Stevens.

It is respectfully but confidently submitted that the decree below should be reversed, and a decree entered in favor of the complainant as prayed for in the bill.

It is impossible to avoid the conclusion that Carton and Eichengreen were jointly interested in this property from March, 1922, until August, 1923; that Eichengreen grew restless because of

the delay of Carton in securing a complete title to the property, and that in the confidence of that relationship, Eichengreen was made aware of the whereabouts and names of the owners of the outside interests. Carton never would have thought of disclosing this information had he not supposed that if availed of at all, it would have been with the object of carrying out the arrangement that was now eighteen months old between him and Eichengreen. Eichengreen failed to terminate this relation. He failed to disclose to Carton the fact that he was using this information to his own advantage and the disadvantage of Carton. He rushes to and deals with these parties in undisclosed hostility to Carton, and remains mute thereafter as to what he had done. Carton gave Eichengreen, at the interview, an opportunity to say that their relations were at an end. This Eichengreen failed to do, and left Carton without a hint that the *status quo ante* was not still in effect. Under such circumstances, it is a rule both of equity and morals, that he could not avail himself of this information and acquire a title hostile to Carton.

Respectfully submitted,

ROBERT H. McCARTER,
Counsel for Complainant-Appellant.

May Term, 1927.

New Jersey Court of Errors and Appeals

Between JAMES D. CARTON, *Complainant-Appellant,* *and* MORRIS EICHENGREEN and EICHENGREEN LAND COMPANY, INC., *Defendants-Respondents.*	*On Bill.* *On Appeal from Chancery.* *From Decree Dismissing Bill of Complaint.* BACKES, *V.-C.*

BRIEF OF RESPONDENTS ON APPEAL.

(Italics, etc., except where otherwise noted, mine.)

Statement of the Case.

It is extremely difficult to succinctly state the case. This arises from the fact that statements of fact made in the bill were, upon the hearing, sworn by complainant to be untrue, and the theory of the bill as to the genesis of complainant's "preferential" right in the property was, after the hearing before the Vice-Chancellor, finally abandoned by complainant although complainant now seems to, in part, return to it, for else there would be no purpose in the long recitation in the brief for appellant (pp. 1, 2) of complainant's services rendered to the owners of the property in litigation therein referred to.

The bill was filed December 29th, 1924. It alleged that: complainant had, for twenty-nine years, been practicing law, with an office at Asbury Park, Monmouth County; Bennett died

in July, 1902, seized of the lands in question leaving a last will and testament; the executors of his will sold the lands in question to Richard M. Gulick, July 7, 1903; August 17, 1903, Richard M. Gulick conveyed the lands to the Lynmore Land Company; complainant had been professionally employed by Richard M. Gulick in connection with the purchase of the tract of land; he was employed by Richard M. Gulick and Peter H. McNulty, beneficiaries of the will of Bennett, for the purpose of organizing the Lynmore Land Company; McNulty died in 1907 possessed of an interest in the corporate stock of the Lynmore Land Company; January 12, 1900, Lynmore Land Company conveyed the property to Richard M. Gulick and Margaret A. McNulty, who was the widow of Peter J. McNulty; meanwhile one Laura Biggar, beneficiary under the will of Henry M. Bennett, deceased, filed a bill in Chancery against the executors of Bennett challenging the title to the lands in question, and complainant, in association with the late Edmund Wilson, was counsel for the executors and also for the Lynmore Land Company, which then held the title, and successfully conducted the litigation through the Court of Chancery to this court; complainant was never paid by the Lynmore Land Company nor by the Gulick or McNulty interests, succeeding to the interests of the Lynmore Land Company to the premises in question, for his services and disbursements in connection with that litigation "and that fact was taken into account in proceedings hereinafter alluded to;" Richard M. Gulick died in August, 1911, leaving a last will and testament by which he appointed Florence S. Housewright his executrix, to whom he devised the bulk of his estate, and bequeathed to his son, James C. Gulick, 2nd, the sum of

$100 only; proceedings were had in the Probate Court in Pennsylvania by which Florence S. Housewright renounced her executorship and agreed to assign to James C. Gulick, 2nd, or his nominee, one-half of the interest acquired by her as chief beneficiary under the will of Richard M. Gulick; James C. Gulick, 2nd, in February, 1915, conveyed to John C. Gulick all his interest in the agreement; March 4, 1915, Florence S. Housewright granted to John C. Gulick a one-quarter interest in the property; John C. Gulick died June, 1916, in New York, leaving a will, which was probated there, and devising his interest in the property to Mariana G. Bradley and Milicent Crissman, James I. Gulick and James C. Gulick; all legal matters in connection with the interest of Richard M. Gulick in connection with the lands and said corporation, including the litigation in the Court of Chancery and the Court of Errors and Appeals commenced by said Laura Biggar were attended to by complainant "*but without the payment by the interested parties of complainant's charges for such varied and protracted services and disbursements. The complainant's interest in the property was, therefore, kept alive;*" "and becoming aware that by certificate of tax sale dated the 14th day of October, 1911, Edwin F. Bennett, tax collector of the district in which the premises hereinabove described were located, transferred to H. S. Kinmouth the premises hereinabove described because of unpaid taxes for the year 1910, complainant paid to said H. S. Kinmouth the amount he required, and took from him an assignment of said tax title;" complainant still owns said tax title, and subsequently purchased property at sale for taxes for the years 1911, 1912, 1913, 1914, 1920 and 1921 respectively; in November, 1915, complainant

assigned the tax certificate, which he had acquired at tax sale, dated November 22, 1913, to James C. Gulick; with the exception of this last assignment complainant retained the tax certificates *"and was in possession of said premises holding the said tax titles, as well as occupying said premises, for the benefit of the owners of said lands whose predecessors had been his clients and whose exact whereabouts were unknown to the complainant."* (It will be observed that the tax certificate, assigned by complainant to James C. Gulick, was dated November 22, 1913, and complainant retained the prior tax certificate which he has obtained from Kinmouth, dated October 14, 1911, and retained several subsequent tax certificates); correspondence ensued between complainant and the legal representatives of the owners of the equity complainant "informing them of the fact that he had, at large expense, purchased said lands at these tax sales, and asking reimbursement therefor, *as well as compensation for his legal services,* but the complainant could at first get no satisfaction beyond the expression of a desire on the part of the owners, through the statements of their respective attorneys, that the complainant should make an offer to them for their interests in said property, as they were unwilling to make any further expenditure in connection therewith;" complainant declined to adopt the suggestion and the matter dragged; complainant was visited by Florence S. Housewright, who endeavored to persuade him to purchase the property, reimbursing himself for all that was due him, and to pay the balance to the owners; at first he declined to consider the matter and finally was persuaded to purchase the property for $8,000 from which he was to deduct all monies paid by him for taxes, *his bill*

for professional services and other expenses; an agreement was made to that effect signed by Florence S. Housewright, but the other parties interested in the property never signed; later negotiations were reopened; while they were in progress James C. Gulick paid to complainant a portion of the taxes which he had theretofore paid upon the property, which had resulted in the tax title, which has been hereinbefore referred to; again the matter rested; complainant lost sight of the representatives of the persons interested in the equity in said lands; the matter was revived by counsel representing the McNulty interests "to whom the complainant again expressed his desire to be reimbursed for the taxes and other expenditures incurred by him in connection with said property;" complainant later got in touch with counsel representing the Gulick interests and similar requests were made of him; the requests were met by the statement that the owners had no desire to make any expenditure in the property, but, on the contrary, desired to sell; negotiations continued until the year 1921 when they resulted in a statement by the attorneys for the two interests living in New York and Philadelphia respectively, that they would procure a quit claim deed to the complainant for their respective client's interests for $2,500 to be paid by complainant for each half interest, "and a definite agreement was reached between the complainant and the counsel of the respective interests, that if the complainant would pay each of said interests $2,500 he could secure a quit claim deed from them for said property."

It will be observed that, up to this point, the bill deals solely with matters with respect to which defendant Eichengreen has no concern.

The purpose was to put complainant in a position of not being only the holder of a tax title upon the land but of also being interested because of services which he had rendered to the owners of the equity of redemption or their predecessors and to show a consideration for the agreement alleged in the bill to have been reached by complainant with the representatives of the owners of the equity to sell their respective interests at $2,500 each.

The bill then proceeds: "*After the foregoing understanding had been arrived at, one Morris Eichengreen, developer of real estate, who owned property adjoining the premises in question, called upon the complainant expressing a desire to buy the property. Complainant at that time was in possession thereof, and had been in such possession for the past ten years, and was generally reputed to be, and understood by the said Eichengreen to be the owner* of the property"; Eichengreen offered complainant $20,000 cash for the property; this was about February, 1922; complainant refused the offer stating that he was not in a position to give a marketable title, *although he held the legal title,* and had possession under the tax deeds; Eichengreen saw complainant several times thereafter in the spring of 1923 "*and sometime in the month of March* of that year, the complainant told Eichengreen that the lowest price for which *the complainant would sell the property* was $25,000 cash, less a plot 200 feet by 200 feet situated on the southeast corner of the tract, * * *." "The property had in the meantime enhanced in value, as the complainant well knew, * * *"; Eichengreen finally agreed, on behalf of the Eichengreen Land Company, to purchase the property for $25,000," he offered to pay the sum of $500 earnest fee; complainant declined to take it until

he had succeeded in getting the deeds for the two interests in question, "but a definite and complete agreement was made between the complainant and the said Eichengreen, including a right on his part in the meantime to take possession, survey the land, trim up the underbrush, put in some drains, open streets, &c."; complainant renewed his correspondence with the two attorneys and the matter was proceeding, as complainant supposed, in a satisfactory manner; Eichengreen expressed the belief that he could accelerate the matter, and complainant thereupon told him that if he could hurry the matter up, he was at liberty to call upon the parties and speed the matter along; in the autumn of 1923, complainant was dumbfounded to ascertain that the said Eichengreen had, notwithstanding his arrangement with complainant, gone to the parties who owned the equity in said property and procured, without notice to complainant, deeds for the property; complainant brought this to the attention of Eichengreen, whereupon Eichengreen said that he had "gotten tired of waiting for the complainant to complete title"; complainant charged that Eichengreen had fraudulently used the information complainant had, in good faith, furnished him with, after the consummation of his agreement to purchase the property, gone to the owners, whose names and whereabouts had been so as aforesaid confided to him by complainant, and purchased the property from them at the same figure that their respective attorneys had finally been able to state, as the attorneys had reported to the complainant, that they would sell the said lands to the complainant; by deed, dated October 25, 1923, one Irma Klophaus, to whom the deeds of the McNulty and Gulick interests had been made,

transferred the property to the Eichengreen Land Company, Inc.

The bill charged that the conduct of Eichengreen was fraudulent and that Eichengreen could not acquire any title in the lands in derogation of the rights of complainant, and prayed that it should be decreed that the defendants, upon being reimbursed for the moneys paid by them to the owners of the respective interests in the property, held the property as trustee for complainant.

The answer, in substance (p. 17), set up that: it was true that Eichengreen, in February or March, 1922, negotiated with complainant for the purchase of this property; it was true, as charged by complainant, that *Eichengreen believed complainant to be the owner of the property;* it was true that Eichengreen offered to make a contract and pay the sum of $500 earnest sum; it was true that complainant refused to take the $500 and refused to make a contract. The answer then proceeds: complainant told Eichengreen that he was the owner of the property but that there were *small outstanding interests* which he had to acquire before he could make a contract of sale, and that he would shortly acquire those interests; Eichengreen from time to time saw complainant, who was never, at any time, prepared to enter into a contract with him, and finally Eichengreen caused a search of the property to be made, and then, for the first time, discovered that complainant did not have any interest in the property of any kind, nature or description except that he held certain certificates of tax sale; complainant did not explain the entire situation to Eichengreen, as stated in paragraph 19 of the bill; after discovering that complainant had no interest in

the property, except as the holder of the tax certificates, Eichengreen made his own investigation and ascertained who the owners of the property were, and thereupon purchased the property from the owners; at no time did complainant tell Eichengreen that if he could hurry the matter up he was at liberty to call upon the parties to speed the matter along; Eichengreen immediately notified complainant that he had purchased the property; on December 21, 1923, the entire amount of taxes, represented by the outstanding tax certificates held by complainant, was paid to the collector, the moneys having been tendered to complainant, who refused to accept them; defendant's deed was recorded as soon as obtained, and complainant, in the autumn of 1923, had full and complete knowledge of what had happened; in January, 1924, defendant went into possession of the property and expended large sums of money thereon; defendants did not go into possession of the property before they obtained their deeds; complainant had full and complete knowledge of the work as it progressed and knew that defendants had taken possession of the property in January, 1924.

The answer sets up that: the conduct of complainant, in inducing Eichengreen to believe, at the time of the negotiations, that complainant was the owner of the property was a fraud upon Eichengreen; complainant was *in laches;* "the conduct of complainant was such as to warrant Eichengreen in abandoning any thought of dealing with him."

Upon the trial, when it appeared from the correspondence passing between complainant and the representatives of the McNulty and Gulick interests, that if any part of the consideration moving the Gulick and McNulty interests to en-

ter into the agreements, which complainant charged had been entered into, was the services previously rendered by complainant, as counsel, in the various litigations, etc. referred to *in extenso* in the bill, there was a violation of professional duty in that at no time during the course of the correspondence, which extended after the making of the alleged contract with Eichengreen by which complainant agreed to sell the property to Eichengreen for $25,000 and Eichengreen agreed to pay it, did complainant disclose that agreement, or, indeed, any offer made by Eichengreen but, on the contrary, continuously "beared" the property, complainant denied that compensation for any such services entered into the consideration, but stated that the allegation in the bill to the contrary was a mistake. Nevertheless, for what purpose I do not know, counsel in his brief in this court repeats the services rendered (pp. 1, 2).

The abandonment of this "interest" of complainant in the property does not answer the fact, however, which clearly appeared by the correspondence, as will be hereinafter shown, that complainant affirmatively deceived the owners of the equity as to the value of the property.

Notwithstanding the allegation in the bill that, at the time the agreement is alleged to have been made between complainant and Eichengreen, Eichengreen understood Carton to be the owner of the property (par. 18, p. 10) complainant on the stand said that Eichengreen understood that he had no interest in the property except as the holder of tax certificates. Eichengreen, on the stand, states that he did understand complainant to be the owner and that complainant so told him and Eichengreen is supported by inferences to

be drawn from the correspondence hereinafter adverted to.

There is an absolute denial in the proofs that Eichengreen ever took possession of the property under any agreement between complainant and Eichengreen. Possession was not taken until January, 1924, after Eichengreen acquired the title.

Appellant, on pp. 3 and 4 of the brief, concede, it seems to me, that, upon the theory of complainant, relief can be granted only upon the establishment of three facts—

1. The making of the agreement between complainant and the owners of the property.

2. The bargain between complainant and Eichengreen as complainant has stated it.

3. The use by Eichengreen of information imparted by complainant to Eichengreen.

That these matters were sharply at issue is conceded by complainant. Many pages of testimony were taken before the Vice-Chancellor and many exhibits offered and read, including voluminous correspondence. The Vice-Chancellor upon the issues of fact, the non-establishment of one of which in favor of complainant would defeat complainant's claim, even if the establishment of all of which in his favor would warrant relief to complainant, which I deny, found against complainant.

Upon the issue as to whether any agreement had been made between complainant and Eichengreen, the Vice-Chancellor, after considering the testimony, says (p. 31)—"Upon this phase of the case the situation is conceived to be that Carton did not consider himself bound beyond driving the best bargain he could with Eichen-

green when the time arrived, and that he was free to bargain for better terms with others if opportunity presented itself. His disinclination to give written evidence of the understanding, his letter just quoted, and his later indifferent conduct, to be presently commented upon, all strongly indicate his attitude that he was not committed to Eichengreen."

Upon the issue as to whether complainant had an agreement with the McNulty and Gulick interests, the Vice-Chancellor says (p. 33)—"The documentary evidence clearly shows that in March, 1922, at the time of the alleged agreement between Carton and Eichengreen, there were no contracts between Carton and the owners of the equity of redemption, and if there were any later, there was none that Eichengreen was bound to take notice of before he purchased, Carton had no right or interest in the land in this respect which he, in his bill, alleges was threatened to be 'derogated' by the title acquired by the defendant."

Upon the issue as to whether complainant disclosed to Eichengreen the names of the owners of the equity the Vice-Chancellor said (p. 37)—"Upon the issue of fact, whether Carton divulged to Eichengreen the names and addresses of the lawyers and owners, with direction to see them in his behalf, and that he took advantage of the confidence, all that need be said is, that Carton's affirmation is met by Eichengreen's denial, and that the burden of proof is on the complainant, which he has not sustained."

Upon this opinion, the final decree, dismissing the bill, was entered (p. 38). Whereupon complainant appealed to this Court (petition of appeal p. 41).

POINTS OF RESPONDENTS HERE.

1. Any negotiations between complainant and Eichengreen were based upon the false assumption by Eichengreen that complainant was the owner of the property and complainant knew at the time of the negotiations that Eichengreen so thought and knew that, in fact, he was not the owner.

2. Complainant had no contract or agreement with the owners of the equity of redemption.

3. There was no agreement between Eichengreen and complainant.

4. If there was any agreement between Eichengreen and complainant, complainant did not perform, on his part, and Eichengreen was at liberty to proceed on his own behalf.

5. Complainant did not disclose any information to Eichengreen and Eichengreen made use of no information derived from complainant.

6. Complainant is not entitled to a decree because of the doctrine of unclean hands.

7. Complainant is barred by laches.

8. Complainant is barred by the Statute of Frauds.

ARGUMENT.

The Credibility of the Respective Parties.

Before considering the points made by respondents, the issue attempted to be made in appellant's brief being one of fact and resting, at least in part, for its determination upon the testimony of complainant on the one side, and Eichengreen on the other, I think it necessary,

particularly in view of counsel's statement on p. 27 of his brief "In the first place, on the one side is Mr. Carton, a lawyer of the highest character and standing, whose word, I think, has always been considered as good as his bond. On the other side is this land operator, whose story is not only unnatural, but contains on its face, blatant inconsistencies that cast discredit both upon it and him," to advert to such proofs, particularly those which are in written form, as I think may be helpful to determine, to some extent, the credibility to be given to the respective parties.

Of course, the lawyer is entitled to have his words weighed by the application of the same rules as is the land operator.

Schmidt v. *Marconi*, 86 N. J. L. 183.

A

Complainant is asking for profit on a real estate deal, *i. e.*, the difference between $8,000, approximately, which complainant says he was to pay for this property, and the $25,000 which Eichengreen was to pay him for it. In his testimony complainant expressly disclaims any interest in this property which would make him a favored purchaser (p. 87). In his Bill of Complaint, which he read before it was filed (p. 89), he devotes a great deal of space, particularly paragraph 8½ (p. 4) to a description of the services which he rendered in prior litigation to or for the benefit of those beneficially interested in the property, and, in speaking of the fixation of the price and the agreement which he claims he had with those beneficially interested in the property to sell to him he says (paragraph 8½ p. 4) "and that fact (that he had not been paid

for prior services and disbursements) was taken into account in proceedings hereinafter alluded to" (the making of the agreement by those beneficially interested to sell to him). But he repudiates this on pp. 86 and 87 of the testimony, and says, in effect, that from the price which he was to pay to those beneficially interested in the property he was to deduct the value of his services, but he does not stand squarely on this for he says (p. 84)—

> "I think probably I had a kind of reservation of that when I was holding the property, that some day I would recover that. I make no claim for it."

And it is impossible for him to explain (p. 84 to p. 88) what the allegations in his bill, paragraphs 8½, 13 and 16, mean in the light of his statement upon the stand.

But complainant is in court seeking to obtain for himself a profit which, if the statements contained in his bill of complaint be correct, he proposed to make upon property of his beneficiaries and, if his statements upon the stand be correct, without the knowledge of his beneficiaries, and to secure which profit he wrote letters to his beneficiaries urging them to consummate a deal by which he was to acquire their interest, making representations which would have the effect of "bearing" the property. He says in his bill of complaint that he purchased the tax certificates, etc., and tax sales (the only legal interest he had in the property, and that (paragraph 15)—

> "With the exception of this last assignment, the complainant still owns all the said tax certificates for the years prior to the proceedings hereinafter related and was in possession of said premises holding said tax titles, as well as occupying said premises, *for the benefit of the owners of said lands whose predecessors had been his clients and*

whose exact whereabouts were unknown to the complainant.''

True it is, that on the stand he repudiates this statement contained in the bill, which he had read before it was filed (pp. 88, 89), although he says (p. 88)—

> ''When I was first moved to take care of the tax matter in 1910 or 1912, it was my idea then to protect it for these owners, because I knew Mr. McNulty had died and Mr. Gulick had died and I bought it in the first instance for them to take care of it for them so that nobody could get any outstanding interest, but in 1914 when I had *this agreement* I did not consider it that I was holding it for them longer than that.''

But nothing had happened to change the relationship.

Counsel replies by referring to the legal rule that one is not bound by an undisclosed purpose to act as a trustee. Perhaps not but the conduct of complainant may be referred to as bearing upon his credibility.

There were two interests joint owners of this property, the McNulty and the Gulick interests. The Gulick interests were represented by Mr. Lawrence of New York; the McNulty interests had been represented by Mr. Moorshead of Philadelphia.

It is alleged in the bill and proven in the testimony that any agreement between complainant and Eichengreen, by which Eichengreen was to purchase this property from complainant for $25,000, was made in *March of 1922,* (paragraph 18 of the bill). It is also alleged that the negotiations between the two were first taken up in February. The correspondence between the representatives of the McNulty interests and com-

plainant as to the sale of the interests ceased in 1916, and that correspondence shows that up to that time there was no arrangement under which the McNulty interests were to sell to complainant. The correspondence is re-opened by a letter written by complainant April 18, 1922 (Exhibit D. 4, p. 419) to Mr. Moorshead in which he says that he is anxious to procure the address of Mrs. Margaret McNulty or that of her daughters and—

"I have before me your letter of June 15, 1916, in which you stated that Mrs. McNulty would sell her interest in the property for $4,000 less taxes and interest on taxes to date, etc."

"The land is vacant and undeveloped *and nothing has ever been done in the matter.* I have been in possession of same for years under tax title and have been paying the taxes and have just now received the enclosed notice from the Borough Clerk of Neptune City requiring that a sidewalk be laid on Sylvania avenue."

"There is considerable frontage on Sylvania avenue and it would cost a lot of money to lay such a sidewalk."

"*I have been hoping that the property would come in the market for developing purposes but to date I have been unable to make any disposition of same.*"

"Our particular anxiety is that a good portion of the property is under water. The Borough recently made some change in the street which had the effect of adding to the size of the pond or portion under water."

* * * * * * * * * * * * * *

"It will be necessary to do something before the Borough attempts to put down a sidewalk, and if Mrs. McNulty still holds any interest in the property, *I would like to hear from her and know just the lowest figure she would take for same.*"

This letter was written at a time when complainant now says he had *a binding contract,* at least binding on Eichengreen, under the terms of which Eichengreen was to purchase the property for $25,000.

Counsel, on p. 51 of his brief, attempts to explain this letter. And he says, quoting one portion of it—"This is literally and actually true, for as the evidence amply shows, Carton, although offered an earnest fee of $500, had positively declined to make any written agreement or give any deed because of the insufficiency of his own title." Can it be said that when one has an offer for property of $25,000 it is even *literally* true to say to the owner of that property that one has been hoping that the property would come in the market for developing purposes but up to date one has been unable to make any disposition of same? Counsel conceives that the agreement he alleges complainant made with Eichengreen was of such a nature as that he could *truly* say *no* agreement had been made but that he could also say that Eichengreen was bound by it and could take no step in derrogation of it.

The correspondence between Mr. Lawrence, representing the Gulick interests, and complainant with respect to their sale of the property was suspended June 21, 1921, and the correspondence shows that no agreement had been made between the Gulick interests and Carton up to that time.

On March 15, 1922 (Exhibit C. 3, p. 317) at a time when complainant says he is uncertain whether he had this alleged contract with Eichengreen to purchase this property for $25,000 (pp. 81, 82) he wrote to Mr. Lawrence:

> "I had intended to have called upon you before this concerning the disposition of the

so-called Gulick and McNulty property at West Avon as you requested in your last letter, but have found it impossible to do so."

"Some disposition should be made of the matter, however, *as taxes are running up each year and I have become tired of paying same without any return whatever.*"

As I recall, your clients, Mr. Gulick and Mrs. Housewright, represent a one-half interest in the property, *and I wish you would let me know just the lowest amount they would take for this one-half interest* so that I may take it up with the others interested and see if I cannot complete the same and get the matter out of the way."

"*The property is standing idle, doing no one any good* and running up a big tax bill each year which puts it in bad shape."

"If you will write me at your earliest convenience *and let me know the very lowest sum they will take,* I will see if I cannot arrange to take over their interest at once."

Counsel devotes considerable space to attempting to demonstrate that this letter was not written until after the alleged agreement, it being contended that the date of the alleged agreement was fixed, by the letter of March 28, 1922, from Eichengreen to complainant, to be March 25, 1922, although complainant was uncertain (pp. 81, 82) as to whether the letter was written after the agreement (pp. 81, 82). *It was certainly written after complainant knew that he could get at least $20,000 for the property for, as complainant alleges in his bill,* prior to the date upon which the alleged agreement was made Eichengreen offered complainant $20,000 cash. This was about February, 1922. "Eichengreen saw the complainant several times thereafter in the spring of 1922, *and some time in the month of March of that year* * * *."

In view of the long suspension of the correspondence between complainant and the representatives of the Gulick interests there is no doubt but that the re-opening of the correspondence was coincident with the negotiations with Eichengreen. They are too clearly coincident in point of time not to be clearly coincident in point of fact, and, in any event, it is quite immaterial because complainant, as will be hereafter indicated, *after he now says the alleged agreement was,* in fact, *made,* wrote similar letters and never disclosed the fact that he had a contract by which the property could be sold for $25,000.

On July 25, 1922 (Exhibit C. 3, p. 307) Carton wrote Mr. Ronon, who was representing the McNulty interests—

> "Something should be done to dispose of this situation promptly as the Borough is proceeding to lay sidewalks and curbs in front of this and other property and as the frontage of the road is a considerable distance, it will naturally mean a big expense against the property to have sidewalks and curbs laid."

In a letter written August 10, 1922 (Exhibit C. 3, p. 307) to Mr. Ronon he said—

> "Something must be done to clear up this situation one way or another, and if your clients are not in a position to buy, I wish you would let me know exactly the interest your clients hold, and immediately upon receipt of your reply, I will make you an offer for that interest."

In a letter written April 10, 1923 (Exhibit C. 3, p. 308) complainant wrote Mr. Ronon:

> "* * * Nothing further has ever been done in this matter and the Borough now threatens to advertise the property for sale for the laying of sidewalks and curbs.

"Something must be done to close the matter out one way or the other. I wrote you last summer with my suggestion in the matter and I wish you would take the same up with your clients and let me know what they wish to do one way or the other."

There is no further correspondence until August 3, 1923, when complainant wrote Mr. Ronon:

"* * * As I notified you some weeks ago, the property has now again been sold for taxes and there will soon be another sale for sidewalk and curbing assessments for a very considerable amount, and if some arrangement is not made to adjust this matter as per your suggestion sometime ago, *I will have to foreclose my tax sale* in order to get the property in such shape that I can convert it *to get my money out of it, as I cannot afford to carry it any longer.*"

To the person to whom this letter was written the words— "that I can convert it to get my money out of it, as I cannot afford to carry it any longer," would mean that complainant was attempting to get the money which he had invested in taxes, etc., out. But complainant, when he wrote the letter, meant not only this but the difference between what he was offering for the property, a comparatively small amount, and $25,000, for which he had agreed, as he now says, to sell it to Eichengreen, more than a year before the writing of this letter.

Mr. Ronon replied to complainant by letter dated August 22, 1923 (Exhibit C. 3, p. 310) and, on August 23, 1923 (Exhibit C. 3, p. 311), complainant wrote Mr. Ronon—

"* * * For sometime I have been endeavoring to find out the status of the one-half interest formerly owned by the Gulick estate, but it appears it was disposed of by James C. Gulick in his will to several par-

ties, who have since died leaving heirs all over the country and it seems an interminable matter and I do not know whether it can be successfully worked out or not. If I thought it could, I would be willing to make Miss McNulty an offer for her interest, *which coupled with the Gulick interest and my own interest,* would enable me to make a marketable sale of the property, *so that I could get my money out of it.* The property has again been sold for taxes and will very shortly be put up for re-sale to pay for the curb and sidewalk assessment, which is a very considerable one, *and someone has got to raise the money to take care of these items,* and as I say, my concern is about clearing up the title in such a way *in order to get something out of it.*"

"However, and without prejudice, I am willing to make your client an offer of $2,000 for her one-half interest in the property, which I consider under the circumstances is a very fair one, and I wish you would let me know at your early convenience if it is accepted or not. If it is not, I must take some steps to *protect my own interest under my tax titles.*"

Again, he does not disclose that when he refers "to *my* money" he is referring to the profit in the $25,000 offer. And this is the first offer he makes, $2,000, although he had the offer from Eichengreen eighteen months before.

On August 29, 1923 (Exhibit C. 3, p. 312) Mr. Ronon wrote complainant—

"Today I tried to reach you by telephone in regard to the McNulty matter, but learned that you were out of town and would not return until Friday of this week.

"I shall be obliged if you will call me on the telephone when you return to the office on Friday, so that we may come to some definite arrangement. I realize the necessity of immediate action and will do everything I can to assist in coming to a settlement."

"My telephone number is Locust 6414. If you could telephone me about noon on Friday, I shall be glad to talk with you."

On September 11, 1923 (Exhibit C. 3, p. 313) Mr. Ronon wrote complainant—

"Your favor of 6th instant received on my return to town. I have been away from the office for some days owing to illness."

"I regret that you were not in town when I telephoned you on Friday, August 31st, for the reason that Miss McNulty was offered a considerably larger price for her interest in the property than you offered. The party making the offer to Miss McNulty was ready to close immediately, and in view of the fact that Miss McNulty had no interest in the matter other than to obtain what she could for herself and sisters, she accepted the offer and executed a deed covering her interest such as it might be."

By a letter dated September 12, 1923 (Exhibit D. 1, p. 416), complainant said to Mr. Ronon (in reply to his letter of the 11th)—

"In view of the fact that I have been carrying this matter for all these years and have had the matter up with you for a long time, I am quite unable to understand how you justify your position in selling the interest of Miss McNulty to a stranger. My dealings with you, representing Miss McNulty were prompted for the purpose of *being fair* with you *and to see that Miss McNulty got something out of the property.* They were all, however, made without prejudice to my rights in the matter, and I assumed that you, representing Miss McNulty, informed the purchaser of some that *I hold title to the premises by a deed in fee,* and will thank you, if you will do so, to let me know the name and address of the party to whom deed was given."

Was it being fair with the McNulty interests to see that Miss McNulty *got something out of*

the property when complainant's real interest was to see that he himself made the profit between what he was going to pay and the $25,000? Is this not disingenuous to say the least? And he says that he holds title to the premises by a *deed in fee.* Not so at all. He had nothing but a certificate of tax sale.

After the writing of the letter of March 15, 1922 (Exhibit C. 4, p. 317) by complainant to Mr. Lawrence, to which Mr. Lawrence replied by the letter of April 11, 1922 (Exhibit C. 4, p. 318) complainant wrote Mr. Lawrence on April 12, 1922 (Exhibit C. 4, p. 319)—

> "* * * If you can see your parties within the next few days, and get the information in question, I wish you would do so, for if there is anything to be done with this matter, I would like to do it now *or drop it.*"

There is nothing further until the letter of August 17, 1922 (Exhibit C. 4, p. 319) when complainant wrote to Mr. Lawrence—

> "* * * I would like to take the matter up with you definitely and have the matter disposed of, as something must be done at once for the reason that the Borough of Neptune City has taken proceedings for the laying of curbs and sidewalks in front of this and other property, and as the property has considerable frontage on the main road, it will be a very considerable expense and lien against the property for the cost of laying the sidewalk and curb, *and as you know, I have been taking care of the taxes on this property* for years, and the taxes and this now cost would amount to a very considerable sum, and something will have to be done with the property so that we can *get our money out of it.*
>
> "*I would like to either sell my interest or buy whatever other interest there may be,* and I wish you would let me know just what

interest you represent *and let me know their very lowest selling figure.* If they wish to buy, let me know."

Does he frankly tell Mr. Moorshead that "our money" does not mean only the amount of taxes which he has referred to in the letter but also means the profit on the offer of $25,000?

On September 14, 1922 (Exhibit C. 4, p. 320) complaint wrote Mr. Lawrence:

"* * * In view of the fact that the Borough has laid a sidewalk and curb in front of this property and there will be an assessment laid against same shortly, and which will have to be paid or the property sold by the Borough, it is important that whatever is to be done one way or the other should be taken care of shortly."

Mr. Lawrence wrote complainant on August 16, 1923:

"* * * Your old contract price was $6,000.00. The taxes you have paid have amounted to a substantial sum through all these years, and then there are the assessments comprising no doubt a considerable amount also, however these items will be partly compensated for in the advance value of property during the past few years."

"Will you agree to pay $2,500 for the half interest in the property if I am able to secure quitclaim deeds to you from the heirs * * * Of the $2,500 the sum of $500 would have to go to me as a fee, for I could not drive the thing through for a lesser compensation especially as I have already put about two hundred dollars worth of time on it to date."

On August 17, 1923 (Exhibit C. 4, p. 328) complainant wrote Mr. Lawrence:

"As I talked with you and already written you I am almost to a point of desperation in this matter because of the delay in getting it closed *fearing that all of us may*

lose the property because of the very heavy taxes and assessments against it.''

''You suggest that I agree to pay $2,500 for one-half interest in the property. *In view of what I already have in the property and the large outstanding claims against it, this figure is high and I am sure more than the interest would amount to.* However, I appreciate that because there are so many parties in interest with whom it would have to be divided and so that your suggested fee may be taken care of, I am without prejudice, willing to make you this offer at this time so that you may immediately take up the matter of procuring the necessary deeds to cover the fee of the one-half interest formerly held by Gulicks, and the sooner you can put the matter through the better it will be for me and all concerned as it is going to be necessary in the near future to raise about $2,000 to put up for assessments and I must have the matter of title fixed before I would be justified in advancing this money. Please, therefore, consider this, my offer to pay $2,500 for this interest as above stated and I wish you would take the matter up with the view of whipping it in shape as speedily as possible.''

Is it literally true that complainant was in a state of desperation fearing that he would lose the property because of the very heavy taxes and assessments against it, when he had a pending offer of $25,000 as he now says? Is it literally true that in view of what complainant already had in the property and the large outstanding figures against it, the figure of $2,500 for the Gulick interests ''is high and I am sure more than the interest would amount to.'' This is clearly a misrepresentation of fact.

There is in all this correspondence not one word or suggestion that at the time it was going

on complainant had an agreement to sell this property to Eichengreen for $25,000. On the contrary, there are many statements contained directly opposed to any such idea.

For example: In the letter written to Mr. Moorshead April 18, 1922, (Exhibit D. 4, p. 419) complainant says:

> "* * * I have been hoping that the property would come in the market for developing purposes but to date I have been unable to make any disposition of same."
>
> "Our particular anxiety is that a good portion of the property is under water. * * * *."

In the letter to Mr. Lawrence August 17, 1923 (Exhibit C. 4, p. 328) complainant said (in making his offer for $2,500):

> "In view of what I already have in the property and the large outstanding claims against it, this figure is high and I am sure more than the interest would amount to * * * *."

There are many other expressions in the letters which are clearly opposed to the view that complainant had, at the time of their writing, an agreement to dispose of this property to Eichengreen for $25,000. And yet this is what complainant asks this Court to find.

At the time this correspondence was going on, if the statements contained in complainant's bill of complaint are to be taken as correct, he was holding the tax certificates and was in possession of the premises, "for the benefit of the owners of said lands, whose predecessors had been his clients and whose exact whereabouts were unknown to the complainant." (Paragraph 15.)

Even taking the revised version of complainant's relationship to the owners of the property, he had originally taken the tax certificates and possession for the benefit of the real owners of the property, whose predecessors had been his clients (p. 88). He says:

> "I bought it (the property) in the first instance for them to take care of it for them so that nobody could get any outstanding interest, but in 1914 when I had this agreement I did not consider it that I was holding it for them longer than that."

But he had no agreement in 1914, so far as the McNulty interest was concerned, and what apparently he is referring to is the agreement which he had with Mrs. Housewright. That agreement never became effective according to complainant's own statement (p. 92). And the later negotiations between complainant and Lawrence, representing the Gulick interests, were not upon the basis of this old contract. See Mr. Lawrence's letter to complainant of August 16, 1923 (Exhibit C. 4, p. 323). However that may be, there is nothing in the correspondence to indicate to complainant's beneficiaries a change of position on his part and the throwing off of his relationship, in effect of trustee for the owners of the property, and assuming the relationship of one entitled to deal at arm's length.

Whatever the situation may have been, Carton was not justified, under the circumstances, for the purpose of getting this property at as cheap a price as he could, in *affirmatively* representing that the property could not be moved, which he did by the letter of April 18, 1922, from himself to Mr. Moorshead (Exhibit D. 4, p. 419) nor in *affirmatively* representing that the offer which he made would net to the Gulick

heirs more than they were entitled to upon the value of the property, which he did in his letter of August 17, 1923 (Exhibit C. 4, p. 328), making the offer of $2,500 to Mr. Lawrence.

If we take the relationship between complainant and the owners of this property, as alleged in the bill, the conduct of complainant, as disclosed by the correspondence, was not only an attempt upon his part to acquire the property from its owners at a very small figure which would aggregate a cost to complainant, including the amount he had paid for taxes, of, in the neighborhood of eight to ten thousand dollars, knowing that he had the property resold at a figure of $25,000, but was of such a nature as to lead the parties with whom complainant was dealing to believe that the property could not be moved.

There was not only concealment of material facts but there was affirmative false representation. This affirmative false representation may not have been due to design. The correspondence speaks for itself. It may have been due to a loose use of the English language, just as the statement contained in complainant's letter to Mr. Ronon of September 12, 1923, Exhibit D. 1 (p. 416)

> "and I assumed that you, representing Miss McNulty, informed the purchaser of same *that I hold title to the premises by a deed in fee.*"

may have been due to the same lack of preciseness in the use of English.

Whatever may have been the motive or the cause, the facts remains that these people with whom complainant was dealing and for whom, in his bill of complaint, he says he held possession

did not know, during any of the time they were dealing with him, that he had negotiated a sale of this property for $25,000, and I assume that they believed the statements contained in complainant's letters to the effect that something had to be done or the property would be wholly lost; that the interest of the parties was less, in fact, than the amount that complainant offered; that a good portion of the property was under water; that, altogether, the property was not worth paying much attention to.

Now it is said that the conduct of complainant towards the owners of these properties is no concern of ours (Appellant's Brief, p. 60). But is not that going too far? There is a principle of law that where two persons have committed an act, which is illegal, or fraudulent toward a third party, a court of equity will not divide the spoil, *in pari delicto potio est conditio defendentis.*

Volney v. *Nixon,* 68 N. J. E. 605.

Here we have a condition of affairs, from the standpoint of complainant, for Eichengreen was under no obligations whatever to the owners of this property and therefore Eichengreen was not *in pari delicto,* assuming the statements contained in the bill of complaint are correct, of one attempting to obtain from another a profit on property which profit the one has improperly attempted to obtain from its owners.

Aside entirely from the legal point involved, however, this correspondence is highly illuminating as to the weight to be given to the respective stories of complainant and Eichengreen, and, upon the main case it is, I submit, important for complainant's case, as made by the pleadings and the proofs, depends upon the existence between himself and Eichengreen in March of 1922 of a

definite agreement under the terms of which complainant was to sell to Eichengreen for $25,000 and **the statements contained in this correspondence, assuming now that complainant intended to be fair with the owners of the property, are quite opposed to the existence of any such agreement.**

This is brought to complainant's attention on cross examination (pp. 65, 66, 67, 68, particularly at pp. 69, 70, 71, 72, 73, 74), and in the examination by the Court at pp. 77, 78, in referring to the letter from Carton to Moorshead, April 18, 1922 (Exhibit D. 4), complainant says:

"The Court: You did not tell him that you had sold to Eichengreen?

Witness: No, I did not.

The Court: You had, in fact, sold to Eichengreen, hadn't you?

Witness: That was in the next month. I had, in fact, had this agreement with Eichengreen.

The Court: Then what you said there was not true?

Witness: I don't know as that is so, your Honor.

The Court: You do say you have not made any sale, do you not? What is the explanation of that?

Witness: I said—I do say that—'up to date I have been unable to make any disposition of the same.' I do say that.

The Court: But you had made disposition of it.

Witness: I had this tentative disposition of it made at that time.

The Court: Absolute disposition at that time.

Witness: It was an absolute disposition, subject to my getting my title, either by foreclosure on the tax title or getting this other interest which I agreed to buy years

> before which I was still willing to buy at the amount I had agreed to buy years before. Their interest was worth very much less, because my interest was very much greater. I had close on to four thousand dollars in it at that time, I believe, moneys advanced for taxes."

Of course this explanation is not an explanation at all for, assuming that complainant had an interest close on to four thousand dollars in the property, the owners of the property had an interest of $21,000, and his suggestion that he had an agreement to buy this property years before is not at all borne out by the correspondence.

And see pp. 79, 80 and 81.

The statements contained in complainant's letter of September 12, 1923 (Exhibit D. 1 (p. 416), pp. 72 and 73) to Mr. Ronon is wholly inconsistent with any idea that he had, at that time, any definite agreement to purchase the McNulty interests. He says in this letter of September 12, 1923:

> "In view of the fact that I have been carrying this matter for all these years and have had the matter up with you for a long while, I am quite unable to understand how you justify your position in selling the interest of Miss McNulty to a stranger. My dealings with you, representing Miss McNulty, were prompted for the purpose of being fair with you and to see that Miss McNulty got something out of the property. They were all, however, made without prejudice to my rights in the matter, and I assumed that you, representing Miss McNulty, informed the purchaser of same that I hold title to the premises by a deed in fee * * *."

He was examined with respect to this letter (p. 73) and said:

"Q I am wondering why in this letter of September 12, 1923, if you had the agreement with Mr. Ronon at least that he was to get the property for you for twenty-five hundred dollars, why you did not, in this reply of September 12, 1923, say anything about that. A I don't know what I said. I know what I said over the telephone and I know what Mr. Ronon told me.

Q Why didn't you in your letter of September 12, written a day after the receipt of his letter of the 11th, when the matter was fresh—why didn't you refer to the agreement you had had with respect to the twenty-five hundred dollars? A I think everything is referred to except the price. I don't know of any particular reason why I should mention the price in there. He had permitted his client to sell to somebody else at the time.

The Court: What?

Witness: He had permitted his client to sell to somebody else at the time.

Q Is there anything in this letter which you can point to which would indicate any definite agreement between you and Ronon or you and the McNulty interest? A I don't know that there is except by inference. I don't know why there should be.

Q Did you consider that you had a definite agreement or not? A I certainly did.

Q Then why didn't you in that letter, instead of referring to your temporary agreement that you had— (interrupted). A I don't see why it was necessary, Mr. Lane. The agreement could have been voided if anyone wanted to—it was a verbal agreement between ourselves, it wasn't anything binding, if one wanted to violate it."

And he is then asked as to the use of the expression "deed in fee" (p. 74):

> "Q What did you mean, Mr. Carton, in this letter, Exhibit D. 1, of September 12th, when you said, 'They were all, however, made (that is your negotiations) without prejudice to my rights in the matter and I assume that you, representing Miss McNulty, informed the purchaser of same that I hold title to the premises by a deed in fee.' A Tax title. In all my negotiations, and in the contract with Mrs. Housewright I did not waive any rights that I had to the property under the tax title.
>
> Q No; and your rights under the property—under the tax title was in repayment of the taxes? A I could foreclose it any time within ten years.
>
> Q And if you foreclosed of course they could redeem? A Yes, sir; but they were not redeeming.
>
> Q I understand you have your tax title to which you referred in this letter. Did this letter apply to the deed in fee? A Yes, sir.
>
> Q You meant by that your tax title? A Yes, sir; which I had a half dozen tax deeds in fee; that is what I had reference to."

I submit that the expressions contained in this letter of September 12th, 1923, are quite inconsistent with any idea that complainant had, at the time, an agreement with the McNulty interest to sell to him at any particular price.

Complainant has made his case based upon two assumed facts:

First: An agreement between himself and Eichengreen under the terms of which Eichengreen was to purchase from complainant for $25,000, and

Second: An agreement between Carton and the owners of the property by which he was to

purchase at a price which would make the property cost him approximately $8,000.

His own correspondence is inconsistent with the existence of either assumed fact, and, if his relationship with the owners of the property was as stated in his bill of complaint, it is not to be assumed for one moment that, if he had had the agreement with Eichengreen, which he says he had, he would have written the letters to the representatives of the owners of the property which the record shows he did write.

If complainant takes the position that, in this transaction with the owners of the property, he was acting solely in his own interest as a business man, and not as a lawyer, seeking a profit for himself alone, he is on precisely the same level, so far as motive is concerned, as "the Land Operator" (Eichengreen) and the mantle of his professional reputation should not be used to give him credence. And if, on the other hand, complainant was acting, not for his own interests, but for the interests of the owners of the property and in a professional capacity, he must be governed by the rules which apply in cases between attorneys and clients, and those rules are of the most stringent nature.

Kerr on Fraud, 153;

Dunn v. *Dunn,* 42 N. J. E. 444;

6 Corpus Juris, 689, sec. 214;

Brown v. *Buckley,* 14 N. J. E. 451, at p. 458;

Cleine v. *Englebrecht,* 41 N. J. E. 498;

Crocheron v. *Savage,* 75 N. J. E. 589;

Wagner v. *Phillips,* 78 N. J. E. 33 at p. 36;

Kelley v. *Schwinghammer,* 78 N. J. E. 437, at p. 438;

In re Hahn, 84 N. J. E. 523, at p. 533.

Certainly, assuming that the relationship of attorney and client did not exist, and assuming that complainant was dealing at arm's length with the owners of this property, although he had purchased the tax sales in the first instance to protect the owners (and it is a fundamental proposition that where one obtains a title to property for the benefit of another he cannot buy in an outstanding title except likewise for the benefit of that other),

Vulcan Detinning Co. v. *American Can Co.,* 72 N. J. E. 387, at p. 402;

McCormick v. *Ocean City Asso.,* 45 N. J. E. 561,

the representations which were made by complainant to the owners of the property as to the value of the property, the importance of disposing of it, etc., etc., in the light of his knowledge, at the time, that he had a binding agreement to transfer the property to Eichengreen for $25,000 places him on a level no higher than the plane upon which stood Eichengreen.

B

Counsel for complainant at pages 50 to 53 produced two files of letters which, as complainant testified (p. 53)— "Covers all my correspondence, yes, sir," and with respect to which counsel used the following language—

> "Q Now in addition to this correspondence that has been offered *frankly* in evidence did you have any telephone conversation or any personal visits upon any of these attorneys?"

Now it appears that this was *not* all the correspondence and that among the letters which were omitted from this correspondence so *frankly* offered were the following—

Exhibit D. 1 (pp. 72, 416) letter of September 12, 1923, from complainant to Ronon, the statements in which are wholly inconsistent with complainant's theory that he had an agreement with the McNulty interests to sell their interests to him.

Exhibit D. 3, letter of August 3, 1923, from complainant to Ronon (pp. 75, 418), the statements in which are wholly inconsistent with any claim that complainant had an agreement with the McNulty interests to purchase their interests back in 1914 and which letter also "bears" the property.

Exhibit D. 4 (p. 419) letter of April 18, 1922, from complainant to Moorshead, which letter is the one stating that— "The land is vacant and undeveloped and nothing has ever been done in the matter. * * * I have been hoping that the property would come in the market for developing purposes but to date I have been unable to make any disposition of same. Our particular anxiety is that a good portion of the property is under water, etc., etc." (p. 77).

Now, it may or may not be significant that these letters, or copies thereof, in view of the fact that these are the letters which are relied upon by defendant to a very great extent, as hereinbefore very fully set forth, were *not* in the files so *frankly* produced.

After being shown the letters on cross examination complainant, upon a further search of his letter books, found the copies (p. 122), and he also found the letter of September 6, 1923

(Exhibit P. 12, p. 395), from himself to Ronon, which he had been interrogated about on page 111 of the record, which was not in the file offered.

When complainant was first shown the file of letters which he offered he swore that it covered all his correspondence (p. 53). He said on page 68—

> "The Court: Do you keep complete copies of all your letters in your office?
>
> Witness: I do, your Honor. Since this matter has come up I have been endeavoring to locate all these letters and copies.
>
> The Court: It is the practice in your office to keep all outgoing letters?
>
> Witness: Yes, sir. Our copy book was put in the basement—old books and some are there and some are not. I have gotten some books and some books I haven't got, therefore I haven't got every letter."

This testimony came after the commencement of complainant's cross examination when letters other than those contained in the file were referred to and *when it became apparent that counsel for the defendants had a file of the letters.*

Again, on page 111, in reference to the letter of September 6, 1923 (Exhibit P. 12, p. 395), he testified—

> "Q Have you a copy of your letter of the 6th? A Not unless it is here. Maybe you have it."

Counsel for complainant is mistaken when he says, page 55 of his brief, that complainant frankly conceded the fact that he had been unable to locate letters before any emphasis was placed upon the fact that some letters were missing. On page 53 on direct he swore that the file contained all the correspondence. On

page 68 on cross emphasis was placed on the fact that some letters were missing. The frank concession referred to by counsel appears, as he says, on pages 102 and 114, which certainly *follow* page 68. How the letter of September 6, 1923, is "quite favorable" to complainant, as counsel says on page 56 of his brief, I cannot see. It demonstrates that complainant's story that an agreement between himself and Ronon had been reached on the telephone is untrue, for it speaks of both trying to reach each other by telephone and of both failing to connect. All letters not produced were unfavorable to complainant.

When he was recalled (p. 123) he explained how these letters came to be missing. He says that a young man in the office named Hampton made an examination six months before the trial and that there had been no examination made since; after the examination of witnesses the day before, he had had an examination made under his personal supervision and the letters had been found. He does not explain how it was that these *particular letters* should have been overlooked by the first searcher nor does he explain his testimony in response to the questions of the court on page 68 with respect to copies of his letters:

> "Since this matter has come up I have been endeavoring to locate all these letters and copies."

When recalled he says that *no* examination had been made except by a young man some eight months before, and this notwithstanding the fact that a notice to produce had been served upon him.

It may be that these very important letters just happened to be the ones overlooked in the search. Such things are possible but improbable.

C

There is another matter also to be considered in determining the credit to be given to the respective sides of this case and that is the necessity which complainant has felt himself to be under to depart from and to retract in part the allegations of his bill. He is a lawyer and does not deny but that he read the bill before it was filed.

The bill contains in its 15th paragraph the allegation—

> "With the exception of this last assignment, the complainant still owns all the said tax certificates for the years prior to the proceedings hereinafter related and was in possession of said premises holding said tax titles, as well as occupying said premises, *for the benefit of the owners of said lands whose predecessors had been his clients and whose exact whereabouts were unknown to the complainant.*"

Complainant's attention is brought to this allegation on page 88 of the record,

> "Q Is it a fact that you were holding possession of that land for the benefit of the actual owners of the land? A *Oh, no, it is not.* When I was first moved to take care of the tax matter in 1910 or 1912, it was my idea then to protect it for those owners, because I knew Mr. McNulty had died and Mr. Gulick had died and I bought it in the first instance for them to take care of it for them so that nobody could get any outstanding interest, but in 1914 when I had this agreement I did not consider it that I was holding it for them longer than that."

In the bill he also set forth, after detailing the legal services which he had rendered in the Bennett litigation, etc. (paragraph 8½).

> "The complainant was never paid by the Lynore Land Company nor by the Gulick or

> McNulty interests succeeding to the interests of the Lynore Land Company to the premises in question for his services and disbursements in connection with that litigation, *and that fact was taken into account in proceedings hereinafter alluded to.*"

(*i. e.*, the negotiations for the purchase by complainant of the Gulick and McNulty interests). His attention is directed to this on page 85 of the record—

> "Q As I read your bill of complaint, you set forth that it was in consideration of those legal services rendered that these people agreed to sell you this property for this small price. A Oh, no. That is wrong if that was in the bill. It wasn't so.
>
> Q I understand that to be the prayer of the bill. A That was not our agreement at all."

And then the paragraph which I have just referred to was read to him from the bill of complaint, and

> "A I would like to state, for the purpose of the record, that that statement that I was not paid by the McNulty interest is incorrect. I was not paid by Gulick. We represented the McNulty interests in the Bennett litigation and an allowance was made in that case which would cover that. I want that corrected."

Paragraph 13 of the bill is then brought to his attention in which he says:

> "All the legal matters in connection with the interest of Richard M. Gulick and Peter J. McNulty in connection with said lands and said corporation, including the litigation in the Court of Chancery and the Court of Errors, commenced by the said Laura Bigger, were attended to by the complainant, but without the payment by the interested parties of complainant's charges for such varied and protracted services and disbursements.

The complainant's interest in the property was, therefore, kept alive.''

Paragraph 16 was also brought to his attention in which he said—

> ''Correspondence ensued between the complainant and the legal representatives of the owners of the equity, subject to said tax titles, of said lands and premises as soon as the complainant ascertained their whereabouts, the complainant informing them of the fact that he had, at large expense, purchased said lands at these tax sales, and asking reimbursement therefor, *as well as compensation for his legal services''*

and complainant says (p. 86) that he made no demand for compensation for legal services and that these legal services which he had rendered were not taken into consideration in the bargain that he made with the Gulick and McNulty interests, and he says (p. 87)—

> ''Q Well, did you regard yourself as entitled to being favored? A No.''

This is a complete about face from the position taken in the bill, many paragraphs of which had been devoted to detailing the past legal services rendered by complainant apparently for the purpose of showing a justification for his taking the position that he did, to wit, getting the property from the McNulty and Gulick interests at so low a price.

There can be no misunderstanding of the language—

> ''The complainant's interest in the property was, therefore, kept alive.''

The language follows in such a way as to make it clear that what counsel is referring to is the legal services performed during the Bennett litigation, etc. If that is not clear, the language of paragraph 16 is certainly incapable of misunder-

standing. Complainant there says that he wrote to the two interests asking not only reimbursement for the money which he had paid out in taxes "but as well as compensation for his legal services."

There is nothing in the correspondence to this effect, and complainant *now* says that nothing of that kind ever took place, and *now* says that he did not consider himself at all in the position of a favored purchaser.

What was the object of putting all of this past history in the bill? It is obvious that, at the time of the drafting of the bill, it was thought necessary to put complainant in a position where he would have some interest in this property other than that of a mere person who had purchased at tax sales. And, to show such an interest, this previous litigation was brought in, and the fact that complainant had not been paid and had an interest in the property for *that* reason. And, notwithstanding denial that he had any such interest, counsel, in his brief, p. 2, after reciting the prior litigation, etc., says that complainant was never paid by the Gulick interests for his services in the Bigger litigation.

Complainant expressly disclaims any interest in the property by reason of services rendered. And yet counsel still relies upon it. It is equally obvious that, when the answer came in and upon the trial, it must have appeared to someone that, if complainant was interested in this property by reason of *legal* fees due and if he was putting himself in the position of being a favored purchaser by reason of *that* fact, he was putting himself in the position of an attorney for the owners of the property and the obligations of attorney and client would apply, and, under such

circumstances, he would have had no right to have attempted to purchase the property without disclosing that he had already contracted to sell it to Eichengreen. The contract with Eichengreen could not be abandoned. That was a necessity. The interest of complainant in the property, by reason of non-payment of legal services, had to be thrown overboard.

And so with respect to the statement of the bill that he was in possession "for the benefit of the owners of said lands whose predecessors had been his clients and whose exact whereabouts were unknown to the complainant." For the same reason also *that* had to be thrown overboard.

And, although complainant is a lawyer and read the bill, or at least thinks he did (he at least says that he sent to counsel the information upon which the bill was drawn and it is inconceivable that counsel who drew this bill should put anything in it that was not justified by the information sent), he has no hesitancy whatever in departing from the statements contained in the bill not only with respect to the theory of the case but with respect to the alleged facts therein set forth.

But counsel has no hesitancy in his brief in referring to the legal fees which were due to complainant for no other possible reason than to show some interest in complainant beyond that of a mere holder of a tax lien (for that is what it was whether evidenced by deed or otherwise) and to put him in the position of a favored purchaser, the theory apparently being that Eichengreen interfered in some unjustifiable way with that favored position.

If that is so, we are back to the situation as disclosed by the bill, of an attorney purchasing a tax lien for the protection of those beneficially interested in the property, the assumed relationship of attorney and client (irrespective of whether the exact identity of the client was known or not) and the attempt to obtain by that attorney, from his clients, the equity of redemption without a full and frank disclosure of what the attorney now claims to have been the exact situation.

There is no middle course for complainant to take. Either the relationship of attorney and client existed in effect, or, at least, a relationship existed of which the obligations were the same, and he could not acquire the equity of redemption of his clients in the manner in which he attempted or he had no interest in this property whatever at the time he dealt with Eichengreen except that of the holder of a tax lien, and if *that* was his interest then he obtained his agreement with Eichengreen, assuming it to have been made, by reason of a mistaken idea on the part of Eichengreen that complainant was, in fact, the owner of the property, and to that I will come later.

Counsel explains the "erroneous" statements contained in the Bill of Complaint by saying (p. 56 of brief), "It is because of the recognized freedom of counsel in drafting unverified bills of complaint that courts attach no importance whatever to their allegations, deeming them 'mere flourishes of the draftsman's pen.' "

I can readily conceive that allegations of *conclusions* contained in the bill may be considered "mere flourishes of the draftsman's pen" but I cannot conceive that the court will so treat an

allegation of fact contained in the bill which, at the time the bill was drafted, it was thought necessary to insert to sustain the cause of action. Such an allegation of fact, which turns out not to be a fact, and known to the party making the allegation not to be a fact, has not always been treated as such. In *Clickner* v. *Clickner,* 2 N. J. Advance Reports (1924), p. 130, in dismissing an annulment suit for one reason that, in the petition of the petitioner, a knowingly false statement was made, the Vice-Chancellor said—

> "This attempt to deceive the court was obviously made in the belief that it was necessary or advisable in making out his right to decree, and for the purpose of endeavoring to obtain such decree. It seems to me therefore that denial of relief to petitioner might well be rested upon that ground, somewhat akin to the ordinary application of the equitable principles which require a suitor for equitable relief to do equity and to come into court with clean hands."

D

Complainant also makes mistakes in his testimony.

He testified on p 60, with respect to a conversation he had with Eichengreen, as he states, in the middle or latter part of August, 1923, when Eichengreen came to his office "for a show-down, apparently," and said that the matter must be closed "up within a month or the thing would be off, and I was—didn't want to be hurried on the matter. I told him if he wanted the thing off, *it could be off right then.* I wasn't anxious to sell."

On p. 97 on his cross examination, referring to the same interview, complainant testified:

"Q You also said that it would be off if you didn't close it? A I didn't say anything of the kind.

Q I thought you so testified this morning? A I did not.

Q I thought you testified—if I am wrong correct me—'he said it would be off unless you closed it in a month and you said it would be off then.' A I don't think I ever testified to anything of that kind in the record, because nothing of that kind—(interrupted).

Q Don't you remember you said in your examination this morning 'off'? A I do not. I may have said that, sir.

Q In what connection did you use it, and wasn't it in connection with that August episode? A I don't know what I said it in that regard.

The Court: My recollection is you said that after he had criticised you you said it could go off now, you were not anxious to sell.

Witness: Yes.

The Court: Or words to that effect.

Witness: I think that is so, your Honor.

The Court: I think that is what you said, you resented the criticism.

The Witness: I did.

The Court: And in substance said that it could be off now, that you were not anxious to sell. Isn't that it? Do you recollect that?

Witness: Yes, sir, I think that is so.

The Court: That is what Mr. Lane is speaking of."

And then, p. 98, he says:

"Q What was it about 'off'? A I don't know whether it was at that occasion

> or not. Likely it was. I know on two or three occasions when he would talk to me about these things I would tell him I didn't want to be bothered with it, I was busy with other things, if he didn't want to carry out his agreement we would abandon the thing; I would take my own time to fix it up. *I may have said something on that occasion if he didn't want to carry out his agreement the thing would be off as far as he was concerned,* but he never wanted it off."

In the face of this testimony it can hardly be claimed that Eichengreen was complainant's agent.

I am wondering whether it is the insistence of complainant's counsel that complainant had the right to make his agreement with Eichengreen and then sit down and refuse to do anything with the property, taking, as he says "my own time to fix it up" and, whether, under the circumstances, Eichengreen was precluded from ever acquiring that property from the real owners. And if that is his insistence I am wondering upon what theory it is based? Apparently complainant seemed to think that he had some right in the property other than his tax lien which gave him the *sole* right to purchase the property from the owners, and yet he has said in his testimony that he did not consider himself in the position of a favored purchaser.

POINT I.

Any negotiations between complainant and Eichengreen were based upon the false assumption by Eichengreen that complainant was the owner of the property and complainant knew at the time of the negotiations that Eichengreen so thought and knew, in fact, that he was not the owner.

In his bill complainant says (paragraph 18, p. 10):

> "After the foregoing understanding had been arrived at, one Morris Eichengreen, developer of real estate, who owned property adjoining the premises in question, called upon the complainant expressing a desire to buy the property. Complainant at that time was in possession thereof, and had been in such possession for the past ten years, *and was generally reputed to be, and understood by the said Eichengreen to be the owner of the property.* The said Eichengreen offered the complainant $20,000 cash for the property. This was about February, 1922. Complainant refused the offer stating that he was not in a position to give a marketable title, *although he held the legal title, AND HAD possession under the tax deeds.*"

And I advert also to the following statements contained in this paragraph:

> "Eichengreen saw the complainant several times thereafter in the spring of 1922, and sometime in the month of March of that year, the complainant told Eichengreen that the lowest price for which the *complainant* would sell the property was $25,000 cash, less a plot of 200 feet by 200 feet *situated on the southeast corner of the tract, which the complainant desired to reserve for a member of his family.* The property had in the meantime enhanced in value, as the complainant well knew."

Compare this allegation in the bill with the statements contained in the letters written by complainant about this time to Ronon and to Lawrence in which the value of the property is depreciated.

Further, in the 18th paragraph the statement is:

> "The complainant warned him (Eichengreen) that he should not go to any considerable expense along those lines until the complainant had completed his title, and was in a position to give a marketable title to the property, but the said Eichengreen expressed his satisfaction—*during the time that it was arranged that the complainant should complete his title to the property.*"

Complainant had no interest in the property except as the holder of a tax lien. Complainant attempts, on pp. 89, 90, etc. of the record to show, in effect, that Eichengreen knew, at the time he dealt with him, that he, complainant, was merely the holder of tax liens.

And see the cross examination of complainant, pp. 88, 89, 90, 91, and his refusal to answer "yes" or "no" to the question p. 90:

> "Q Did you tell him that that was the only interest you had in that property?"

And, again his refusal to answer "no" to the question on p. 91:

> "Q Did you tell him that the interest you had in that property was solely that of holder of the tax sale?"

And the answer to the question on pp. 91, 92:

> "Q Then so far as anything was said between you two at that time the communication to Eichengreen was that you had nothing in this property and no right in that property except that of the tax title, so far

as your right was concerned? A *I don't think he could get that impression from my conversation, because I had had prior to that time the old 1914 contract which we were trying to renew after various parties died.* He knew I had that and he knew from my negotiations at that time that I could close this title up and get these two interests."

But it immediately appears that the contract which complainant is referring to was never delivered or operative (p. 92). See also his testimony on pp. 92, 93:

"Q You were generally reputed to be the owner of that property, were you not? A Oh, possibly so. I imagine the people around there—they never saw any of the McNulties and Gulicks—who lived around there, I assume they probably thought I was the owner of it. * * *

Q Is that what you meant when in the 18th paragraph of your bill you say that the defendant came to you expressing his desire to buy the property and 'complainant at that time was in possession and had been in such possession for the past ten years and was generally reputed to be and understood by the said Eichengreen to be the owner of the property?' A It was generally understood that I was the owner in that way without people going into the detail as to what my ownership consisted of."

Eichengreen says (and this is the first time that I have referred to the testimony of Eichengreen) that he thought, when he went to complainant, that complainant was the owner of the property (p. 133) and he details the conversation between himself and complainant (pp. 133, 134) and says that complainant said that, although he was the owner of the property and would sell it, he was not in a position—

"now to give you title." He says that, "I have acquired all the interest except one

> very small interest, and I will have that within thirty days, and if you come in here in thirty days then we will make a deal and close it up.''

Eichengreen says that one reason why he thought that complainant was the owner of the property was that complainant had given a deed for twenty-five feet front, signed by himself and his wife to the Borough of Neptune City in order that it might be used as a street. That deed is in evidence, (Exhibit D. 5, p. 420) and shows that complainant and wife, on the 21st of November, 1921, made a deed of quitclaim to the Borough of Neptune City, which was recorded on January 22, 1924.

On cross examination, p. 188, Eichengreen again refers to this deed and says that he heard about it in November, 1921, at the meeting of the council.

Eichengreen had had an option to purchase this property, signed by Richard Gulick and Margaret A. McNulty, then the owners of it, on February 14, 1911, for the purchase price of $8,000 (p. 129). A suit to enforce this option was brought in November, 1911 (Exhibit D. 8, p. 130). The subpoena was returned *non est* and no disposition was made of the suit (p. 131). Eichengreen continued to be interested in the property and communicated with Mr. Ronon, representing the McNulty interests, as late as October 8, 1921, as indicated by the letter of October 8, 1921, from Eichengreen to Ronon (Exhibit D. 10, p. 132).

Eichengreen had seen Ronon seven or eight months before that letter (p. 131) and that was the last he saw of him (pp. 131, 187, 188). There was no answer to the letter. Then in November,

1921, Eichengreen was at a council meeting at Neptune City and heard about the delivery of the deed from complainant and wife to the city, and it was *then* that he went to complainant, *believing that complainant was the owner of the property* (p. 188).

Counsel makes much of the fact (p. 188) that, as counsel says, Eichengreen supposed that *between October and November,* 1921, Carton had acquired the McNulty interests. But the fact is that it was seven or eight months before the letter written by Eichengreen to Ronon on October 28, 1921, that Eichengreen had seen Ronon and had attempted to negotiate with respect to this property. He then wrote the letter of October 28, 1921. He then was at a council meeting in November, 1921, and heard that complainant and wife had given a deed of the property to Neptune City. He had gotten no reply from Ronon. Is it any wonder that he thought that complainant had secured the McNulty interests? Not having heard from Ronon he went to complainant believing him to be the owner and attempted to negotiate with him for the purchase. *And complainant did not attempt to undeceive him.*

It is absurd for complainant to contend that the statements of his bill are true, to wit, that it was "UNDERSTOOD by the said Eichengreen that he, complainant, was the owner of the property, and that he disclosed to Eichengreen," as he now says he did, although refusing to answer the question categorically, that he was only the holder of tax liens upon the property. Yet counsel (page 28 of his brief) puts complainant in this position and says "In this connection the question naturally arises, if, as Eichengreen admits, Carton stated there were out-

standing interests, to be acquired, how Eichengreen could have supposed Carton was 'the owner,' " but complainant himself admits that Eichengreen supposed him to be the owner. Outstanding interests *were* mentioned. They must have bene represented by complainant to Eichengreen as of small interests or of slight importance else Eichengreen could not have supposed complainant to be the *owner.*"

Stronger than testimony, perhaps, is the absurdity of Eichengreen's offer to pay $25,000 to complainant for this property believing that complainant was only the holder of a tax lien, and without making any inquiry whatever as to what complainant's negotiations were with the owners of the property (pp. 93, 94). Such an agreement between Eichengreen and complainant is quite understandable if we assume that what Eichengreen says is correct, to wit, that complainant said that he had *all of the interests in the property except one or two which he was able to get.* And this also fits in with the allegations of the bill.

Complainant was not adverse to representing himself as the owner of the property, even to people who must have known better. In his letter written to Mr. Ronon of September 12th, 1923 (Exhibit D. 1, p. 416) which was not included in the file of correspondence originally offered by complainant he says to Ronon:

> "My dealings with you, representing Miss McNulty, were prompted for the purpose of being fair with you and to see that Miss McNulty got something out of the property. They were all, however, made without prejudice to my rights in the matter, and I assumed that you, representing Miss McNulty, *informed the purchaser of same that*

I hold title to the premises by a deed in fee.''

And he now says (p. 74) that what he was referring to was his rights under the tax sale. Complainant was a lawyer and, as a lawyer, must have known that one does not refer to the holder of a tax lien as an owner *in fee* and that is, in effect, what complainant says he is in his letter of September 12, 1923.

In the face of the allegations of his bill, made at a time when, perhaps, the effect of what was being said was not fully considered; of his refusal to answer categorically the questions as to whether he ever advised Eichengreen that he had nothing in the property except the interest of a holder of tax liens; of the absurd idea that Eichengreen should have made any such offer as he did, without believing that complainant was in such a position as that he was, in effect, the owner of the property with only some small outstanding interests which he could control, without making any inquiry whatever as to what complainant was going to pay (it is one thing to make an offer of this kind if the person with whom you are dealing is, in effect, the owner with only some small outstanding interests and another thing to make a contract with a person who has no right in the property except that of a tax lienor, and is in no position of controlling the fee and not even in the position of being a favored purchaser, as complainant now says is correct); of complainant's assertion in the letter to Ronon of having a deed in fee, it is hard to contend, without taking into consideration the testimony of Eichengreen at all, that Eichengreen did not believe that complainant was the owner of the property and that complainant knew that he so believed and knew

that the belief was based upon a false assumption, and to say the least complainant certainly took no measures to undeceive Eichengreen. And complainant says that in August, 1923, when he talked with Eichengreen he told Eichengreen "He knew this was *my* matter, **that I was dealing with it and that was my property.**"

But it was not. Is there any doubt that complainant represented, when he first saw Eichengreen in 1922, that the property was his? When he saw Eichengreen, as late as August 6, 1923, he represented that *it was his property.* This was before any definite agreement is claimed in the testimony of complainant to have been made between himself and the representatives of the McNulty and the Gulick interests.

And see complainant's testimony on p. 89 in which, referring to his conversation with Eichengreen, he says that he recalled the situation to Eichengreen—"which he knew, that I couldn't sell it, that I had never foreclosed my tax title, that there were these two outstanding interests that I hadn't taken over yet, and that I didn't want to foreclose the tax title. *I wanted to get rid of those interests in some way; I didn't think they had much in it, but I wanted to give something to them,* and he then made this offer." *Why didn't they have something in it if the property was worth $25,000?*

The story of Eichengreen is circumstantial. He tells why he believed that complainant was the owner. He tells how, some months before, he had, himself, been talking with Ronon and how, in October, he had written Ronon, and how, in November, he had heard at the council meeting of this deed, and then how he received no

reply from Ronon and went to complainant believing that he was the owner. And complainant now upon the stand says that he was *generally reputed to be the owner.*

POINT II.

Complainant had no contract or agreement with the owners of the equity of redemption.

Again, I refer to the bill. After reciting the services performed by complainant in the Laura Bigger litigation, all of which was thrown overboard in his testimony, for complainant says that this was not taken into consideration in any manner, although in his bill he says it was (paragraph 17), the allegation in paragraph 16 is—

> "Correspondence ensued between the complainant and the legal representatives of the owners of the equity, subject to said tax titles, of said lands and premises as soon as the complainant ascertained their whereabouts, the complainant informing them of the fact that he had, at large expense, purchased said lands at these tax sales, and asking reimbursement therefor, as well as compensation for his legal services, but the complainant *could at first get no satisfaction, beyond the expression of a desire on the part of the owners, through the statements of their respective attorneys,* that the complainant should make an offer to them for their interests in said property, as they were unwilling to make any further expenditure in connection therewith. *This suggestion the complainant at that time declined to adopt, and the matter dragged along in that way.*

He then refers to an agreement to purchase made between himself and Mrs. Housewright, paragraph 17, for the purchase price of $8,000 from which complainant was to deduct all moneys

paid by him for taxes, his bill for professional services and other expenses, and then says—

> "*and an agreement to that effect was prepared and signed both by the complainant and said Florence S. Housewright, but the other persons interested in the property never signed the said agreement.* Later, the arrangement hereinabove adverted to between the said Florence S. Housewright and James G. Gulick, 2nd, occurred, and negotiations were reopened for the purpose of *carrying out the agreement that had been signed by Mrs. Housewright and the complainant.* While these negotiations were in progress, John C. Gulick paid to the complainant a portion of the taxes he had theretofore paid upon said property, resulting in the assignment of the tax title to said Gulick hereinabove referred to. Again the matter was held in abeyance for some time, the complainant having lost sight of the whereabouts of the persons interested in the equity in said land, and being not fully posted either as to where such persons were, or who, indeed, had succeeded to the title, correspondence was revived by counsel in Philadelphia representing the McNulty interest, *to whom the complainant again expressed his desire to be reimbursed for the taxes and other expenditures incurred by him in connection with said property.*
>
> * * * * * * * * * * *
>
> Negotiations along this line continued until about the year 1921, when they resulted in a statement by the attorneys for the two interests living in New York and Philadelphia respectively, that they would *procure a quitclaim deed to the complainant for their respective client's interests for* $2,500 to be paid by the complainant for each half interest. At that time the disbursements which the complainant had made for taxes and otherwise in connection with said property, amounted to upwards of $3,500. The correspondence and negotiations between the

complainant and the lawyers of the respective interests, were conducted as the complainant believes and charges, in entire good faith, *and a definite agreement was reached between the complainant and the counsel of the respective interests, that if complainant would pay each of said interests $2,500, he could secure a quit-claim deed from them for said property.* * * *''

Paragraph 18—

''After the foregoing understanding had been arrived at, one Morris Eichengreen'' did, etc.

With these allegations of the bill in mind let us look at the correspondence.

The correspondence with respect to the McNulty interests is contained in C. 3 (291) together with defendant's exhibits not contained in the file C. 3 (D. 1, 2, 3, pp. 416, 417, 418).

The first series runs from November 3, 1915, to June 24, 1916.

There is nothing in this correspondence indicating the acceptance of any offer to buy or sell.

The last offer is that contained in the letter of June 15, 1916 (300) from counsel for Mrs. McNulty to complainant in which he says—

''Mrs. McNulty will sell her interest, an undivided one-half interest in this property for $4,000 less the taxes and interest on taxes to date, her share of which would be approximately $525.''

There is no acceptance of this, although counsel wrote complainant again on June 24, 1916 (302), asking him whether he was—

''still interested in purchasing Mrs. McNulty's interest in the Avon property on a basis of $4,000 less taxes, interest, etc.''

There is then no correspondence whatever until April 20, 1922.

The correspondence then seems to have been opened by a letter from complainant to Moorshead. Complainant then saw Ronon as appears by the letter of April 27, 1922, for Ronon writes him asking that he make a definite proposition (304). On May 9, 1922, Carton writes Ronon enclosing a memorandum of taxes, etc. (305). And this is followed by the letter of May 11, 1922, from complainant to Ronon (306). This is followed by the letter of July 25, 1922 (307), from complainant to Ronon in which complainant says:

> "Something should be done to dispose of this situation promptly as the Borough is proceeding to lay sidewalks and curbs in front of this and other property, etc."

Then follows the letter of August 10, 1922 (307), from complainant to Ronon.

And on April 18, 1922, complainant wrote the letter Exhibit D. 4 (419), which was not in the file produced by complainant, in which **after he had the arrangement, as he says, to sell to Eichengreen in order to induce the McNulty interests to sell he states—**

> "I have been hoping that the property would come in the market for developing purposes but to date I have been unable to make any disposition of same."

And when he wrote this letter he had, if he is to be believed, a firm agreement that Eichengreen would pay him $25,000.

This ends the second series of correspondence.

In this second series of correspondence there is neither offer nor acceptance on either side.

All letters constituting the second series of correspondence *were written after* Eichengreen had made the contract with complainant in February, 1922, as complainant now states. And yet complainant in his bill says that when Eichengreen came to him, he had a *definite* understanding to purchase the interests, each for twenty-five hundred dollars (paragraphs 17 and 18, pp. 9, 10) and that is also the effect of his testimony on p. 54 of the record in which he said, speaking of a time anterior to his arrangement with Eichengreen—

> "*I had arrangements with both Mr. Lawrence representing the Gulick interest and Mr. Ronon representing the McNulty interest, that I would pay them each twenty-five hundred dollars for their interests, quit-claim deed for their interests,* basing—going back to the original contract of eight thousand dollars."

Complainant then eight months later writes the letter of April 10, 1923 (308), in which he says:

> "I have been expecting to hear from you concerning the McNulty matter about which I communicated with you some months ago. Nothing further has ever been done in this matter and the Borough now threatens to advertise the property for sale for the laying of sidewalks and curbs.
>
> Something must be done to close the matter out one way or the other. I wrote you last summer with my suggestion in the matter and I wish you would take the same up with your clients and let me know what they wish to do one way or the other."

There is then no correspondence until four months later on August 3, 1923, complainant again wrote Ronon stating that unless something was done—

> "I will have to foreclose my tax sale in order to get the property in such shape that

I can convert it to get my money out of it, *as I cannot afford to carry it any longer*" (Exhibit D. 3, p. 418).

On August 23, 1923 (311), Carton makes the first offer, at least after 1916. After "bearing" the property in a long paragraph he says:

"*However,* and without prejudice, I am willing to make your client an offer of $2,000 for her one-half interest in the property, which I consider under the circumstances is a very fair one, and I wish you would let me know at your early convenience if it is accepted or not."

Ronon then writes complainant, on August 29, 1923 (312), a letter in which he says:

"Today I tried to reach you by telephone in regard to the McNulty matter, but learned that you were out of town and would not return until Friday of this week.

I shall be obliged if you will call me on the telephone when you return to the office on Friday, *so that we may come to some definite arrangement.*"

The next letter is one of September 6th, which is not in the file, but which was subsequently produced (p. 125) and reads (Exhibit P. 12, p. 305):

"I duly received yours of the 29th ultimo in the McNulty matter, and am sorry that I was not in when you called me on the phone last Friday. I tried to reach you by phone yesterday and today, but found you were out of the office. As I am very anxious to get this matter closed out so that I can arrange for funds to adjust the taxes and outstanding assessment liens, I wish you would get your deed in shape and have it executed at your earliest opportunity and arrange an appointment with me for closing."

The next is a letter of September 11, 1923 (p. 313) from Ronon to complainant—

> "I regret that you were not in town when I telephoned you on Friday, August 31st, for the reason that Miss McNulty was offered a considerably larger price for her interest in the property than you offered. The party making the offer to Miss McNulty was ready to close immediately, and in view of the fact that Miss McNulty had no interest in the matter other than to obtain what she could do for herself and sisters, she accepted the offer and executed a deed covering her interest such as it might be."

To which complainant replied by the letter of September 12, 1923, Exhibit D. 1 (p. 416):

> "In view of the fact that I have been carrying this matter for all these years and have had the matter up with you for a long while, I am quite unable to understand how you justify your position in selling the interest of Miss McNulty to a stranger. My dealings with you, representing Miss McNulty, were prompted for the purpose of being fair with you and to see that Miss McNulty got something out of the property. They were all, however, made without prejudice to my rights in the matter, and I assumed that you, representing Miss McNulty, *informed the purchaser of same that I hold title to the premises by a deed in fee* * * *."

Complainant is examined on this correspondence (p. 67) and he cannot point to any offer and acceptance except only that he contends that, within a week after the letter of August 23, 1923 (p. 311), in which he made the offer of $2,000, he had Mr. Ronon on the telephone and, over the telephone, made an offer of $2,500 which was accepted (p. 70) but which was not confirmed by letter (p. 71).

The clear inference from the letters, of August 29th from Ronon to complainant, of September 6th from complainant to Ronon, of September 11th from Ronon to complainant—is that they never got together on the telephone. Attempts to get together are mentioned and each concede that they failed. Moreover if complainant had had, as he now says he had, a telephone conversation with Ronon in which a definite agreement was made, why did he not speak of that definite agreement in the letter of September 12, 1923 (Exhibit D. 1, p. 416).

I ask the Court to read the cross examination of complainant on this subject from pp. 67 to 83 of the record. And I submit that it is clear that there **never was at any time, any agreement between complainant and the McNulty interests.**

Turning to the file in the Gulick matter (Exhibit C. 4, p. 315) we find that it opened with a letter of March 17, 1921, from complainant to Lawrence, in which complainant states that he will make an appointment with Lawrence. This is followed by a letter of March 18, 1921 (316), in which Lawrence gives complainant his address. It is followed by the letter of June 21, 1921 (316), in which Lawrence asked complainant for information with respect to the property and suggests an appointment. There is then silence until March 15, 1922 (p. 317), when complainant writes Lawrence stating that he had intended to call upon him before regarding the property and—

> "Some disposition should be made of the matter, however, *as taxes are running up each year and I have become tired of paying same without any return whatever*" * * *.
>
> " * * * I wish you would let me know just the lowest amount they would take for this one-half interest so that I may take it

up with the others interested and see if I cannot complete the same and get the matter out of the way."

"The property is standing idle, doing no one any good and running up a big tax bill each year which puts it in bad shape."

This was, I submit, *after* the alleged contract with Eichengreen. I have considered the subject elsewhere. Then follow the letters of April 11th and 12th (Exhibit C. 4, p. 319).

There is then silence until August 17, 1922 (Exhibit C. 4, p. 319), when complainant writes Lawrence again "bearing" the property and asking for a disposition of the matter.

On September 14, 1922 (Exhibit C. 4, p. 320), complainant writes Lawrence again "bearing" the property, referring to an assessment, etc., and

"Can you arrange with the attorney representing the McNultys to attend at a conference to be held in your office where we might meet to endeavor to adjust the matter as a whole."

There is then silence until April 10, 1923 (Exhibit C. 4, p. 321), when complainant sends some information to Lawrence.

See also the letter of April 12, 1923 (Exhibit C. 4, p. 322).

Silence again until August 16, 1923 (Exhibit C. 4, p. 323), when Lawrence writes complainant asking him

"Will you agree to pay $2,500 for the half interest in the property if I am able to secure Quit Claim Deeds to you from the heirs, etc."

On August 17, 1923 (Exhibit C. 4, p. 328), complainant replies—

"You suggest that I agree to pay $2,500 for one-half interest in the property. In

view of what I already have in the property *and the large outstanding claims against it, this figure is high* and I am sure more than the interest would amount to. However, I appreciate that because there are so many parties in interest with whom it would have to be divided and so that your suggested fee may be taken care of, I am without prejudice, willing to make you this offer at this time so that you may immediately take the matter of procuring the necessary deeds to cover the fee of the one-half interest formerly held by Gulicks, and the sooner you can put the matter through the better it will be for me and all concerned as it is going to be necessary in the near future *to raise about $2,000 to put up for assessments* and I must have the matter of title fixed before I would be justified in advancing this money. Please, therefore, consider this, my offer to pay $2,500 for this interest as above stated and I wish you would take the matter up with the view of whipping it in shape as speedily as possible.''

Lawrence writes on August 24th and 29th (Exhibit C. 4, p. 329) that he has been away but that the matter will receive his attention, to which complainant replies (September 4th, Exhibit C. 4, p. 330) that he expects to hear from Lawrence about the first of the week, and then there is silence until November 8, 1923, when he writes Lawrence asking him to let me know when he may receive the deeds (Exhibit C. 4, p. 330). When he wrote this last letter complainant knew that Eichengreen had the property.

In this correspondence there is no offer, so far as complainant is concerned, until the letter of August 17, 1923 (Exhibit C. 4, p. 328).

This correspondence is referred to on the cross examination of complainant (pp. 80, 81, 82, 83, 84 of the record).

Where is the agreement which is referred to in the bill in paragraph 17— "and a *definite agreement* was reached between the complainant and the counsel of the respective interests, that if the complainant would pay each of said interests $2,500 he could secure a quit claim deed for them for said property?"

And how does this correspondence fit in with the allegation of paragraph 18 of the bill, "*After* the foregoing understanding (to wit the agreement to purchase each of the interests for $2,-500) had been arrived at, one Morris Eichengreen, a developer of real estate," came, etc.?

Where is the agreement referred to by complainant in his testimony (p. 54)—

> "I had arrangements with both Mr. Lawrence representing the Gulick interest and Mr. Ronon representing the McNulty interest, that I would pay them each twenty-five hundred dollars for their interests,"

referring to a period anterior to Eichengreen's intervention?

Where, in this correspondence, are the letters "Complainant informing them of the fact that he had, at large expense, purchased said lands at these tax sales, and asking reimbursement therefor, *as well as compensation for his legal services* * * *"?

And where is the expression of a desire on the part of the owners through the statements of their respective counsel "that complainant should make an offer to them for their interests in the property, as they were unwilling to make any further expenditure in connection therewith." And again I advert to the fact that complainant on page 85 of the record repudiated any claim that compensation for legal services was taken into consideration.

The fact that there is nothing in the correspondence as alleged in the bill with respect to legal services is brought to the attention of complainant on pages 86 and 87 of the record and no explanation is offered.

The statement that complainant had any agreement with the representative of these two interests prior to Eichengreen coming to him in February 1922, is unequivocally false and it is likewise clear that no definite agreement was made between complainant and the persons interested at any time.

POINT III.

There was no agreement between Eichengreen and complainant.

We start out with the statement of complainant that he **refused to make a written agreement.** He was dealing with land and he refused to make any agreement which would be binding upon him. If we assume for the moment that it was binding upon Eichengreen we have complainant putting himself in the position of making an agreement binding upon the person with whom he was contracting and not binding upon himself. And the excuse he gives for not making a binding agreement is that he was not able to. He was not able to make a *binding* agreement but he was able to represent to Eichengreen, as he says in paragraph 18 of his bill, "stating that he was not in a position to give a marketable title, *although he held the legal title, and had possession under the tax deeds.*" Complainant repudiates the suggestion, page 107 of the record, that he was going to act with respect to this property as the agent of Eichengreen.

On direct examination complainant says with respect to the contract (p. 56)—

> "*I told him in the first place that I could not sell the property, that I had not yet completed my title, and if I could sell, I would not sell for twenty thousand dollars.* He then offered either—I am not sure whether that day or a few days thereafter, offered me twenty-two thousand five hundred dollars for it, and I made the same response. He wanted to know what I would sell the property for. I told him when I had completed my title, that the least I would sell it for would be twenty-five thousand dollars less a piece in the corner that I had wanted to reserve."

Page 57—

> "I told him that I couldn't enter into any written agreement with him at that time and it could only be a conditional agreement, depending on my either foreclosing my tax title or getting the deed from the two interests that I was then negotiating for. *He insisted that would be all right,* wanted to pay me five hundred dollars right there. I told him that he could not pay me anything, nor would I enter into any written contract with him, that I hoped at that time to soon be able to get these two interests which I had been negotiating for and if I did not I would foreclose my tax title that I had been carrying then for some ten or twelve years and upon getting title he would have it for twenty-five thousand dollars, less this two hundred feet. He was to pay ten thousand dollars cash at the time, and mortgage with release clauses in for fifteen thousand dollars. We wanted to know if he could bank on that and I told him he could. *He wanted to shake hands on it and we did shake hands on it.*"

He is cross examined on the agreement (p. 89), where he says that he told Eichengreen that he wanted to get rid of—

> "those interests in some way; *I didn't think they had much in it, but I wanted to give something to them,* and he then made this offer."

Facts which indicate the improbability that an agreement such as complainant says was made by Eichengreen is brought to his attention (pp. 92, 93, 94) and then (p. 94)—

> "Q Notwithstanding the fact that you declined to make a contract which would be enforceable, nevertheless you had a contract; is that right? A I wouldn't make any written contract with him as he wanted, but the understanding was and the agreement was, and he wanted to shake hands to it and did. I was his friend, and when I got them in shape where I could sell, I would sell it to him for twenty-five thousand dollars, and that was the agreement, and I did shake with him on it, and all my efforts thereafter was to get it in shape so I could carry out the agreement with him.
>
> Q If that is so and he made this offer of twenty-five thousand dollars, why didn't you put that contract in writing so it would be enforceable as between you two? A I wouldn't put any contract in writing with anyone to sell them something I didn't have complete title to yet—something might happen—I might never be able to do it. Something might happen that I couldn't take care of the tax foreclosure—I wouldn't do such a thing. He knew about it and we talked about it."

And again facts which indicate the improbability of Eichengreen making such an agreement is brought to the attention of complainant on pages 106 and 107 of the record.

Eichengreen's story of the supposed agreement is contained on p. 133. He says that after he knew of the deed to Neptune City he went to complainant and said—

> "Q 'Do you own this property?' And he said, 'Yes.' I said, 'Well, what do you want for it?' He said, 'Twenty-five thousand dollars.' I says, 'I will give you twenty thousand dollars.' He said, 'I will tell you, Eichengreen, come in next week when you are down here.' I said, 'All right.' Next week I came down. I went into his office. I said, 'What have you got to say?' He said, 'Well, I will tell you, Eichengreen: I will sell you this property, but I am not in a position now to give you title.' He says that 'I have acquired all the interest except one very small interest, and I will have that within thirty days, and if you come in here in thirty days then we will make a deal and close it up.' At the end of thirty days—(interrupted).
>
> Q Let me ask you there: Did he tell you where that interest was located at that time? A No, sir.
>
> Q What was the next time you saw him? A At the end of thirty days I went into the office, Mr. Carton's office, and asked him he had acquired that interest and he told me no, but 'I will have it in two weeks.' "

He says (p. 134) that no contract was ever made; that about six months after his talk in March when he called at complainant's office to see what was doing the following conversation took place between himself and complainant (p. 134)—

> "A About six months after that, Mr. Carton told me, he said, 'There is a real small interest in that business that I have not acquired.' I said, 'Have you the McNulty interest?' He said, 'Yes. I have had that long ago.' So, 'I will have it, Eichengreen, in a couple of weeks. The lawyer is out of town on a vacation. He has got the papers and

everything and he does not get them signed.' I said, 'Well, let me give you five hundred dollars, to bind the bargain' and he said, 'No, I would not take any money.' ''

On cross examination he says (p. 149)—

''Q Mr. Eichengreen, I understand you to say that you never reached any bargain whatever with Mr. Carton? A No, sir.

Q How far had you gotten in your negotiations? A We never got any further than he told me, when I offered him twenty thousand dollars. He said, 'I can't do anything now'—'I have all this property but one very small interest, and I will have that in thirty days, and you come in here then and we will be able to do business.'

Q And that was the extent— A 'We may be able to do business.'

Q What? A 'We may be able then to do business.' ''

He is then cross examined at great length over a layout which had been prepared, and over a letter which was marked in evidence P. 13, written March 28, 1922 (p. 396) in which he makes suggestions as to how to handle the matter, etc.

And this letter is made much of by counsel in his brief (p. 37) as indicating that a definite agreement was reached. See Eichengreen's testimony pp. 149 to 154 of the record. Also pp. 163 to 165. Particularly is stress laid upon the fact that Eichengreen uses the word ''purchase'' in the letter (p. 163).

There is no doubt but that Eichengreen wanted to purchase this property nor is there any doubt but that he offered complainant $20,000 for it, as he says—complainant says $25,000—and there is no doubt that Eichengreen may have used language which indicated a purchase (pp. 182,

183, 184) but as Eichengreen says (p. 181) (and this is the same as the testimony of complainant as to the offer of the deposit of $500)—

> "A So I said, 'Do you want a deposit of five hundred dollars'? And he said, 'No; not until I get the interest.' "

Eichengreen is cross examined upon the use of the word "purchase" in this letter (pp. 184 to 185). Eichengreen, of course, in his letter attempted to use as strong language as he could, and there is no doubt but that, if complainant had been willing to enter into a contract of $20,000 Eichengreen would have made the contract (and he could have repudiated it upon learning that he had been misled into believing that complainant was the owner of the property). But complainant, according to his own testimony, steadfastly refused to make a contract.

There is nothing in the letter or in any of the correspondence to indicate that any purchase price of $25,000 was fixed. It is quite immaterial whose fault it was that the contract was not, in fact, made. Taking complainant's testimony at its face value no contract was made. The burden is on complainant. He states the purchase price was $25,000. Eichengreen denies this and says that *$20,000 was the highest price he offered.*

But complainant's letters to Ronon and to Lawrence are in accord with the testimony of Eichengreen. They are certainly not in accord with the testimony of complainant for now he is saying that a definite agreement was made, whereas *then* he said that the property could not be moved. Any such conditional contract, to use complainant's language, as complainant says was made, would be wholly without consideration, and

any contract whatever is in violation of the provisions of the statute of frauds.

How can counsel contend that a contract or agreement was made in March, 1922, in the face of complainant's letter to Eichengreen of March 7, *1923* (Exhibit P. 15, p. 415), containing the statement:

> "I have not yet completed my matters sufficiently to enable me to take up the *negotiations* for the property about which you spoke to me, but hope to within a very short time."

And yet complainant and his counsel say that at the time he wrote *that* letter he had a full, definite and complete agreement between Eichengreen and himself. If he did have such a full and definite agreement did he couch this letter in the form in which it was couched so that it would not be an enforceable contract against him?

Complainant attempts to explain this letter on p. 228 by saying that he was referring to the negotiations for the preparation of deed and mortgage and release clauses, etc., and all that sort of business. Is it possible to so construe the language—"to enable me to take up with you the negotiations *for the property about which you spoke with me?*" Why not use the language "preparation of deeds for the property which I have agreed to sell to you." No such language is used. Instead the expression is—"for the *property* about which *you spoke with me.*"

The court below was correct in holding that complainant had not sustained the burden of proving that there was a contract made by him to sell this property to Eichengreen.

POINT IV.

If there was any agreement between Eichengreen and complainant, complainant did not perform on his part.

The agreement between complainant and Eichengreen is supposed to have been made in March, 1922, and, according to complainant, contemplated that he should clear this title up. He concedes that Eichengreen thought that he was the owner of the property. What did he do?

Everything that he did is indicated by the correspondence. He wrote the letter to Lawrence, representing the Gulick interests, on March 15, 1922 (Exhibit C. 4, p. 317). He made no offer and "beared" the property. He wrote another letter on April 12, 1922 (Exhibit C. 4, p. 319). He was then silent until August 17, 1922 (Exhibit C. 4, p. 319) a period of four months. He wrote a letter on September 14, 1922 (Exhibit C. 4, p. 320) and he was then silent until April 10, 1923 (Exhibit C. 4, p. 321) a period or seven months. He was then silent until August, 1923, a period of four months, when he received the letter of August 16, 1923 (Exhibit C. 4, p. 323), to which he replied on August 17, 1923 (Exhibit C. 4, p. 328), and this is the first offer that he made.

So with respect to his negotiations with the McNulty interests. He wrote a letter in April, 1922 (Exhibit C. 3, p. 303). The correspondence continued until August, 1922, without any offer having been made. There is then silence from August 1922, to April 1923 (Exhibit C. 3, p. 308) a period of nine months, and there is then silence until August 3, 1923 (Exhibit C. 3, p. 309), a period of four months, and the correspondence continued until August 23, 1923 (Ex-

hibit C. 3, p. 311) when he made his offer of $2,000, which was the first offer made by him.

And, in the meantime, according to his own testimony, Eichengreen was continuously calling upon him to clean up the title. See among other things the letter of March 5, 1923 (p. 58) in which he urges complainant to do something and complainant's reply of March 7, 1923 (Exhibit P. 15, p. 415). Finally, in August 1923, Eichengreen came to him; according to complainant's testimony, the following took place (p. 60)—

> "A Finally he came to my office in—I think about the middle or latter part of August, 1923, and he came there for a show-down, apparently. He says I must close this up within a month or the thing would be off, *and I was—didn't want to be hurried on the matter. I told him if he wanted the thing off, it could be off right then. I wasn't anxious to sell. He insisted he wanted to carry out his arrangement by his contract with me and I had to carry it out. I had to do something.* * * * He first threatened me and then importuned me to get the matter closed up within a month. I had then about completed my arrangements with both the other interests and I told him I thought I could clean it up within a month. At that time I told him what I was doing; told him of the efforts I had been making, and when he criticised me for being slow, said he had waited a year and a half. I told him that if he could do any better he could go and see if he couldn't hurry the thing up for me, and on that * * *, etc."

This statement that he says he made that he had about completed his arrangements with the two interests was not true as the correspondence indicates.

On p. 83 he says, referring to his previous negotiations—

> "John C. Gulick had left some of this property to people in California and a whole lot of negotiations were under way before Mr. Eichengreen came in on the thing. It is true that I didn't do—I wasn't hurrying to close this thing up. It was my own matter, and I probably neglected it, and it was Mr. Eichengreen coming in on the matter and wanting me to close it out that probably made me take it up again at that time, but I had the matter under way prior to that time."

The statement that a whole lot of negotiations *were under way* before Eichengreen came in on the thing is untrue as the correspondence shows.

How was it *his own* matter, when, he says he didn't consider himself in the position of a favored purchaser?

And see complainant's cross examination (pp. 95, 96, 97, 98) and particularly on p. 98:

> "Q What was it about 'off'? A I don't know whether it was at that occasion or not. Likely it was. I know on two or three occasions when he would talk to me about these things I would tell him *I didn't want to be bothered with it*, I was busy with other things, if he didn't want to carry out his agreement we would abandon the thing; I would take my own time to fix it up. I may have said something on that occasion if he didn't want to carry out his agreement the thing would be off as far as he was concerned, but he never wanted it off."

The correspondence shows that no bona fide effort was made by complainant to clean it up, and, as matter of fact, it would appear that, as complainant indicates so often during his testimony, for some reason or other, *he considered the property was his*, although in fact it was not,

and that no one had any right to deal with it in any manner, shape or form except himself.

Eichengreen testifies (pp. 134, 135) that he went to complainant's office from time to time and that complainant kept promising that he would close it up, but never did. He testifies to the conversation in August, 1923 (p. 135) and says that complainant said—

> "A In the latter part of August, 1923. After going there for a year and a half—two years pretty near—he said, 'Eichengreen, I haven't got that interest yet.' He said, 'They live in California.'
>
> Mr. McCarter: What is that?
>
> A 'They live in California.' So I told Mr. Jones—(interrupted) etc. * * * "

How long was Eichengreen to wait because of this contract which complainant says bound Eichengreen but did not bind him? Was complainant privileged to take his own time in cleaning up the situation, in the meantime tying the hands of Eichengreen, Eichengreen having no hold whatever upon him? Notwithstanding the fact that complainant attempts to deny that in this August talk he used the expression "off" (pp. 97, 98, 99), he *had* testified on his direct examination (p. 60) that he did.

By reason, therefore, of the failure of complainant to, in good faith, attempt to clear this title, Eichengreen was under no obligation to continue to consider himself bound to complainant. At various stages of the proofs complainant attempts to excuse himself for not moving more rapidly because he did not know who the persons interested were. This is absurd because the correspondence shows that as early as March or April, 1922, he had full and complete knowledge.

In view of the fact that no offer whatever came from Carton with respect to the Gulick interests until August of *1923,* and no offer whatever with respect to the McNulty interests until August, *1923,* but that during all of this time complainant was attempting to "bear" the property so that he could buy it as cheaply as he could, it is impossible to understand what counsel means when he says (p. 17 of the brief) "Carton was doing *everything in his power* to bring matters to a head with the counsel of the two owners, and the correspondence in the latter part of August with both Ronon and Lawrence, shows how untrue are the statements that Jones, in his evidence (pp. 199, 211) to the effect that both Lawrence and Ronon in their interviews with him on behalf of Eichengreen, claimed they could make no progress with Carton. The correspondence already quoted is better evidence of the facts in that regard than the hearsay testimony of Mr. Jones, who is the zealous counsel of Eichengreen.

Why did not Carton make some offer before August, 1923? Why does he allege in his bill that he had agreements prior to February, 1922, to purchase both of these interests for $2,500 each when the correspondence shows he did not?

POINT V.

Eichengreen received no information from Carton in August, 1923, which he made use of in acquiring title.

Again turning to the bill of complaint we find that complainant alleges in paragraph 19 that—

> "The said Eichengreen visited the complainant from time to time to inquire how the details of getting the title were progressing, and the complainant frankly explained the whole situation, naming the attorneys, and the parties, so far as he knew them, and expressing the hope and belief, from his correspondence with the attorneys, that title could be obtained, and passed to said Eichengreen within a month or so. Eichengreen expressed the belief that he could accelerate the matter, and the complainant thereupon told him that if he could hurry the matter up, he was at liberty to call upon the parties and speed the matter along."

I can conceive of no purpose in this allegation unless it was an intent on the part of the drafter of the bill to have it believed that complainant expected Eichengreen to act in the capacity of his agent. When we turn to the testimony of complainant on cross examination, we find him saying (p. 104) that he did not expect Eichengreen to go out and do anything and this notwithstanding the fact that he suggested (p. 103)—

> "if he could speed this up and make these people move faster than I am 'you can do it yourself.' "

Although he did not expect Eichengreen to do anything, nevertheless he says that he gave Eichengreen information as to whom he was dealing with (pp. 104, 105). He remembers giving Eichengreen the name of Lawrence but

is not certain that he showed him a letter "showing him the difficulties, that some woman had left her husband, couldn't get a deed from him; someone else in California—I showed him those to justify the time I had been taking in getting this closed up—letter from one of the attorneys. I forget which one." (p. 103.) Notwithstanding the fact that he gave him all this information (p. 104) he did not expect Eichengreen to do anything yet told him "if he could speed the matter up he might go try it himself. I made that foolish remark."

He repeats on p. 105 that he had no thought that Eichengreen would go out and do anything.

On his direct examination (p. 61) he says he did show Eichengreen a letter from Mr. Moorshead or Mr. Lawrence, and he identifies the letter of August 16, 1923 (Exhibit C. 4, p. 323). Apparently certain when his own counsel showed him the letter, he is equally uncertain on cross examination, p. 103, when he says—

"I *think* I did show him the letter, etc."

Eichengreen denies that he received any such information from complainant. He testifies with respect to the conference in August and says that: when he went to complainant to find out what the situation was, he was told, as he had been told many times before, there was a small interest out which complainant had not acquired, and that interest was in California (p. 135); previous to that time complainant had told him that the interest was in Massachusetts (p. 137); complainant did *not* give him the name of Lawrence or Ronon (p. 138); he became suspicious when complainant told him that the interest was in California as he had previously told him it was in Massachusetts, he immediate-

ly went to see Charles J. Jones, a lawyer in Newark; Jones told him to have a search made; he had a search made and ascertained that complainant had no title to the property. He then tells a circumstantial story (p. 139) of having, under the direction of Mr. Jones, gone to see Miss McNulty. He tells how (p. 140) he located the address of Mrs. Housewright and the Gulick interests and says that he got in touch with Mr. Lawrence through Mrs. Housewright (p. 141). He tells also of having examined the will of Mr. Gulick to get the interests of the respective parties, etc. On cross examination he reiterates what he had said on direct (pp. 157, 158, 161). He testifies on p. 164, on cross examination, as to the change with respect to the outstanding interest from California to Massachusetts which made him suspicious in the first instance.

He tells a circumstantial story of how he made the search at the Surrogate's office (p. 167), and again as to how he located Miss McNulty (pp. 171, 172).

Much is made in counsel's brief (p. 30) of the statement of Eichengreen that complainant's name did not appear upon the search. Eichengreen is not a lawyer and what Eichengreen meant was, and all that he meant was, that the search disclosed that complainant was not in any manner, shape or form, the owner of this property.

With respect to the information which complainant says he gave Eichengreen in August of 1923 he stands alone. It is as improbable as that he ever disclosed to Eichengreen, during the year and a half, *what his real* interest in the property was. If he had disclosed his real in-

terest in the property there would have been no inducement whatever for Eichengreen to have made any such contract as complainant says he did.

But Eichengreen, as to the manner in which he ascertained who the owners of this property were, or the whereabouts of the owners, is supported by the testimony of Jones, who says: he is familiar with this property; he thought of it as "the Carton property;" when Eichengreen was first interested in it he came to him and reported to him that he was willing to give $20,000 for it; he told Jones that complainant had given a piece of it to the Borough; Jones himself always supposed that complainant owned the property and, so believing, he told Eichengreen "to go to Carton and buy it;" Eichengreen spoke to Jones about the property from time to time and told him that complainant had stated that there was an outstanding interest in Massachusetts; in August of 1923 Eichengreen came to Jones and told him that he had just come from complainant's office and that complainant had said that the outstanding interest was in California; thereupon Jones said that he thought complainant was stringing Eichengreen, and that there was something wrong and advised him to see Taylor in Freehold and have a search made; a search was made and it was ascertained that complainant did not own the property; he advised Eichengreen that he thought that complainant had not treated him right and that he ought to go down and see the people direct (p. 195); Jones negotiated the purchase from Miss McNulty (pp. 196, 197); he advised Eichengreen how to locate the Gulicks (pp. 197, 198).

He tells a circumstantial story as to how the Gulicks were located (pp. 197, 198) and as to how he found out the name of Lawrence. He tells how he took the matter up with Lawrence and closed the transaction. He says (p. 199) that in August, 1923, *Eichengreen did not give him any information as to the identity of the people interested in the estate or the lawyers representing them.*

If Jones is telling the truth the information with respect to the persons interested in this property and the names of the representatives of those interested were not given to Eichengreen by complainant in August, 1923, or at any other time. It would be perfectly absurd and ridiculous to go through the motions which Jones says they went through if this were the fact. Jones, under the circumstances, would be guilty of a deliberate attempt to impose upon the court. Unless the testimony of Jones is to be wholly ignored Eichengreen used no information acquired from complainant in any manner, shape or form.

He was vigorously cross examined to such an extent as that (p. 207) the following took place:

"Q After office hours, eh? A Yes; after— (interrupted).

Q You heard me? A I heard you.

Q Any difficulty in hearing? A I left so as to arrive in Philadelphia shortly after six o'clock.

The Court: Please, please. Is there a little bit of ill-feeling here?

Mr. McCarter: Pardon me?

The Court: Is there a little bit of ill-feeling between the lawyers?

Mr. McCarter: Not the slighest.

Witness: No."

This injection by the court was brought about by the method of cross examination. The cross examination disclosed that what Eichengreen says complainant told him Eichengreen reported to Jones. The method of examination rather indicates that counsel thought that, for some reason or other, Jones should not have obtained the file of correspondence between Carton and Ronon (p. 216). If he had not gotten that correspondence the court would have been deprived of the letters which were omitted from the files offered by complainant so "frankly." We did not get those letters until July, 1925 (p. 227).

I do not know what justification counsel has for the statement on page 30 of his brief—

> "It is obvious from this that Jones, whose only source of information was Eichengreen, must have been told of Carton's negotiations with Miss McNulty, and the question at once arises what about the California story? Both Eichengreen and Jones claim that Eichengreen supposed, until the Taylor informal search was made, that Carton owned the premises, notwithstanding the year and a half that Carton had been 'stringing Eichengreen along' while he was engaged in securing title. How this supposition that Carton owned the property could exist when both Eichengreen and Jones knew of the alleged outstanding interest in Massachusetts, later transferred, according to them, to California, Jones cannot explain."

Jones denies absolutely that he knew of the negotiations between Miss McNulty and complainant. Of course, when he ascertained that complainant had not acquired the McNulty interest which he did when the search was made, he must have supposed that complainant had been dealing with the McNulty interests. Both Eichengreen and Jones say, time over and

again, that they believed that complainant owned the property, but they each say that complainant had represented that there was *some* outstanding interest. How counsel can now say that Jones and Eichengreen did not believe that complainant owned the property when complainant himself says that *everybody* believed it and that he was reputed to be the owner of it, I do not know.

It was not necessary for Eichengreen to obtain information from complainant as to the owners of this property. He himself knew of the McNulty interests when he went to complainant. He had been in communication with Ronon eight or nine months before October, 1921, and he wrote the letter of October, 1921, to Ronon (Exhibit D. 10, p. 448). He had an option (Exhibit D. 7, p. 425) to purchase the property made in 1911 between Richard M. Gulick and Margaret A. McNulty and himself and he had filed a bill to enforce specific enforcement of that option to purchase (Exhibit D. 8, p. 427).

With the information which he had there would have been no difficulty whatever in his locating the representatives of the interests involved. He went to complainant only because he thought that complainant was the owner of the property and because he thought that complainant had acquired all of the interests in the property except some small outstanding interests. There were several people interested in the Gulick estate and it was quite conceivable that complainant should have practically a complete title, but that some one interest, some heir of Gulick, located in California or Massachusetts, as the case may be, may have been outstanding.

I urge that it is absurd to consider that if Eichengreen had known that complainant had

done nothing and had no title whatever, he would have offered the price he did to complainant. He could have done, in October or November, 1921, precisely what he did do in September, 1924.

Both complainant and Jones are lawyers. There is considerable difference, however, between their positions in this case which should, I submit, have some value in weighing their testimony. Complainant is an interested party, here for profit. Jones is not. Jones is not attempting to make a profit at the expense of either his present or "former" clients or their representatives, nor out of those for whom he originally purchased tax titles in order to protect them. Jones has not made allegations in a bill and repudiated them upon the stand. Jones has not written letters stating that it was impossible to move property at the time having a contract to sell the property for $25,000. Jones has not written a letter after he had a contract to sell property to the person with whom he had such a contract stating that he was not ready to enter *into negotiations* as yet. Notwithstanding the vigor of the cross examination of Jones his testimony stands as given upon direct and he is unimpeached. The story of Eichengreen and Jones is either true, in which event the court cannot find that Eichengreen acquired any information whatever from complainant which he subsequently used in his dealings in the purchase of this property, or both Jones and Eichengreen are perjurors or actors, who, in preparation for some such case as this, have deliberately gone out for the purpose of creating a situation.

The burden is on complainant and I submit that if complainant were in no other position in this case than that of an interested party, leaving out of consideration entirely the other mat-

ters which go to the weight of his testimony, to which I have referred, the testimony of complainant, as an interested party, cannot be permitted to have the weight of convicting not only Eichengreen but Jones also either of perjury or of a fraudulent set-up.

Counsel for complainant on page 32 refers to testimony of Eichengreen on page 167 of the record as impeaching his story. I have read that testimony and I submit that the nature of the examination was such, the interruptions of the witness were such, the putting of questions in the witness' mouth was of such a nature, as that it cannot be considered of any probative value whatever as impeaching. When, on pages 168, 171, *et seque,* Eichengreen was given, still on cross examination, an opportunity to testify, we find that his explanation is quite complete and agrees with the testimony of Jones (pp. 197, 198).

There are statements contained in appellant's brief to the effect that after Eichengreen had his agreement with complainant he went into possession of the property. *There is no proof to this effect.* The proof is to the contrary. Eichengreen did nothing with the property until after he had his deeds in November, 1923. He did consult complainant with respect to plans and layouts and he did talk of the nature of the improvements he proposed to make, etc., but he assumed at that time, of course, that complainant would perfect his title and that he, Eichengreen, would get it and they were all in the nature of preliminary matters, things which a person would do even if he had no contract to purchase. They in no sense were in the nature of part performance of any contract. There is no evidence of any act

of possession on the part of Eichengreen until after he acquired title.

There is no basis in the testimony for the statement contained on page 40 of appellant's brief that Eichengreen "became vendee in possession of the property."

POINT VI.

Complainant is barred by the doctrine of unclean hands.

The general rule is stated in 21 *Corpus Juris title "Equity"* sec. 163, at p. 182 and with reference to the maxim that he who comes into equity must come with clean hands—the author says:

> "This maxim expresses rather a principle of inaction than one of action. It means that equity refuses to lend its aid in any manner to one seeking its active interposition, who has been guilty of unlawful or inequitable conduct in the matter with relation to which he seeks relief."

And in *section 165* (p. 184) it is stated:

> "Any wilful act in regard to the matter in litigation, which would be condemned and pronounced wrongful by honest and fair-minded men will be sufficient to make the hands of the applicant unclean."

And *Pomeroy* says, sec. 397, 4th Edition:

> "On the other hand, the maxim now under consideration, He who comes into equity must come with clean hands, is much more efficient and restrictive in its operation. It assumes that the suitor asking the aid of a court of equity has himself been guilty of conduct in violation of the fundamental conceptions of equity jurisprudence, and therefore refuses him all recognition and relief with reference to the subject-matter or

transaction in question. It says that whenever a party, who, *as actor,* seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principles, in his prior conduct, then the doors of the court will be shut against him *in limine;* the court will refuse to interfere on his behalf, to acknowledge his right, or toward him any remedy."

In *Prindiville* v. *Johnson & Higgins,* 93 N. J. E. 425, this Court said:

"It is a maxim of equity that a court of conscience will not even listen to a suitor who comes into that tribunal with unclean hands, and this doctrine is applicable whenever it appears that the litigant seeks to be relieved of the consequences of a fraud in which he has been an active participant. The courts of this state have steadfastly refused to lend their aid to a wrong-doer either by the enforcement of an illegal contract or by relieving the wrong-doer from the obligations thereof; and this they do, not out of regard for the defendant in the action, but because of their unwillingness to use the powers which were granted to them for the furtherance of lawful ends in aiding schemes which are in their nature venal, or for the purpose of relieving parties from the liabilities which such schemes create."

And this Court cited with approval:

Watson v. *Murray,* 23 N. J. E. 257;

Todd v. *Rafferty,* 30 N. J. E. 260;

Minzesheimer v. *Doolittle,* 60 N. J. E. 394;

Gregory ads. Wilson, 36 N. J. L. 315;

Hope v. *Linden Park Asso.,* 58 N. J. Law 627;

Wyckoff v. *Weaver,* 66 N. J. Law 648.

In *Wyckoff* v. *Weaver,* 66 N. J. Law 648, the second headnote is:

> "When it conclusively appears on the trial of an action that it is brought by a fraud-doer to recover his share of the profits of a fraudulent scheme, the court should refuse to permit the trial to proceed further, and direct a non-suit to be entered."

And to the same effect is *Gregory ads. Wilson,* 36 N. J. L. 315.

And in *Todd* v. *Rafferty's administrators,* 30 N. J. E. 254, there was a case where profits were made by one of two partners without the knowledge of the other. There was a suit against one partner by the other for an accounting. The Court said:

> "It is admitted that part of the gains made by Mr. Rafferty, in the business he carried on secretly, were obtained by the practice of fraud. Instances are shown where, acting as the agent of a purchaser, he would purchase at one price and sell to his principal at a price considerably larger, thus becoming both seller and purchaser, and getting both commissions and a profit."

The court held that with respect to this branch of the secret business there could be no accounting.

And see also *Nagle* v. *McCoy,* 94 N. J. E. 790.

And in *Pendleton* v. *Gondolf,* 85 N. J. E. at p. 308, the Vice-Chancellor said (p. 317):

> "In Vulcan Detinning Co. *v.* American Can Co., 70 N. J. E. 588, this court denied relief to complainant because of the unclean hands of the parties from whom complainant acquired its rights to the secret process which it sought this court to protect. The opinion filed says:
>
> 'It is not alone fraud or illegality which will prevent a suitor from entering a court

> of equity. Any really unconscientious conduct connected with the controversy to which he is a party will repel him from the forum whose very foundation is good conscience. Pom. Eq. Jur. sec. 404.' This case was reversed in our court of errors and appeals (72 N. J. E. 387) for the reason that the latter court determined that complainant had no actual knowledge of unconscionable conduct of its vendor, hence, while complainant's legal rights might be affected by the knowledge of its agent, complainant's conscience could not be so affected and complainant could not, in consequence, be properly charged with unclean hands within the meaning of the equitable maxim. But no other criticism was made of the application of the equitable maxim by the lower court. These decisions are all necessarily based upon the assumption that a denial of equitable relief to a participant in wrong-doing forms a part of the recognized public policy of this State as best conserving public interests; it follows that to aid a participant in wrong-doing in the recovery of the property which he has disposed of in the attempted execution of his wrongful purposes on any theory that such course might best conserve public interests becomes impossible without a complete reversal of our defined policy as disclosed in the cases above cited."

Vice-Chancellor Bergen, in *Vulcan Detinning Co.* v. *American Can Co.*, 70 N. J. Eq. 588, cites the case of *Krauss* v. *Peebles' Sons Co.*, 58 Fed. Rep. 585, in which Judge Taft had stated the reason for the rule as follows:

> "The reason why relief is refused complainant in such cases has nothing to do with the defendant's rights or wrongs. It is that the court will not protect a fraudulent business of a plaintiff, however much in the wrong the defendant may be."

The Vice Chancellor imputed knowledge to the complainant by reason of the possession of knowledge by an agent, but not acquired by him while acting for his principal. This court held that the court below had gone too far in giving weight to a presumption of law.

There is no such situation in the case at bar.

In *Rogers* v. *Genung,* 76 N. J. E. 306, referred to by counsel (p. 62 of the brief), the rule was not applied because this court did not find any agent to which Genung could be false. And see page 313.

And so in *Harrop* v. *Cole,* 85 N. J. E. 32.

We have no such situation in the case at bar.

The Vulcan Detinning Case answers the contention of counsel on page 60 of his brief, that defendants here cannot make the point.

As all of the cases hold, the position taken by the courts is not one taken out of any tender consideration for the defendants but because of the policy of the law, and it is quite immaterial whether the question be raised or whether the parties who have been injured are in court or not.

See *Volney* v. *Nixon,* 68 N. J. E. 605.

Upon the pleadings, we have a case where the complainant, alleging that he holds interests in this property for the benefit of the rightful owners, after having made a sale of the property at a large price, succeeds in obtaining an agreement from the rightful owners of the property to sell to him at a smaller price, not disclosing to them the price at which he has agreed to sell, and further than this, indicating by his correspondence that the property could not be at that time moved. And he seeks a profit out of such

a transaction. Upon the proofs—the situation is no different for he, at least, concedes that he originally went into the transaction of purchasing at tax sales for the purpose of protecting the interests of the persons rightfully owning the property and at no time did he disclose that his relationship had changed, and, even if he were not in fiduciary relations, in view of the affirmative statements contained in the correspondence to the effect that the property could not be moved, while *at the time* he had made a contract to sell it at a large price, there was express misrepresentation.

It is not the ordinary fiduciary relationship which is involved, but that of attorney, and the care with which the court scrutinizes the conduct of attorneys is illustrated by the cases already cited.

POINT VII.

The statute of frauds applies.

The theory of the bill was that complainant had an express contract with the owners of the property which vested a right in him; he had an express contract with Eichengreen which vested a right in complainant to compel Eichengreen to take the property; Eichengreen interfered with the rights of complainant as fixed by these two express contracts. These contracts involved the sale of land or an interest therein. The statute of frauds, therefore, clearly applies.

POINT VIII.

The cases cited by appellant have no application.

Rogers v. *Genung,* 76 N. J. E. 306, and *Harrop* v. *Cole,* 85 N. J. E. 32, have no application in this case. Both of these were cases where someone had authorized another to purchase lands for him, and that other went out and betrayed his trust, buying for himself. There is no evidence in this case that Eichengreen agreed to act as the agent of complainant in any manner, shape or form, nor is there any evidence (and I do not know of what importance it would be if there was) that complainant was acting as the agent of Eichengreen. He said that he was not. According to the story of complainant they were both acting as principals. There never was a fiduciary relationship between complainant and Eichengreen, at least there never was a fiduciary relationship of Eichengreen toward complainant. There is no suggestion of an agency unless it be spelled out of what occurred at the conference between complainant and Eichengreen in August, 1923, but complainant himself says that he did not expect Eichengreen to do anything as the result of what was there said. And complainant himself says (at least in one part of his testimony), that at that time he said that if Eichengreen did not like it the matter could be considered off. Nor can it be said that Eichengreen became an agent *ex maleficio* by reason of his conduct in going out and purchasing the land for himself. If under the law such a relationship could be created the proof in this case was not sufficient for the court to find that Eichengreen used any information which he acquired from complainant at that conference, and it would only be if such fact were established that

any contention could be made that Eichengreen became an agent *ex maleficio* by reason of the use of such information.

I have considered the proofs upon this subject in detail under its proper head. I will only repeat here that the burden is on complainant and that the court will have to believe what complainant says as against the evidence not only of Eichengreen but of Jones, and as against the fact that Eichengreen did not need any such information, as it is said was given him, because, with respect to one of the interests he knew all about it, and with respect to the other interest he had already had an option to purchase from it, and had available means by which he could ascertain who the persons interested were. And as against it also is the conduct of not only Eichengreen but of Jones, and the court would have to hold that that conduct was a deliberate set up and this solely upon the testimony of complainant.

POINT IX.

Complainant is barred by laches.

This suit is in the nature of a specific performance suit.

The rules with respect to laches in such a suit are more stringent than in any other class of suits.

City of Newark v. *Lindsley,* 114 Atl. 796;
Meidling v. *Trefz,* 48 N. J. E. 638;

On general question of laches;
Lutjen v. *Lutjen,* 64 N. J. E. 773.

The deeds to Eichengreen were recorded, two on October 25, 1923, and two on November 7,

1923. Complainant had knowledge of the purchase of the property by Eichengreen at that time. See his correspondence with Ronon. He had a talk with Eichengreen in October, 1923. He knew at that time about Eichengreen's purchase and charged him with perfidy (p. 62). Eichengreen at that time offered to pay him the taxes (p. 63). Eichengreen went into possession of the property immediately. It is true that complainant stopped his woodsman as counsel says, and that he quit work, but it is likewise true that, immediately after the taxes were paid, which was on or about December 13, 1923 (Ex. D. 15, p. 472), the man was put back to work. Immediately after paying the taxes in December of 1923, he put the woodsman back to work and the woodsman stayed there all winter (p. 146). It is true that complainant was in communication with Mr. Boggs between November 30, 1923, and April, 1924. There is nothing, however, which occurred between Mr. Boggs and complainant which excused complainant's delay. See Mr. Boggs' testimony (p. 126). But if there had been, it only excused delay between December 1st and April 23rd. After April 23, 1924, complainant did nothing. Eichengreen proceeded to improve the property (pp. 146, 147). He put a sign upon the property in June, 1924, whereupon complainant served his notice (Ex. C. 9, p. 356), to which, on June 12, 1924, Eichengreen replied (Ex. D. 18, p. 475), not recognizing any rights of complainant whatever. And still nothing was done until the filing of this bill, subpoena issued 29th day of December, 1924, more than a year after complainant had full and complete knowledge of Eichengreen's purchase and of his possession, and more than six months

after the letter of June 12, 1924 (Ex. D. 18), in which Eichengreen said:

> "You may take such action as you may be advised to take, but in view of the above, it might be well to keep in mind that you will be the trespasser."

And, in the meantime, Eichengreen had been improving the property. He had practically completed two streets. In one street he had put in sewer pipes, etc. (Eichengreen, pp. 147, 148, 149; Morris, p. 229).

In view of the nature of this suit, there was gross laches.

CONCLUSION.

It is respectfully submited that the decree should be affirmed.

MERRITT LANE,
Of Counsel with Respondents.

INDEX.

	PAGE
Bill of Complaint	1
Answer	13
Amended Replication	14
Stipulation as to Facts	15
Jewett Map, Annexed to Stipulation of Facts	32
Page 16 of Hopkin's Map, Annexed to Stipulation of Facts	32
Case	33
Conclusions	59
Final Decree	71
Notice of Appeal	72
Petition of Appeal	73
Answer to Petition of Appeal	77

TESTIMONY FOR COMPLAINANT.

Edith J. Marvin:	
Direct	34, 52
Cross	37, 54
Frank C. Kliem:	
Direct	41
David W. McCreit:	
Direct	47
Cross	51
Newton H. Marvin:	
Direct	57

TESTIMONY FOR DEFENDANT.

Edith J. Marvin:	
Direct	41

DEFENDANT'S EXHIBIT.

	Offered Page	Proved Page
D-L—Map of W. S. L. Jewett	47	58