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BILL OF COMPLAINT OF JOHN H. MILLER.

Filed May 18, 1931.

In Chancery of New Jersey.

To the Honorable Edwin Robert Walker, Chan- 10
cellor of the State of New Jersey:

The complainant, John H. Miller of the Borough
of Rockaway, Morris County, New Jersey, respect-
fully shows that:

1. On April 9, 1931, the defendant, William F.
Headley, contracted in writing to convey to com-
plainant for the sum of \$4,000, title in fee to cer-
tain property located in Jefferson Township, Mor-
ris County, New Jersey, referred to in said writing 20
as the property involved in the foreclosure pro-
ceedings of John F. Gentzel vs. Roxbury Lumber
Company, and which said property is bounded and
described as follows:

All the following tract or parcel of land and
premises hereinafter particularly described situate
lying and being in the Township of Jefferson, in
the County of Morris and State of New Jersey:

Being part of a tract conveyed by J. Ludlow
Kitchell et als., Trustees of the Hopatcong Pioneer 30
Association, to the Kenvil Lumber & Store Com-
pany, by deed dated 28th day of March, 1910, re-
corded in Morris County Clerk's office in Book F.
20 of Deeds, page 523; and the part hereby intended
to be conveyed, Begins at an iron pin driven in the
ground, being the beginning corner of the said
whole tract, distant one hundred thirty-five (135)
feet on a course of South seventy-nine degrees East
from an iron pin driven in the stump of a button-
ball tree, and running thence (1) South seventy- 40

Bill of Complaint, Miller

nine degrees East seventy-seven and twenty-five
 hundredths (77.25) feet to an iron bound, along the
 Southerly line of the right of way of the Central
 Railroad of New Jersey; Thence (2) along said
 right of way South sixty-one degrees forty-six min-
 10 utes East twelve and seventy hundredths (12.70)
 feet to a brass pipe, the beginning corner of a tract
 heretofore conveyed to William Hockenjos, Sr., and
 William Hockenjos, Jr.; Thence (3) along the
 fourth line of said Hockenjos tract reversed, South
 twenty-six degrees fifty-nine minutes West one hun-
 dred thirty-one and fourteen hundredths (131.14)
 feet to a point in the fourth line of the whole tract;
 Thence (4) along the fourth line in part of the
 whole tract, North forty-four degrees thirty min-
 utes West ninety-three and forty-seven hundredths
 20 (93.47) feet to the fifth corner of the whole tract;
 Thence (5) North twenty-eight degrees fifteen min-
 utes East eighty and fifteen-hundredths (80.15)
 feet to an iron pin in the point of Beginning.

Together with all the land above and under water
 lying between the extension of the third line in this
 deed into Lake Hopatcong, a distance of one hun-
 dred and eighty-five and eighty-nine hundredths
 (185.89) feet on a course of South twenty-six de-
 30 grees fifty-nine minutes West from the fourth cor-
 ner of this tract and the extension of the fifth line
 reversed, on a course of South twenty-eight degrees
 fifteen minutes West a distance of two hundred and
 sixteen (216) feet more or less into Lake Hopat-
 cong.

Together with the right, title and interest of the
 party of the first part in and to the roads and road-
 ways over the property hereinabove described and
 across the right of way of the Lake Hopatcong Rail-
 40 road Company.

Bill of Complaint, Miller

2. By said writing, a true copy of which is annexed hereto, made part hereof, and marked schedule A, the said William F. Headley and the said complainant fixed the purchase price for said property as set forth above, at \$4,000. \$500 to be paid initially, and the balance of \$3,500 to be paid on or before May 15, 1931. By said agreement the said William F. Headley agreed to procure an assignment of the mortgage involved in said foreclosure proceedings, and in the event he could purchase said property for a sum not in excess of the amount due on the mortgage under foreclosure and referred to above, which mortgage was described in said agreement, as the "first mortgage" to convey said property to complainant for said sum of \$4,000, provided the balance of \$3,500 was paid on or before May 15, 1931. Said property under foreclosure was sold in the foreclosure proceedings by the Sheriff of Morris County, and purchased by the defendant, William F. Headley, for the sum of \$500, and he secured title thereto by the deed from the Sheriff of the County of Morris, having purchased said property under date of April 13, 1931, and the deed having been delivered to him on April 29, 1931.

3. Complainant duly paid the \$500 called for by said contract in the form of a check, made to the order of the defendant, William F. Headley, attorney for John F. Gentzel, which check was duly endorsed by the defendant as such attorney and also endorsed by him individually and paid, and which said sum of \$500 the said defendant retains.

4. The said William F. Headley is a married man and his wife's name is Etta M. Headley, who is also made a defendant in this suit, and against whom a decree is sought for specific Performance,

Bill of Complaint, Miller

as hereinafter set forth, by reason of the obligation of the said defendant William F. Headley by his written agreement to convey the entire fee free from any outstanding interest to this complainant. In the event the said defendant, William F. Headley, fails and neglects to procure the signature of his said wife to a deed to complainant, then complainant asks for an abatement of the purchase price, to the extent of the value of her inchoate right of dower.

5. Complainant on May 15, 1931, made due and proper tender of the balance of said purchase price of \$3,500, and defendant William F. Headley neglects and refuses to make conveyance of said property pursuant to his written agreement so to do.

6. On information of belief, complainant alleges that in said foreclosure proceedings defendant William F. Headley was solicitor of record for said John F. Gentzel, the mortgagee who was foreclosing said property, and in the event that it is determined by this Court that the said William F. Headley in making said agreement was acting for the said John F. Gentzel, then and in that event complainant asserts and alleges in the alternative, that he is entitled to a conveyance also from the said defendant John F. Gentzel with an abatement of the purchase price to the extent of the dower interest of the wife of said John F. Gentzel, in the event her signature is not procured to a deed to complainant.

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

1. That William F. Headley and Etta M. Headley his wife, and John F. Gentzel, who are the defendants in this suit, may answer this bill of com-

Bill of Complaint, Miller

plaint without oath, and each statement therein made.

2. That the said William F. Headley and Etta M. Headley his wife may be decreed to perform specifically the agreement to convey the property aforesaid to complainant, complainant tendering himself ready and willing to perform his part of said agreement by making payment of the balance of said purchase price amounting to \$3,500, or in the alternative in the event that it is determined by this Court that the said William F. Headley was trustee or agent for the defendant John F. Gentzel, that the defendant John F. Gentzel be also decreed to make conveyance of said property to complainant with an abatement of the purchase price to the extent of the dower interest of the wife of the said John F. Gentzel, in the event her signature is not procured to a deed to complainant.

3. That the said defendants be enjoined and restrained from conveying, mortgaging, leasing or encumbering said property above described in any way, and from creating any lien thereon of any nature, which would in any way impair the title agreed to be conveyed in fee to complainant.

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

KING & VOGT,
Solicitors of Complainant.

HAROLD A. PRICE,
Of Counsel.

*Bill of Complaint, Miller*AGREEMENT FOR THE SALE OF
PROPERTY.

Part of Bill of Complaint of John H. Miller.

SCHEDULE A.

10

Newark, N. J., April 9, 1931.

Whereas under a certain decree dated March 3, 1931, in foreclosure John F. Gentzel vs. Roxbury Lumber Company, there is due John F. Gentzel \$5,450.00 principal and interest \$213.67 costs and Sheriff's fees, which amount to about \$5,800.00, and

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Whereas the party of the second part hereto has offered \$4,000.00 for an assignment of this mortgage, party of the first part, William F. Headley, agrees to procure an assignment of said mortgage and decree for said sum of \$4,000.00, to be paid \$500 check herewith and balance thirty-five hundred dollars on or before May 15, 1931. Party of the first part further agrees at his own expense to continue said foreclosure proceedings and in event he can purchase said property for a sum not in excess of amount due on said first mortgage to convey said property to John H. Miller, party of the

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second part hereto, provided balance of \$3,500.00 is paid on or before May 15th, 1931.

(Signed) WILLIAM F. HEADLEY.

Witness

FRED H. BUCK.

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*Bill of Complaint, Hockenjos***BILL OF COMPLAINT OF WILLIAM HOCKENJOS, SR., AND WILLIAM HOCKENJOS, JR.**

(By order: to be taken as the answer and counterclaim of William Hockenjos, Sr., and William Hockenjos, Jr., defendants to the bill of John H. Miller.)

Bill Filed June 5, 1931: 84: 584.

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IN CHANCERY OF NEW JERSEY

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

The complainants, William Hockenjos, Sr., and William Hockenjos, Jr., residing in the Township of Jefferson, County of Morris, and State of New Jersey, respectfully show:

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1. That on the 23rd day of April, 1931, the defendant, William F. Headley, entered into a written contract with the complainants to convey to them a certain tract in the Township of Jefferson, County of Morris and State of New Jersey described as follows:

Being part of a tract conveyed by J. Ludlow Kitchell et als., Trustees of the Hopatcong Pioneer Association to The Kenvil Lumber & Store Company by deed dated 28th day of March, 1910, recorded in Morris County Clerk's office in Book F. 20 of deeds, pages 523 and the part hereby intended to be conveyed:

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Begins at a brass pipe at the Beginning corner of a tract sold to William Hockenjos and William Hockenjos, Jr., and runs thence (1) along the fourth line of said Hockenjos tract reversed South 26 degrees 59 minutes West 131.14/100 feet to a point in the fourth line of the whole tract; Thence (2) along the fourth line of the whole tract North

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Bill of Complaint, Hockenjos

44 degrees 30 minutes West 43.97/100 feet; Thence (3) North 28 degrees 15 minutes East 100 feet more or less to the right of way of the Central Railroad; Thence (4) Southerly along the right of way of the Central Railroad about 42 feet to the place of Beginning.

10 Together with all the right, title and interest of said Headley in land above and under water lying between the extension of the third line in this deed into Lake Hopatkong, a distance of one hundred and eighty-five and eighty-nine (185.89) hundredths feet on a course of South 26 degrees 59 minutes West from the third corner of this tract, and the extension of the first line reversed on a course of South 28 degrees 15 minutes West a distance of 216 feet more or less into Lake Hopatcong.

20 Together with the right, title and interest of the party of the first part in and to the roads and roadways over the property hereinabove described and across the right of way of The Lake Hopatcong Railroad Company.

for a consideration of \$3,000.00, of which \$1,000.00 was paid at the closing of said contract and under the terms of the said contract title was to close on May 20, 1931, at which time the balance of the consideration of \$2,000.00 was to be paid,
30 and in which contract the defendant William F. Headley agreed to convey the said premises by warranty deed, free and clear of all encumbrances.

For the sake of convenience, however, only William Hockenjos, Jr., was named in the contract.

2. Prior to the date of passing title, the said defendant William F. Headley asked whether or not the date of the closing could not be advanced, and by mutual understanding one of the complainants, William Hockenjos, Jr., met the defendant
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Bill of Complaint, Hockenjos

William F. Headley on May 15, 1931, in the office of Samuel C. Meyerson at Dover, New Jersey, for the purpose of closing title. The defendant William F. Headley had in his possession at that time a warranty deed executed by his wife and himself for the said premises, and the complainant William Hockenjos, Jr., produced a certified check for \$2,000.00 to close title. At the last moment, however, the defendant William F. Headley refused to pass over the deed unless an agreement was made with him by which he was to have the privilege to repurchase the property at any time within several months upon tendering a profit to the complainants of \$250.00. This complainant refused to do, as he wanted specific performance of the contract, and the defendant William F. Headley thereupon refused to go through with the deal, and insisted upon abiding by the written terms of the contract, which fixed the closing for May 20th, 1931.

3. Upon the failure to close title on the day aforesaid, namely May 15, 1931, upon advice of their solicitor the complainants decided to record their contract and on the 16th day of May, 1931, the said contract in question was recorded in the Morris County Clerk's office at — in Book P. 32 of deeds, page 461.

4. On the said 20th day of May, 1931, the day fixed for passing of title, the said William F. Headley appeared in the office of Samuel C. Meyerson at 4 P. M. and at that time delivered a warranty deed for the premises executed and acknowledged by himself and wife, and received the balance of the consideration money in cash, namely a balance of \$2,000.00, making a total of \$3,000.00. The said defendant also left with the solicitor of complainants a deed for a larger tract, which included the

Bill of Complaint, Hockenjos

premises in question, which he had received from the Sheriff of the County of Morris, at a foreclosure sale, and which had not as yet been recorded, and both of which deeds were mailed to the County Clerk's office at Morristown, for recording, and were recorded on the 21st day of May, 1931.

- 10 5. On May 29, 1931, the said defendant, William F. Headley, appeared in the office of Samuel C. Meyerson, solicitor of complainants, and produced a bill of complaint, which had been served upon him in a certain cause wherein John H. Miller was complainant and himself and others were defendants, docket number 84-413 of this Court, by which it appeared that prior to the making by the said William F. Headley of his contract with the
- 20 the complainants, he had entered into a contract for the sale of a tract of land which included the premises sold to complainants, which contract was made with John H. Miller, and which agreed to convey title to him, for the whole tract for \$4,000.00 on May 15, 1931. The said bill alleged that a tender was made by the said John H. Miller to the defendant William F. Headley at the time fixed for the taking of title, but that William F. Headley refused to make a conveyance, and therefore the said bill was filed for specific performance. Upon being
- 30 apprised of this said pending litigation your complainant caused the records in Morristown to be examined and found that two days subsequent to the filing of complainants of their contract with the defendant William F. Headley the said John H. Miller had filed a lispinden in the Morris County Clerk's office, giving notice of the pendency of his action, but which lispinden was also filed prior to the filing by the said John H. Miller of his bill of complaint in the Court of Chancery, and is
- 40 therefore defective in that respect.

Bill of Complaint, Hockenjos

6. The said John H. Miller had failed to file his contract for the sale of property which he had with William F. Headley for the whole premises, and any rights or interest which the said John H. Miller may have in the premises or to specific performance of his contract, is subject and subservient to the rights of your complainants, by virtue of the fact that the complainants' contract was on file, and was notice to the said John H. Miller of the complainant's rights in the property, and because of the fact that the said complainants had no knowledge either actual or constructive of any rights or interest or any encumbrance in the premises as far as John H. Miller is concerned. 10

7. In the said bill filed by the said John H. Miller against the defendant William F. Headley, docket 84-413, the said John H. Miller prays that a decree may be made for specific performance as against William F. Headley, declaring himself ready and willing to pay the balance of the purchase price, which, after payment by him of his deposit, amounts to \$3,500.00. 20

8. If it should be decreed in that suit that the said John H. Miller is entitled to specific performance as against William F. Headley, and that his interest in the premises is superior and paramount to that of your complainants, then in that event your complainants will have no right or interest or title to the premises and will have parted with their consideration to the said William F. Headley and are therefore entitled to a return of their purchase money, namely \$3,000.00, together with interest thereon, the costs of their search and expenses, incidental to breach of contract on the part of the said William F. Headley. 30

Your complainants are without adequate remedy in the Courts of law and therefore pray: 40

Bill of Complaint, Hockenjos

1. That William F. Headley and John H. Miller, who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

10 2. That a decree may be made adjudging and declaring that the rights, interest and title of the said complainants are paramount and superior to any right or interest which the said John H. Miller may have in the premises, by virtue of his contract with William F. Headley.

3. That the said complainants are protected in their title by virtue of the fact that their contract of sale was on record in the County Clerk's office before the filing by the said John H. Miller of his lispenden.

20 4. That any cloud which may be on the title of the said complainants to the premises described in the complaint herein by virtue of the filing of the said lispendens be removed and that an order be made cancelling and discharging the said lispendens of record.

30 5. That in the event that it should be decreed by this Honorable Court that the rights of defendant, John H. Miller, are superior and paramount to that of your complainants and that John H. Miller is entitled to a conveyance of the whole tract, which includes the premises in question, from William F. Headley and that such conveyance is not subject to the contract and deed of the complainants, that then and in that event the consideration to be paid by John H. Miller be applied towards the return to your complainants of the \$3,000.00 paid by them to the said William F. Headley, for his deed and be further applied towards the expenses of the examination of title, closing of title,
40 and damages suffered by your complainants as

Bill of Complaint, Hockenjos

against William F. Headley for breach of contract to convey free and clear of all encumbrances.

6. That a restraining order be issued restraining the defendant John H. Miller from paying any of the consideration in question to William F. Headley or the said William F. Headley from receiving any part of the said consideration, until the final decree in this cause, or that in lieu thereof, that an order be made directing that in the event the said John H. Miller is successful in his suit and is entitled to a decree for specific performance, that the said consideration money be paid to the Clerk of the Court of Chancery, pending the final hearing in this cause. 10

7. That a writ of subpoena may issue, commanding said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises. 20

SAMUEL C. MEYERSON,

Solicitor and of Counsel with Complainants.

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Answer of Miller, Defendant

ANSWER OF JOHN H. MILLER,
DEFENDANT.

Filed July 24, 1931.
IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> WILLIAM HOCKENJOS, SR., WILLIAM HOCKENJOS, JR., <i>Complainants,</i> <i>and</i> WILLIAM F. HEADLEY, JOHN H. MILLER, <i>Defendants.</i>	}	<i>On Bill, &c.</i> <i>Answer of</i> <i>John H.</i> <i>Miller.</i>
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Defendant John H. Miller, residing at Rockaway, New Jersey, answering the bill of complaint herein, says:

(1) He has no knowledge or information sufficient to form an opinion as to the allegations of paragraph one.

(2) He has no knowledge or information sufficient to form a belief as to the allegations of paragraph two.

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(3) He has no knowledge or information sufficient to form a belief as to the allegations of paragraph three.

(4) He has no knowledge or information sufficient to form a belief as to the allegations of paragraph four.

(5) He denies paragraph five, except as to the allegation that defendant William F. Headley called at the office of the solicitor of the complainants on May 29, 1931, as to which allegation this

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Answer of Miller, Defendant

defendant has no knowledge or information sufficient to form a belief, and also except that portion of paragraph five which alleges that said John H. Miller had instituted a suit against William F. Headley et als. in the Court of Chancery, which allegation this defendant admits.

This defendant specifically denies that portion of paragraph five which alleges that the *lis pendens* in the action instituted by this defendant against William F. Headley et als. was filed prior to the filing of the bill of complaint in that cause and alleges that said *lis pendens* was not defective, but was in all respects legal and binding. 10

(6) He denies paragraph six, and alleges that his rights are not subject to the rights of complainants and denies the statement in paragraph six that the complainants had no knowledge either actual or constructive of any right or interest of this defendant, John H. Miller. 20

(7) Answering paragraph seven, this defendant begs leave to refer to the file and the pleadings therein in the case of John H. Miller vs. William F. Headley et als., docket No. 84-413.

(8) With reference to paragraph eight this defendant alleges that he has no knowledge or information sufficient to form a belief as to what relief the complainant should have against William F. Headley in the event that the said John H. Miller should prevail in his action against the said William F. Headley, et als. 30

This defendant denies that the said complainants are entitled to the relief prayed for in the bill of complaint.

SEPARATE DEFENSES

(1) This defendant alleges that his rights in the property described in the bill of complaint are superior to the rights of complainants.

10 (2) This defendant alleges that the complainants were not legally justified as it appears in the affidavits annexed to the bill of complaint herein in relying on representations as to the absence of any claim or interest vested in others and particularly this defendant, and that under the law they are bound by the presence of the *lis pendens* of record in the County Clerk's Office of Morris County, filed in the suit of this defendant against William F. Headley et als., 84-413.

20 (3) The complainants cannot claim any right superior to this defendant by reason of the fact that they failed and neglected to examine the records of the County Clerk's Office of Morris County prior to the closing of title from Headley to the complainants and cannot rest any claim to superior rights against this defendant, in the absence of such inspection of the records, by replying upon representations referred to in the affidavits annexed to the bill of complaint.

30 (4) Complainants knew of or should have known of the rights of defendant in said tract of land by virtue of a contract with the defendant Headley referred to in the action of this defendant against Headley et als. in the Court of Chancery docket No. 84-413.

KING & VOGT,

*Solicitors of Defendant,
John H. Miller.*

A true copy.

40 FERD GARRETSON,
Clerk.

Answer of Headley, Defendant

ANSWER TO COMPLAINANT'S BILL

Filed June 29, 1931.

IN CHANCERY OF NEW JERSEY

Between

JOHN H. MILLER,

Complainant,

and

WILLIAM F. HEADLEY,

Defendant.

*On Bill of
Complaint
for Specific
Performance.*

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ANSWER OF DEFENDANTS WILLIAM F.
HEADLEY, ETTA M. HEADLEY and
JOHN F. GENTZEL.

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The defendants, William F. Headley, Etta M. Headley and John F. Gentzel, make their answer to said bill of complaint of complainant as follows:

1. These defendants deny paragraph one of said bill of complaint and all the matters and things alleged therein. These defendants say in further answer thereto that the said alleged paper writing is not an agreement, and was never intended to be an agreement of William F. Headley or of any other person. That said alleged paper writing was never accepted or agreed to by said complainant. That no consideration was given for said alleged agreement, but on the contrary same was repudiated and refused. That complainant was negotiating with one Fred H. Buck in the position merely of loaning money to said Fred H. Buck under contemplated arrangements whereby said Fred H. Buck was undertaking to raise \$12,000 to the end

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Answer of Headley, Defendant

that the said Fred H. Buck might obtain control of certain properties formerly belonging to said Fred H. Buck and purchased by said defendant William F. Headley from the Sheriff of the County of Morris at foreclosure sales of said properties. That moneys if any advanced by complainant were to be secured by mortgages and complainant was interested in lending money and having his money secured by bond and mortgage. All contemplated arrangements for taking over said properties fell through and complainant said John H. Miller and said Fred H. Buck upon many and numerous demands and requests declared no such agreement as is now alleged was ever made, accepted or entered into, and declared everything off, null and void, and of no effect, and refused acceptance of any alleged proposition or offer, and refused to consider any alleged offer, and declared they would not purchase said decree or bond and mortgage, or put any money into same or put any money into the said property or any part thereof. Said alleged agreement is not an agreement of any parties hereto. Complainant never made, accepted, approved or ratified said alleged agreement. Complainant repudiated and turned down said alleged agreement.

2. Defendants deny paragraph two of said complaint and all the allegations thereof. Defendants were willing and able to assign to complainant said bond and mortgage or said decree or convey to him said property, but complainant refused to accept same and refused to make any agreement regarding same. Complainant on numerous occasions refused to pay any money and declared any and all negotiations as alleged were off, void and of no effect, and no alleged agreement or alleged terms were ever agreed upon, made or entered into. Defendants repeat paragraph one of this answer in fur-

Answer of Headley, Defendant

ther answer to paragraph two of said bill of complaint and make same a part hereof as if here repeated. Defendants admit that said property was sold in said foreclosure proceedings and purchased by said defendant William F. Headley from said Sheriff. That complainant and Fred H. Buck thereupon on numerous other occasions thereafter declared they would not take said lands or any part thereof and each of them declared moreover that no agreement existed as alleged or ever existed and that if any claim of any alleged agreement was made, they and each of them repudiated same; that no alleged agreement existed or ever existed. 10

3. Defendants admit that William F. Headley received a check for \$500 as attorney for John F. Gentzel, but deny said alleged agreement had anything to do with said check or that said check was on said alleged agreement; and defendants say that on many occasions they or one of them offered to return said \$500, but complainant requested same be retained temporarily as there were many other matters they were interested in and complainant was satisfied in any way said Fred H. Buck could use and secure same. Complainant, however, declared on every occasion said \$500 was in no wise connected with said alleged agreement, but that on the contrary he repudiated same, refused same and was in no wise bound or to be bound thereby. That said \$500 was in no wise connected with alleged agreement. Alleged agreement was repudiated and never accepted. 20 30

4. Defendants admit that William F. Headley is married and the name of his wife is Etta M. Headley, but deny any alleged agreement was ever made, accepted or in existence, but same was, on the contrary, expressly made null and void and of no effect and repudiated and refused by complainant. 40

Answer of Headley, Defendant

That said William F. Headley on many occasions offered said property to said complainant John H. Miller or to said Fred H. Buck to have a deed to said John H. Miller or any person he would name, but each of them refused and repudiated said alleged agreement and declared it was even useless to talk the matter over or to prepare or have any conveyance arranged, as they nor either of them would never be bound and had never accepted such agreement and never would. On such occasions they claimed William F. Headley had no possession, and said property was subject to use by one Hockenjos as to part, and use by Summertime Incorporated as to part, and other alleged easements, rights and claims, wherefore no good title could be given; wherefore they repudiated said alleged agreement; that other arrangements might be considered, but this alleged agreement never existed.

5. Defendants deny paragraph five and all parts and allegations thereof. Defendants answering deny that on or prior to May 15, 1931, or at any other time before or since complainant made due and proper tender or any tender whatsoever of \$3,500, or any other amount or tender whatsoever, but that on May 15, 1931, the said Fred H. Buck called at the office of said William F. Headley and produced a letter that said John H. Miller, complainant, was not able to meet said William F. Headley, and as agent for said John H. Miller he demanded a warranty deed for said property to John H. Miller subject to his approval, which would have to be free and clear before they would pay any money, and he wanted to make negotiations. Then he said that to make any deed was useless as it could never be acceptable for any of

Answer of Headley, Defendant

the property. Upon this refusal and all other refusals it was understood, agreed and declared by all said parties that said alleged agreement never existed and any such alleged offer was withdrawn and cancelled and nothing as alleged was or ever could be agreed upon between said parties or any or either of them.

6. Defendants admit William F. Headley was solicitor of record for John F. Gentzel, who was foreclosing on said property and was very anxious not to have to buy it in, and on numerous occasions they importuned complainant to take over said bond and mortgage, and then said decree and then said property, but on all such occasions complainant refused to take over any or either of them, even upon their offers to make generous reductions, complainant positively refused to take any or either of them, which he could have had at any time, but refused all offers. Said complainant never acted as principal, but only as agent for said Fred H. Buck, for whom he claimed he could have advanced money but would not. That said property, together with other properties of Fred H. Buck, formerly having been purchased by William F. Headley at Sheriff sales, were to have been taken over by Summertime Incorporated, a corporation of said Fred H. Buck, which was one contemplated deal for \$12,000.00, and complainant at no time intended to consider any alleged agreement, the said alleged agreement being merely retained as a receipt for the \$500, being never intended as an alleged agreement of sale and as to same as an alleged agreement being repudiated, refused and never existing.

Defendants make the following special defenses to complainant's said Bill of Complaint in addition to their said answer as follows:

Answer of Headley, Defendant

FIRST SEPARATE DEFENSE.

1. Said alleged agreement is not the agreement of defendants or of any or either of them.

SECOND SEPARATE DEFENSE.

10 1. No tender of performance has ever been made. Said alleged agreement is incomplete in terms. Said alleged agreement is incomplete in form, and no terms are made therein.

THRD SEPARATE DEFENSE.

1. Alleged agreement never was accepted. Alleged agreement never was made or entered into. Alleged agreement never existed as an agreement. There is no consideration for alleged agreement.

20

FOURTH SEPARATE DEFENSE.

1. Said alleged agreement was waived and abandoned. Said alleged agreement was repudiated and refused; said alleged agreement is made impossible of performance by acts of complainant, both of denial and of repudiation and of refusal to consider any attempt to perform.

FIFTH SEPARATE DEFENSE.

30

1. Said agreement is not the agreement of complainant. Said agreement was never made or accepted by complainant. Said alleged agreement was never made nor accepted.

WILLIAM F. HEADLEY,
Solicitor for and of Counsel with
Defendants William F. Head-
ley, Etta M. Headley and John
F. Gentzel.

40

Reply to Answer of Headley

REPLY TO ANSWER OF WILLIAM F.
HEADLEY ET ALS.

Filed July 6, 1931.
IN CHANCERY OF NEW JERSEY.

10

Between

JOHN H. MILLER,

Complainant,

and

WILLIAM F. HEADLEY et als.,

Defendants.

On Bill &c.

20

REPLY TO ANSWER OF DEFENDANT WIL-
LIAM F. HEADLEY, ETTA M. HEADLEY
AND JOHN F. GENTZEL.

Complainant replying to answer of defendant
says:

1. He denies paragraph one.
2. He denies paragraph two, except that portion
thereof which admits that said property was sold
in foreclosure proceedings and purchased by said
defendant, William F. Headley. 30
3. He denies paragraph three.
4. He denies paragraph four, except that part
which admits that Etta M. Headley is the wife of
defendant, William F. Headley.
5. He denies paragraph five and alleges that the
total consideration for said purchase was \$4,000,
of which \$500 was first paid to defendant Headley
and the balance of \$3,500 tendered both in cash and 40

Reply to Answer of Headley

certified check on May 15, 1931, and said defendant refused to convey said property pursuant to his contract referred to in the bill of complaint herein.

6. He denies paragraph six.

ANSWER TO SPECIAL DEFENSES.

10 Complainant denies each of the special defenses.

KING & VOGT,

*Solicitors for and of Counsel
with Complainant.*

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*Reply to Complainant's Reply*REPLY TO COMPLAINANT'S REPLY TO
ANSWER

Filed July 9, 1931.

IN CHANCERY OF NEW JERSEY.

10

Between

JOHN H. MILLER,

*Complainant,**and*

WILLIAM F. HEADLEY et als.,

*Defendants.**On Bill, &c.**Reply to**Complainant's**Reply to**Answer.*

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The defendants, William F. Headley and Etta M. Headley his wife, and John F. Gentzel, reply to the reply to answer by Complainant and say:

1. Defendants join issue on paragraphs 1, 2, 3, 4, and paragraph 6 of complainant's reply to answer, and on complainant's answer to special defenses.

2. Defendants deny paragraph 5 of said reply to answer and each statement and allegation thereof. Defendants repeat the allegations of their answer in further reply to complainant's reply to answer. These defendants allege the said alleged paper writing was never made and was never entered into by them or either of them, or by complainant. That said alleged paper writing was never accepted by them or either of them or by complainant. Defendants allege that complainant agreed to finance one Fred H. Buck in his organizing a new holding company called "Summertime Incorporated" to take over several foreclosed prop-

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Reply to Complainant's Reply

erties, and complainant retained said alleged paper
writing or some other paper writing as a receipt
for money deposited only and other negotiations be-
ing made in reliance thereupon, and said alleged
paper writing never being an agreement or ex-
pressing any terms or in anywise made or entered
10 into by any of said parties or either or any of them.

WILLIAM F. HEADLEY,

*Solicitor for and of Counsel
with Defendants.*

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Reply to Defendant's Reply

REPLY TO DEFENDANT'S REPLY

Filed July 15, 1931.

IN CHANCERY OF NEW JERSEY

Between

JOHN H. MILLER,

*Complainant,**and*

WILLIAM F. HEADLEY et als.,

*Defendants.**On Bill, &c.*

10

REPLICATION TO PLEADING FILED BY
 DEFENDANTS ENTITLED "REPLY TO COM-
 PLAINANTS' REPLY TO ANSWER."

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Complainant replying to the above entitled
 pleading filed by defendant says:

1. He denies paragraph two thereof.

KING & VOGT,

Solicitors of Complainant.

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Appearances

IN CHANCERY OF NEW JERSEY

10	<i>Between</i> WILLIAM HOCKENJOS, SR., et als., Complainants, and WILLIAM F. HEADLEY, et als., Defendants.	} <i>On Bill, &c.</i>
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20	<i>Between</i> JOHN H. MILLER, Complainant, and WILLIAM F. HEADLEY, et als., Defendants.	} <i>On Bill, &c.</i>
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30 TRANSCRIPT OF SHORTHAND NOTES OF
 TESTIMONY taken on final hearing in above
 stated cause, November 12 and 20, 1931, at Chan-
 cery Chambers, Jersey City, before His Honor
 James F. Fielder, Vice Chancellor.

APPEARANCES

Samuel G. Meyerson, Esq., for the complainants,
 William Hockenjos, Sr., and William Hockenjos,
 Jr.

Messrs. King & Vogt (Mr. Price) for the com-
 plainant, John F. Miller.

40 Elroy Headley, Esq., for defendant William F.
 Headley.

John H. Miller, direct

COMPLAINANT'S CASE

JOHN H. MILLER, one of the above named complainants, sworn as a witness in his own behalf, testified as follows:

Direct examination by Mr. Price.

Q You are the complainant in the suit against Headley? A Yes, sir. 10

Q Where do you live? A Rockaway, New Jersey.

Q Are you the John H. Miller mentioned in a contract signed by William F. Headley bearing date of April 9, 1931? A I am.

Mr. Price. I offer in evidence this check.

Mr. Headley. I object to the contract on the ground that there was no contract made. 20

The Court. Objection overruled.

(Marked Exhibit CM-1.)

Q Are you the Mr. Miller whose name appears on check for \$500 dated April 11, 1931, to the order of W. F. Headley, attorney for J. F. Gensel, endorsed "William F. Headley, attorney for J. F. Gensel," and then underneath that "William F. Headley"? A Yes, sir.

Q And this check was paid in cash and taken out of your account? A Yes, sir. 30

Mr. Price. I offer the check in evidence.

(Marked Exhibit CM-2.)

Q That \$500 is the \$500 that is mentioned in Exhibit CM-1? A Yes.

Q What was the next step which led up to the drawing of a certain check on the 14th of May, 1931, for \$3,500, payable to William F. Headley? A That was in accordance with the agreement and was to be the final payment when title was to be given. 40

John H. Miller, direct

Q This \$3,500 check, did you deliver that to anybody to take to Mr. Headley? A Yes.

Q To whom? A To Mr. Buck.

Q Mr. Fred L. Buck? A Mr. Fred L. Buck.

By the Court.

10 Q Was it certified when you gave it to Mr. Buck? A It was.

By Mr. Price.

Q When next, without repeating the conversation, did you get this certified check back? A Mr. Buck reported that Mr. Headley—

Q When did you get it back? A On the 15th of May.

Q The next day after the check is dated? A Yes.

20 Q From whom did you get it? A From Mr. Buck.

Q Then what was the next thing that you did, without repeating any conversation, which led up to the procuring of \$3,500 in cash? A Mr. Buck reported—

By the Court.

Q What did you do about getting cash? A I deposited the certified check again and took cash and turned it over to Mr. Buck and he tendered Mr. Headley the cash at his office in Newark.

30 *By Mr. Price.*

Q You were not at Mr. Headley's office? A No.

Q The last you did was to give the cash to Mr. Buck to take it down to Mr. Headley? A Yes, sir.

40 Q Now, I ask you whether this certified check for \$3,500, dated May 14, 1931, is the certified check made to the order of William F. Headley which you refer to when you say that you had it drawn for the

John H. Miller, direct

purpose of making the final payment on the property, and that you delivered it to Mr. Buck and received it back from him and deposited it in your bank account—is that the check? A Yes.

Mr. Price. I offer the check in evidence.
(Marked Exhibit CM-3.)

Q I show you check called "Counter Check" on the First National Bank of Rockaway, dated May 15, 1931, payable to the order of Cash for \$3,500, and ask you whether that is the check against which you were able to procure the \$3,500 in cash from the First National Bank of Rockaway, from your account, concerning which you have already testified that you delivered to Mr. Buck to take down to Mr. Headley's office on the 15th of May? A Yes.

Q And resulted in your being able to procure the \$3,500 in cash which you delivered to Mr. Buck; is that right? A Yes, sir.

Mr. Price. I offer the check in evidence.
(Marked Exhibit CM-4.)

Q You were familiar with this property that you were purchasing and knew where it was located and the boundaries of it? A Yes, sir.

Q Will you tell me whether or not it is the same property which is referred to in a certain sheriff's deed from Fred S. Meyers, sheriff, to William F. Headley, dated April 27, 1931, under which, under foreclosure of mortgage, and a decree thereon, the Sheriff of Morris County conveyed property in Jefferson Township to William F. Headley? Will you please inspect the deed? A I believe it is.

Mr. Price. I offer in evidence deed from Fred S. Meyers, Sheriff of Morris County, to William F. Headley, dated April 27, 1931; re-

John H. Miller, cross

corded on May 21, 1931, in Book Q-32 of deed at page 319, in the clerk's office of the County of Morris.

(Marked Exhibit CM-5.)

10 Q Did you later receive from Mr. Buck, and if so when, the return of the \$3,500 in cash, with a report from him as to what he had done? A He reported—

Q Don't say what he said to you. A He returned the money to me at a late hour on May 15, 1931.

Q At your home in Rockaway? A Yes, sir.

Q That is, the \$3,500 in cash that you had given him? A Yes, sir.

20 Q Now, did you ever receive from William F. Headley the deed to this—

The Court. It is admitted that he did not receive it. That is what this suit is about. Is that right, Mr. Headley?

Mr. Headley. He never received a deed.

Mr. Price. We tendered in our bill our willingness to complete the transaction by the payment of \$3,500.

Mr. Headley. I object to the tender as not a tender.

30 *The Court.* Mr. Price is telling me what is in his bill.

Cross examination by Mr. Headley.

Q What time did you give this cash to Mr. Buck; at what time of the day on May 15? A My recollection is it was early in the day.

By the Court.

40 Q Before 12:00? A Oh, yes; around 9:30 perhaps.

Fred H. Buck, direct

Q We are talking about the cash after the certified check? A Oh, I will correct that statement. I think I have the certified check and the cash confused. The check was given early in the morning, and Mr. Buck came back to Rockaway—

Q Make it short. What time did you give him the cash? A I think it was immediately after dinner, maybe 1:00, or 1:30—very near to 1:30 perhaps. 10

Mr. Meyerson. I have no questions.

FRED H. BUCK, sworn as a witness on the part of the complainant, John H. Miller, testifies as follows:

Direct examination by Mr. Price.

Q You live at Lake Hopatcong? A Yes, sir. 20

Q And you are friendly with Mr. Miller? A Yes.

Q Did you go for him to Mr. William F. Headley's office in Newark, New Jersey, on the 14th of May with a certified check which has been produced in evidence in this case? A I did.

Q A certified check of Mr. Miller? A Yes.

Q What did you do with the certified check after you reached Mr. William F. Headley's office? I refer to Exhibit CM-3. A I tendered it to Mr. Headley for Mr. Miller with a letter from Mr. Miller stating that it was impossible for him to get there, and that he could deliver the deed to me; and Mr. Elroy Headley— 30

Q That is the gentleman who is conducting the examination? A Yes.

Q Go on. A He saw the check, and he said it looked like a perfectly good check to him, and he advised his brother to take it, but his brother would not take it at that time. 40

Fred H. Buck, direct

Q What did his brother state to you and what happened from then on until you left? A There was a conversation about most everything excepting the transfer of this property, and he told us—

Q Who? A Mr. W. F. Headley told us to return at 2:00.

10 Q By "us" whom do you mean? A Mrs. Buck and myself. He told us to return at 2:00, and we went out to lunch about 12:25 and we returned about five minutes of two. When we returned Mr. Headley—

Q Which one? A W. F. Headley.

Q Go on. A He and his father came into Mr. Headley's private office and Mr. W. F. Headley stated that he had a right to cash.

20 Q That he had a right to receive cash? A Yes. He used the words "a right to cash" and a reasonable time to deliver this deed. I asked him what he meant by a reasonable time, and he said thirty days. I said: "Mr. Headley, if you have a right to cash, you get your deed ready, because the cash will be back here." I said: "I will be back with cash this afternoon." Mrs. Buck and I left the office, and I left her in Newark with instructions to telephone Mr. Miller and apprise him of the fact, and in case Mr. Miller was not there, about getting
30 the money, and to get \$3,500 in legal tender ready for me, that I was on the way up from Newark just as fast as I could get there.

Q Did you not also phone me about the circumstances? A We phoned you from Rockaway.

Q What did you do then? A I hurried up to Rockaway. Mrs. Buck had gotten in touch with Mr. Miller and the bank and the \$3,500 was put up, and Mr. Miller had an armed policeman ready
40 to go back with me, with the money. We came

Fred H. Buck, direct

from Mr. Miller's office to you for further instructions, and went from your office back to Mr. Headley's, arriving there at three minutes to five by the clock down in the hall. Mr. Headley was gone. We tendered the money and counted it out, the policeman and myself, to Mr. Meeker, a young man in the office, and he said he would not take the money because he could not deliver it and he knew nothing about it. We counted out the money in his presence and we went from there to Mr. Headley's home in Madison. We arrived there about twenty minutes after six. We saw Mrs. Headley, and Mrs. Headley said that Mr. Headley had been home and gone out and she did not know what time he would return, that sometimes he did not get back until 10:00 or 11:00 at night. We waited from half-past six until half-past eight and he did not come in. So I saw his son at the house and I counted out the money to his son and told him what we were after, and then decided to go home. We went up to the village and got something to eat, and on the way up to the village, I thought I saw Mr. Headley's car parked across at a service station, which service station would command a view of Mr. Headley's house, and it was just a passing coincidence and while we were at the restaurant we spoke about it—

Q What did you do next? A Well, we came from the restaurant back to Mr. Headley's place and encircled the garage and saw that his car was in the garage and as we were going into the garage I thought I saw Mr. Headley in the kitchen, but the light went out immediately. We came around to the front door and the son came to the door and said that Mr. Headley was in the house but had retired.

Fred H. Buck, direct

By the Court.

Q What time was that? A About 8:30 or a little later than 8:30—probably 9:15—and we told the son what we were after, that we had the money and we wanted to close this matter up, and the son said that Mr. Headley had retired and would not
10 see us and when he told us that—he went back and told him—

By Mr. Price.

Q He left you to go where? A He left us to go and talk to his father and came back and said his father would not see us, that he had retired. Then we went back and I delivered the money back to Mr. Miller that night and we went home. The
20 next morning he told me to do the same thing all over again. I took the money down to Newark and I saw Mr. Headley's son in his Newark office. Mr. W. F. Headley was not there. The son told me that Mr. Headley told him that the price of this property now was \$5,000; that he wanted \$4,500 more in cash with the \$500 that Mr. Headley had paid. We counted out the money to his son, \$3,500, and left the office and went to his house again. He was not at his house; they did not know when he
30 would be in; but I saw the daughter and I told the daughter what we wanted and I counted out the money in front of the daughter and of course she had no authority to take it; she knew nothing about the transaction at all; and we left.

Q Then the money was later given back to Mr. Miller? The money was given back to Mr. Miller the same day.

Mr. Headley. No questions.

Mr. Meyerson. No questions.

40 *Mr. Price.* I feel so far as the case of Mr.

Harold F. Price, direct

Miller against Headley is concerned, with the exception that I am prepared, although I think it is hardly the proper time, to prove the fair value of the tract of land, which may come up for your Honor's consideration, but that is probably premature at this time, on the main case I rest.

10

COMPLAINANT HOCKENJOS' CASE

HAROLD F. PRICE, sworn as a witness on the part of the complainants, testifies as follows:

Direct examination by Mr. Meyerson.

Q You represented Mr. Miller in the transaction between him and Headley, did you not? A Yes.

Q And you started this suit in Chancery? A Yes. 20

Q When did you send the bill to be filed and how? A I sent the bill by messenger. He left my home in Mendham, New Jersey, I think between 7:00 and 7:30 on the morning of Monday, the 18th of May, with instructions that as soon as he filed the bill in the office of the clerk in Chancery in Trenton, to telephone me at my office, so that I might have the subpoena placed in the sheriff's hands and the *lis pendens* filed.

30

Q When did you receive word from your messenger that he had filed the bill? A I think it was a very few minutes after 9:00.

Q What time did he file the bill? A I cannot tell you what time he filed it except from his message, but if it is necessary and it can be left open I will produce Mr. Headley.

Q He is not here? A No.

Q You say you received word from him a few minutes after 9:00 that he had just filed the bill? 40

A Yes.

Harold F. Price, direct

Q Then what did you do? A I went to the sheriff's office and left the subpoena for service on the Morris County defendants, who were Mr. and Mrs. Headley. That was in the office of the Sheriff of Morris County. Then we went to the Clerk's Office of Morris County and filed the lispensens which I did.

10 Q What time did you leave the subpoena with the Sheriff for service? A I do not recollect but I should say long enough time to walk from my office up to the Sheriff's office which is not more than a block.

Q That must have been ten minutes after nine because you got your telephone message three minutes after nine? A Right. I was speaking of Daylight Saving Time, you understand.

20 *The Court.* Does the record show what hour the lispensens was filed?

Mr. Meyerson. Yes; it does. I am going to offer it in evidence.

Q Do you know when the sheriff made service of the subpoena? A No; I do not. His return would show. It was sometime that day, I think, at the home—I am not certain about that but I do know that the order in which I took these things was, first, to the sheriff to serve and then to the Clerk's office.

30 Q You are sure that you received a message from Mr. Headley at five minutes after nine? A I did not say that. I said a few minutes after nine. The reason I say so is because I usually reach the office a few minutes before nine, and I cannot pin myself down. The only thing I can say is that I did not go to the Sheriff's office or Clerk's office until after I had the message. I think the card shows the day of filing May 18th.

40

William Hockenjos, Jr., direct

Mr. Meyerson. I offer certified copy of the docket of the clerk showing date of filing.

(Marked Exhibit D-Hock. 1.)

Mr. Meyerson. I offer in evidence certified copy of lispensens showing that it was filed in the Clerk's office at twenty-one minutes after 8:00 on the same day.

(Marked Exhibit D-Hock. 2.)

10

By the Court.

Q How do you explain the difference between the hours? A Because in the Clerk's office they have a stamp which fixes the record of a paper, and it is fixed on Standard Time. No matter whether the community is run on Daylight Saving Time, they keep Standard Time.

By Mr. Meyerson.

20

Q You do not contend, do you, that between 9:03 or 9:05 and 9:21 you were able to go to the Sheriff and give him the subpoena for service and have him effect service on the defendant in Madison in those sixteen or seventeen minutes? A Of course not. I merely left the subpoena with him a short time after 9:00 and walked around the building from his office to the Clerk's office. I do not say the service was made.

Q So, as a matter of fact, the lispensens was filed, actual service was not made of the subpoena? A I assume that is correct. I do not see the materiality.

30

Mr. Headley. No questions.

WILLIAM HOCKENJOS, Jr., one of the complainants, sworn as a witness on behalf of the complainants, testifies as follows:

40

William Hockenjos, Jr., direct

Direct examination by Mr. Meyerson.

Q You are the party named in and who signed this agreement to buy certain property at Lake Hopatcong? A I am.

Q Did you see Mr. Headley sign that agreement? A I did.

10 Q Was that signed on the day of its date? A I believe it was the same day.

Q This calls for a consideration of \$3,000. Did you pay anything on account? A \$1,000.

Q I show you a check for \$1,000. Is this the check that you paid Mr. Headley? A That is it; yes, sir.

Mr. Meyerson. I offer the contract and check in evidence.

20 (Contract is marked Ex. Hock. 3. Check is marked Ex. Hock. 4.)

Q This property which you bought, is it contiguous to property which you now own in Lake Hopatcong? A Yes.

Q Was it necessary for you to acquire it in connection with your business? A Yes.

Q It is not a question with you as to dollars and cents, but of the property itself; is that my understanding? A That is right.

30 Q Did you have knowledge of any other outstanding contract for the sale of this property which you agreed to buy? A I did not; no.

Q Were you present in my office on the 15th of May to close title to this property? A Yes, sir.

Q Did you have your consideration with you? A Yes; a certified check.

Q For how much? A \$2,000.

40 Q Did you tender that to Mr. Headley at that time? A I did.

William Hockenjos, Jr., direct

Q Did he deliver a deed to you then? A He did not.

Q Why was not the title closed at that time? A He would not close title unless I gave him an agreement to re-sell the property back to him, I believe within thirty days.

Q Were you willing to execute such an agreement? A No, sir. 10

Q Was title closed that day? A No, sir.

Q Upon failure to close title what did you do with your contract? A Recorded it the next morning.

Q In Morristown? A That is right.

Q Did you go down to Morristown yourself? A My wife went down.

Q Is this the agreement which you gave her to file, which is now marked in evidence? A Yes, sir. 20

Q It was filed on the 16th? A Yes, sir.

Q Will you kindly identify on the map the exact piece of property which this contract covers? A This section right here.

By the Court.

Q Is it marked by any designation on the map? A This is the entire piece here.

Q Suppose you take a lead pencil and make an "X" mark at the top and at the bottom of the piece that you were going to buy. A The four corners? 30

Q All right. A (Witness does as requested.)

By Mr. Meyerson.

Q Did you finally close title on the day fixed in your contract of sale? A Yes, sir; on the 20th.

Q You paid the balance in what way? A Cash, \$2,000.

Q And you received a deed for the property? A Yes. 40

William Hockenjos, Jr., cross

Q A warranty deed? A That is right.

Q I show you a deed dated May 18, 1931, recorded in the Morris County Clerk's office on the 21st day of May, 1931, in Book Q-32 of Deeds, page 317. Is this the deed which you received for the property? A Yes, sir.

10 *By the Court.*

Q When did you say that deed was delivered to you? A The 20th of May.

Q How much cash did you pay then? A \$2,000.

By Mr. Meyerson.

Q Making a total of how much? A \$3,000.

Mr. Meyerson. I offer the deed in evidence.
(Marked Ex. D-Hock. 5.)

20

Q And what did you do with the deed after you received it? A Turned it over to you for recording.

Q At any time prior to the actual delivery to you of the deed in question and the payment by you of the consideration, did you have any knowledge that there was any outstanding contract? A I did not.

30 *Cross examination by Mr. Price.*

Q When the 15th day of May came and Mr. Headley came up to your place and made the option which you have referred to and wanted an additional stipulation added to re-purchase the property, did he say anything at that time at all about John H. Miller? A No, sir.

By the Court.

40 Q What hour of the day was he there on the 15th of May? A I think it was four o'clock.

William Hockenjos, Jr., cross

By Mr. Price.

Q That was at Mr. Meyerson's office? A Yes.

Q Did you go there by appointment? A I did.

Q Who had told you to come there and at what hour? A Mr. Headley.

Q He told you to be there? A Yes.

Q When had he made that appointment with you? A Either that day or the day before. I am not quite sure now. 10

Q By telephone? A Yes.

Q Fixing four o'clock at Mr. Meyerson's office in Dover, New Jersey, as the time and place for meeting? A I believe that is mentioned in the contract for sale.

By the Court.

Q The contract of sale mentions the 20th of May. He is asking you about the 15th of May. A That is right. 20

By Mr. Price.

Q I understand it was advanced by agreement to the 15th? A That is right.

Q You say you got the information to come there on the 15th by telephone message? A That is right.

Q From William F. Headley? A That is right. 30

Q Either the same day or the day before? A That is right.

Q Your contract at that time was not acknowledged? A It was that day, at the office.

Q Up to that time it was not acknowledged? A No.

Q You know Mr. Fred H. Buck and John H. Meller, both of them? A I know Mr. Buck. I met Mr. Miller at your office some time later. 40

William Hockenjos, Jr., cross

Q You had not met him before? A No, sir.

Q Had you ever had any discussion with Mr. Buck prior to the making of your contract with Mr. Headley which bears date April 23, 1931, with reference to the property that Mr. Miller was negotiating the option for? A I did not know—Mr. Buck said he owned the property.

10 Q I am speaking of the property Mr. Headley owned? A That is right.

Q Did you have any discussion with Mr. Buck about the acquirement of that title by Mr. Miller? A Not the acquirement of it; no.

Q Did you know it was for sale by Mr. Headley? A Not at that time.

Q Did Mr. Buck tell you? A No, sir.

Q Did he discuss that particular property with you? A Yes, sir.

20 Q He merely spoke of the value of it and so forth? A No; he wanted to lease part of it.

Q You at that time owned the property adjoining? A That is right.

Q Up to that time you did not have any ownership of the property which you later got on contract from Mr. Headley? A That is right.

Q Did you know at that time that Headley owned the property? A No, sir. I had read in the paper it was being sold under foreclosure proceedings.

30 Q Was it after the conversation with Mr. Buck that you got this contract from Mr. Headley? A Yes.

Q You got the contract on April 23rd? A Yes; some time after.

Q Did you negotiate this contract yourself personally? A Yes, sir.

Q Did you go to Mr. Headley's office? A No; he came to my home.

40 Q At your request? A Yes.

William Hockenjos, Jr., cross

Q And the thing which had preceded his coming to your home was your inquiry of him as to whether the property could be bought? A That is right.

Q And when he came to your home did you have the contract drawn that day? A He brought the contract with him.

Q You did not have your terms arranged over the telephone, did you? A No; he brought that the way it is, unexecuted. 10

Q With the price of \$3,000 in it? A Yes.

Q You must have discussed terms with him before he came to you? A Yes; we did. That is right.

Q On the telephone? A That is right.

Q In other words, you made him an offer for this property? A I did not. I asked him the price. 20

Q He quoted a price to you? A That is right.

Q Was this the first price he quoted? A That was half the property. He quoted \$6,000 on the whole property.

Q He offered to sell the whole property? A That is right.

Q By that you are referring to the piece of property that you ultimately got the deed for, the part which adjoins your property? A Fifty feet adjoining it. 30

Q On the west side of the tract that you own? A Yes.

Q He quoted you \$6,000 for the whole tract, or \$3,000 for half? A That is right.

Q And the half which you agreed to buy was the half next to your property? A Yes.

Q Did you tell him that \$3,000 was satisfactory? A No; I said we could take it up.

Q When he came he had a contract? A Yes; 40
filled out that way.

William Hockenjos, Jr., cross

Q He came to your home with this contract? A That is right.

Q How many days after you had talked to Buck about this property was it that you communicated by telephone with Mr. William F. Headley?

A I am not sure of the exact time—possibly a few days after that.

10 Q Where did you meet Mr. Buck? A Down in Dover in my automobile.

Q When Mr. Headley came and had this contract ready, did he sign it at your home? A Yes, sir; he did.

Q How did Mr. Meyerson come to be there? A Mr. Meyerson was not there. He took that acknowledgment later.

20 Q Mr. Headley signed this contract in your home without Mr. Meyerson being there? A That is right.

Q Did you sign it at your home? A Yes.

Q Do you know when Mr. Meyerson witnessed Mr. Headley's signature? A The day we were to close title, the 15th.

Q What did you do with this contract on April 23, 1931, after Mr. Headley had signed it at your home and you had given him a deposit? A I just kept it.

30 Q You gave him a thousand dollar check that day? A That is right.

Q Payable to his individual order? A That is right.

Q When did you take the matter up with Mr. Meyerson? A I believe a few days after that, to have the property searched.

Q And did you deliver the contract to him? A Yes, I believe I did.

40 Q At that time the signatures were unwitnessed and the acknowledgment of Headley was not taken? A That is right.

William Hockenjos, Jr., cross

Q From April 23 to May 15, 1931, did you see Mr. Headley at any time? A I do not believe I did. I may have.

Q Did you receive any message at all from him up to the 15th of May of the existence of a prior contract with Miller for this whole tract? A No, sir.

Q On the 15th of May, you went down to Mr. Meyerson's office as the result of a telephone call from Mr. Headley? A That is right.

Q When you got to Mr. Meyerson's office, was Mr. Headley there or did he come in while you were there? A He came in about the same time I did.

Q Tell me again what Mr. William F. Headley said at Mr. Meyerson's office? A He wanted an agreement to purchase this property back within approximately thirty days from me.

Q Did Mr. Meyerson discuss with him the fact that he and you were there ready to close title? A He did and he asked him why he should postpone it for five days.

Q Did he give any reason for that? A No, he did not.

Q Did he refuse to close that day? A Yes.

Q When did Mr. Meyerson's name get on this agreement? A That day.

Q How did it come to get there? Do you know the circumstances surrounding that? A I believe he then took Mr. Headley's acknowledgment.

Q Then the conference broke up, did it not? A That is right.

Q You did not succeed in transmitting the rest of your money that day? A No.

Q How did you have the balance—in cash or in certified check? A Certified check.

Q When was the appointment made to meet again, if at all? A There was no appointment made. It called for the 20th in the contract.

William Hockenjos, Jr., re-direct

Q Was anything said by Mr. Headley that he would be back on the 20th? A Yes; he said that.

Q To close title? A Yes.

Q He so stated to you that day? A He did.

Q What hour did you meet on the 20th? A I believe it was around four o'clock. I think that
10 was the time set.

Q You reached Mr. Meyerson's office? A Yes.

Q Mr. Headley came there? A He did.

Q What transpired? A He got the \$2,000 and we got the deed.

Q Did he at that time say that there had been a suit already started against him? A He did not.

Q And then the next thing you had to do—the thing that you did prior to that was to take the
20 agreement of April 23rd down to Morristown? A Yes.

Q The deed you left with Mr. Meyerson to record? A That is right.

Re-direct examination by Mr. Meyerson.

Q Did Mr. Buck at any time tell you that he was acting for Mr. Miller? A He did not.

Q Did he at any time tell you that Miller was interested in the property under contract or other-
30 wise? A Mr. Miller's name was never mentioned.

Q I notice the deed in evidence was made out to you and your father. Did you take the contract in your own name for the sake of convenience? A That is right.

Q Were you acting for your father? A That is right.

Q And both you and your father are complainants in this suit? A Yes.
40

William Hockenjos, Jr., cross

Cross examination by Mr. Headley.

Q In this agreement, is it not a fact that the writings inserted in that agreement were made on the 15th? A I believe some of them were.

Q And then it was acknowledged after they were written in? A I believe that is right.

10

The Court. You are talking about the contract between Headley and Hockenjos, Exhibit D-Hock-3?

Mr. Headley—Yes.

Mr. Meyerson. As far as Mr. Hockenjos is concerned there is a decree pro con against William F. Headley. I do not know how your Honor feels about it, but I do not think he has any right to cross examine.

The Court. Maybe it is material in the other case. 20

Q Is it not a fact that you and Mr. Meyerson would not accept the deed that was presented until it was re-acknowledged according to the corrections in the agreement?

The Court. When was this—May 20th or May 15th?

Mr. Headley. The 15th of May.

A. I do not quite get that question. 30

Q (Question repeated.) Is it not a fact that you and Mr. Meyerson would not accept the deed that was presented until it was re-acknowledged according to the corrections in the agreement? A Not to my knowledge.

Q (Showing witness) Is this the deed that was presented to you on the 15th of May? A I could not tell you that, sir. I think that (indicating) is the deed right there. 40

Samuel C. Meyerson, direct

SAMUEL C. MEYERSON, sworn as a witness on the part of the complainants, William Hockenjos, Sr., and William Hockenjos, Jr., testifies as follows:

Direct examination.

10 I am a counsellor at law, practicing in Dover. Mr. Hockenjos came to me subsequently to April 23, 1931, to have title searched on a tract of land at Lake Hopatcong, described in Exhibit D-3. I made a search preparatory to closing title on May 15th, which was the date set by appointment—the 15th of May.

By the Court.

20 Q Appointment by whom? A By Mr. Hockenjos, who called my attention to the fact that he had made an appointment with Mr. Headley to meet in my office on the afternoon of the 15th. On the morning of the 15th I ran the title down from the time I had completed my previous search and found the title at that time was in the Kenvil Lumber & Store Company. I found a lis pendens on file showing that the property was in course of foreclosure. I ascertained from the sheriff's office of
30 Morris County that the property had actually been sold by him to William Headley, but that the deed up to the time that I had made the original search, had not as yet been delivered, and it was not on file.

I found the premises free and clear of all encumbrances as a result of the foreclosure and vested in William F. Headley, although the deed then was not of record. From Morristown I went up to my office in Dover and met Mr. Headley and Mr. Hockenjos about four o'clock to close title. Mr. Hocken-

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Samuel C. Meyerson, direct

jos handed me a certified check for \$2,000, which I passed over to Mr. Headley, asking him for the deed to the property. He took a deed out of his pocket, but would not hand it over, stating that he was ready to deliver title on condition that Mr. Hockenjos should execute to him an agreement to re-sell the property to him within thirty days, for which agreement he would give him \$250. Mr. Hockenjos refused to make such an agreement, stating that he needed the property and did not want the profit involved. I talked with Mr. Headley, urging that the title be closed, but he refused to do so. I made several inquiries of him as to his refusal to do so. The only thing that I could get out of him was that his brother had advised him that inasmuch as he had already had trouble at Lake Hopatcong with Mr. Buck, that he better be protected in case Mr. Buck should ever sue him. I asked Mr. Headley whether Mr. Buck had any agreement with him by which Mr. Headley had agreed to transfer this property to Buck, or whether Mr. Buck had any claim on this property. I also asked him whether he was acting as agent for Mr. Buck in any way. He assured me that Mr. Buck had absolutely no interest in the property whatsoever; that Mr. Buck had never owned the property, and that there was no reason why he should not pass title, except that he would now insist upon waiting until the 20th. I took the agreement which is in evidence, marked Exhibit D-4, and showed it to Mr. Headley—I am a little ahead of my story. Before we reached the impasse we had started to compare the description. I followed the description in the agreement with the map and noticed that one of the courses was wrong and the distance was wrong. The deed which Mr. Headley had tendered—or rather, which

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Samuel C. Meyerson, direct

he had in his pocket—also had the incorrect course and the incorrect distance, and I told Mr. Headley at that time that if we closed title on that day, that would have to be corrected, which he agreed to do. I think we then changed the course and distance with pen and ink on the deed which he had in his possession. Later, when Mr. Headley refused to pass over the deed to us, I showed him the contract and said: “Mr. Headley, do you realize you have a written contract for sale, in which the date of passing title is fixed and we are entitled to go through with the deal on the 20th, even if you don’t go through with it today?” He said: “Yes.” Then I said: “Mr. Headley, do you re-affirm this to be your signature on this contract?” He said: “Yes.” I asked Mr. Hockenjos the same question and he re-affirmed his signature. I thereupon put my name down as a witness to the re-affirmation of the signature. I then turned to Mr. Headley and said: “Mr. Headley, do you acknowledge that this is your agreement which you have executed and delivered to Mr. Hockenjos, and he admitted that he had signed and executed that agreement and delivered it. After he acknowledged the contract I put my certificate of acknowledgment on the back of the agreement and instructed Mr. Hockenjos to file the agreement in the county clerk’s office at Morristown. I made no further examination of the title.

On the 20th, by appointment at four o’clock in the afternoon, Mr. Headley and Mr. Hockenjos met in my office to close title. Mr. Headley produced a deed which bore date the 18th day of May, 1931. The deed was already executed by both Mr. Headley and his wife and had been acknowledged before an attorney by the name of John E. Kennedy. I paid over the balance of the consideration in cash, \$2,000. There was an adjustment to be made on

Samuel C. Meyerson, direct

account of taxes and Mr. Headley left with me the sum of \$150 for the taxes apportioned against the part of the property which we purchased and to pay those taxes. Such apportionment as yet has not been made by the tax collector and the \$150 is still in my possession. The deed was left by Mr. Hockenjos with me the afternoon of the 20th. I mailed it to Morristown that very afternoon and it was recorded the next morning. I heard nothing further from any of the parties to the transaction until the 29th of May, 1931. In the early afternoon of that day my family and friends were about to leave my office for Budd Lake for the holiday week-end. Just as I was about getting out of the office Mr. Headley came in the door and wanted to speak to me. He asked me whether I would represent him in a suit pending in the Court of Chancery. I told him that I was rather surprised that he should come to me to have me represent him. Then he remarked to me: "The reason I want you to represent me is because your client Hockenjos may be interested in this suit in which I have been served." That, of course, made me interested, and I asked him to show me the papers. I read the bill of complaint. I told Mr. Headley that it seemed to me our interests were contrary and that I could not represent him. I was however disturbed about the matter and I asked my family to wait for me in the office. I took my car and ran down to Morristown, where I found that at twenty-one minutes after eight on the morning of the 18th day of May, 1931, a lis pendens was filed in a suit in which John H. Miller was complainant and William F. Headley was defendant.

Q That was the first knowledge you had? A
That was the first knowledge I had.

Samuel C. Meyerson, cross

Q That information from Mr. Headley was the first intimation you had of the suit? A Yes; or any information whatsoever of any outstanding interest whatsoever in the property which I handled for Mr. Hockenjos. Then I instituted my suit in the Court of Chancery.

10 *Cross examination by Mr. Rice.*

Q As I understand it, the 15th day of May was the day when Mr. Headley was at your office, and then following that, from the 16th of May on until the 20th, when your deed was sent for record, you made no search? A No.

Q Did you mail your deed down? A I did.

Q The examination of title that you had made was continued to the 15th day of May, the morning of the day you first met? A Correct.

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Cross examination by Mr. Headley.

Q You say Mr. Headley discussed with you on that day, when you pressed him for the reason why he would not close title—that the reason was that his brother had advised him that there might be trouble with Buck? A Correct. Mr. Buck was the president of the Montville Lumber and Store Company, the owner of record of the property which was foreclosed, and—

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Q It had been under foreclosure, and the foreclosure had resulted in the purchase of the property by Mr. Headley; is that correct? A That is right.

Q Who was the mortgagee? A A party by the name of Gensel was the mortgagee.

Q William F. Headley was attorney for the mortgagee? A Yes.

Q He made no further explanation than that his brother advised him he might have trouble with Mr. Buck? A That is right.

40

Samuel C. Meyerson, cross

Q And upon pressing him whether Buck had an interest in the property, he assured you that he did not? A He assured me he did not.

Q And still he refused to deliver the deed? A Right.

By the Court.

Q Just as a matter of curiosity, you say when you finished your search on the 15th of May, the title was in the Montville Company? A It was.

Q And you made no further title search. How did you satisfy yourself that Mr. Headley was the actual owner? A By going to the sheriff's office and finding that Mr. Headley had bought the title.

Q But he didn't have record title? A No.

Q The deed was not recorded. How did you come to pass title on the 20th without knowing that Mr. Headley had title? A Mr. Headley told me he would bring the sheriff's deed with him, and he recorded the sheriff's deed simultaneously with mine. The sheriff's deed which is already in evidence, shows the recording time to be the same time as our deed.

I want to make one correction in my testimony. I said the Montville Lumber and Store Company had been the record owner of the title, but there had been a previous foreclosure in which the property had been sold to the Roxbury Lumber Company. I think the Roxbury Lumber Company owned the property at the time. That is my present recollection. Both the sheriff's deed to Mr. Headley and Mr. Headley's deed to Hockenjos were recorded May 21, at 8:19 in the forenoon.

Q That is standard time? A Standard time.

Q That means 9:19 daylight saving? A Yes.

Q They use standard time in the clerk's office?

A Yes; that is right.

William F. Headley, direct

Mr. Headley. I renew my motion to dismiss on the grounds—

The Court. If you move to dismiss now on the testimony of the complainants, you rest.

WILLIAM F. HEADLEY, the defendant, sworn as a witness in his own behalf, testifies as follows:

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Direct examination by Mr. Headley.

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Q What happened on the 9th of April between you and Mr. Miller or Mr. Buck? A On the 9th of April Mr. Buck came to my office and I signed two papers which Mr. Buck said he was going to take up to Mr. Miller. On the 13th of April, 1931, Mr. Buck came back to my office and said Mr. Miller would not sign the paper that I drew up on the 9th. At that time he had a check drawn to the order of William F. Headley, as attorney for John F. Gensel. I drew up two new agreements, leaving the date the same, April 9th, and gave them to Mr. Buck. I signed both of them and gave them to Mr. Buck to take up and have Mr. Miller sign. At that time Mr. Buck left the check drawn to William F. Headley, as attorney for John F. Gensel. Since that time I have never seen either one of the papers that I gave to Mr. Buck to take up to Mr. Miller. On the 13th of April—Is that the date of the Sheriff's sale?

30

The Court. The Sheriff's sale was April 13th.

Q Continue. A On the 13th of April I went to the sheriff's office, representing Mr. Gensel, and purchased the property for \$500 in my name. As there had been no agreement between Mr. Miller and Mr. Gensel—as I had not heard anything—

40

Mr. Price. I move that that be stricken out. It is argumentative.

William F. Headley, direct

The Court. He is testifying to a fact, that there was no agreement between Gensel and Miller. I will let it stand.

Q Go on. A I presumed that the arrangement that Mr. Buck had been trying to put through had fallen through, and I communicated with Mr. Hockenjos asking him if he would be interested in the property, and Mr. Hockenjos—I don't know whether it was by telephone or letter or how, but at any rate he communicated with me that he would be interested in it and asked me the best figure, and I told him that he could have half of it for \$3,000 or the whole of it for \$6,000. He told me at the time that he understood that Mr. Buck was the owner of the property, and I told Mr. Hockenjos "No," that Mr. Buck was not the owner of the property, and that I had authority to sell it. Mr. Buck was the man I had been dealing with. I understood that Mr. Miller was simply a figure-head and was not to take title.

Mr. Price. I move to strike that last sentence out.

The Court. Strike it out.

By the Court.

Q Don't tell us what you understood. If you have anything that anybody said to you on that subject, we will take that, but not what you imagine. A Mr. Buck informed me that he would take over this property and the property on which he was living and also five lots with bungalows, in the name of a company which he was to form.

Q That is this property in question? A Yes; with two other properties. The plan at that time was that I would receive about \$12,000 for the three properties, and I had consulted with Mr. Gensel. Can I tell what Mr. Gensel said?

Mr. Price. I object to it.

William F. Headley, cross

By Mr. Headley.

Q Did you offer the \$500 check to Mr. Gensel?

A Mr. Gensel said he would not accept the \$500. He wanted the full amount or nothing.

By the Court.

10 Q You offered him the \$500 check that Buck had given you? A No. I had cashed the check to see whether it was good or not and offered Mr. Gensel the cash and he refused to take it.

By Mr. Headley.

Q Did you ever meet Mr. Miller? A In this transaction I had not met him until after the time I signed the agreement with Mr. Hockenjos.

20 Q When you gave Mr. Buck this little paper, what did you tell him? A I told him to take it up and have Mr. Miller sign it.

Q What did he say? A I am not positive what he said, but I understood that he would do it. I don't remember the conversation at all.

Q What was the purpose of this paper?

Mr. Price. I object. It speaks for itself.

Cross examination by Mr. Price.

30 Q April 9th you say that there was a conference at your office between Buck and you? A Yes.

Q Was there anybody present with Mr. Buck? A I think not.

Q And on that day was a paper dictated by you to sell this property to Miller? A I had the stenographer draw up a paper I believe.

Q And is that the one that has been offered in this case, signed by you? A No; it is not.

Q It is not that one? A No.

40 Q And wherein does the one that you drew

William F. Headley, cross

differ from this one? I am now referring to Exhibit CM-1. A I am not just positive. The time of taking the assignment was very much earlier.

Q Do you know of any other change or difference? A I am not positive. The figure of \$4,250 at one time was submitted and Mr. Miller refused it, I understood from Mr. Buck.

10

Q Was \$4,250 the figure that was in the paper that you drew that day? A I don't know.

Q Did you ever put the figure \$4,250 in a proposed agreement with Mr. Miller? A I am not positive.

Q At any rate, the paper that you drew had to do with the same piece of property? A It did.

Q The same property that Exhibit CM-1 had to do with? A Yes.

Q That paper, you say, was handed to Mr. Buck on the 9th of April to take to Mr. Miller? A Yes; to have Mr. Miller sign.

20

Q Mr. Buck came back later, after that? A He came back on the 13th or 14th of April.

Q And reported to you what? A That Mr. Miller would not be interested—that he would not put up more than \$4,000.

Q Does that refresh your recollection that the figure you had in the previous contract was \$4,250? A I think it was \$4,250, but I do not recollect.

30

Q At any rate, the message that came back from Mr. Miller through Mr. Buck, was that Mr. Miller would not pay more than \$4,000? A The words were that he would not put up more than \$4,000.

Q Thereupon, you prepared Exhibit CM-1, did you not? A Yes.

Q It was dictated by you? A Mr. Buck, I think, did a good deal of that.

Q At any rate, you signed it? A I signed it; yes.

40

William F. Headley, cross

Q That was some time around the 13th or 14th of April? A I think it was the 14th.

Q You remember the 9th because that had been the day on which the previous memorandum had been drawn? A Yes.

10 Q You put in this one \$4,000 as the consideration for the sale, did you? A For the assignment of the mortgage.

Q The \$4,000 which you put in here and which appears in two places, was put in after Mr. Buck had reported that Mr. Miller would not put up more than \$4,000? A That is right; yes.

Q Then you dictated this paper, signed it and delivered it to Mr. Buck? A I delivered two papers like that to Mr. Buck, both signed by me.

20 Q And was that the day that he gave the check? A I think it was the 14th.

By the Court.

Q At any rate, it was the same day that this agreement offered in evidence was drawn? A I exchanged the agreement for a check drawn out to me as attorney for Mr. Gensel.

By Mr. Price.

30 Q As a matter of fact, will you search your recollection and see if you do not recall that the check was delivered to you before the 14th of April? A May I see the check?

Q Can you recollect without seeing the check? If you cannot, I will show it to you. A The check was delivered to me at the same time that I turned these checks over to Mr. Buck.

40 Q I show you the check which has been offered in evidence and which bears date April 11th, 1931. Seeing the date, does that refresh your recollec-

William F. Headley, cross

tion at all? A No; it does not, because my recollection is it was the 14th.

Q Having received this check, how long did you hold it before you cashed it? A I don't remember that. I imagine I kept it three or four days. I don't remember what day the 11th came on.

Q In any even, what was the next thing you did with reference to this property after the 11th day of April, or after the 13th of April, if that is the date when Mr. Buck was at your office? A Is there any way I can find what day the 11th came on? 10

Q April 11, 1931, was on a Saturday. A I think it was Saturday, Mr. Buck was in the office and we fixed up this agreement and he gave me the check. I think it was Saturday and I think I deposited the check Tuesday of the next week. 20

By the Court.

Q You change the date. A I didn't have the day.

Q You now fix the date as April 11th. A I am practically sure it was Saturday he was in.

By Mr. Price.

Q What was the next thing you did after April 11th with reference to this property and with reference to Mr. Miller whose name is mentioned in the contract? A Nothing. 30

Q Did you ever make any request of Mr. Miller or Mr. Buck to return a signed contract to you, which you say was the purpose of giving it to Mr. Buck? A Not until I had signed the contract with Mr. Hockenjos.

Q Without any further colloquy between you and Mr. Buck you went ahead and signed a contract with Mr. Hockenjos. Is that right? A Yes. 40

William F. Headley, cross

Q Is it not true that on the 14th of May, Mr. Buck was at your office? A No.

Q You say he was not there? A On the 14th, no.

Q You mean you did not see him, do you not? A You asked me if I saw him.

10 Q Were you at your office on the 14th? A Not that I know of, he was not.

Q You say he did not produce the certified check to you on the 14th of May? A I don't think he did.

Q You saw him on the 15th? A I saw him on the 15th.

Q It was what day of the week? A I don't know.

20 Q As a matter of fact it was on Friday. Does that refresh your recollection? A That is right. It was on a Friday.

Q What time did he get there? A I imagine about eleven o'clock in the morning.

Q And did he have a certified check for \$3,500 with him? A At that time he had a check for \$3,500, certified.

Q Did he tender it and ask for a deed? A He refused to give it to me until I gave him a certified deed for the property.

30 Q Did he tender the check and ask for a deed? A He hung on to the check with both hands and—

Q And wanted a warranty deed? A That is what I understood—he wanted a warranty deed.

Q Did you have the deed prepared? A I think I had a warranty deed prepared at that time; yes.

Q Already signed by you? A Already signed by me.

Q To Mr. Miller? A To Mr. Miller.

40 Q Then, you expected Mr. Miller to close this transaction? A I expected to see Mr. Miller.

William F. Headley, cross

Q How long before the 15th day of May had you prepared and executed ready for delivery a warranty deed to Mr. Miller? A I think probably the same day. I don't know.

Q The morning of that day? A I think probably.

Q The kind of a deed that you had prepared for Mr. John H. Miller and already signed, was the very kind of a deed Mr. Buck asked for, was it not? A Yes. 10

Q And had your acknowledgment already been taken to it? A I think so.

Q Your wife had signed it? A Yes.

Q By the way, did you show the deed to Mr. Buck? A No.

Q So that when Mr. Buck asked for a warranty deed for which he was ready to deliver the check, what was your reply? A I told him that the agreement called for cash before he got the deed. 20

Q Did you raise any question that Mr. Miller himself was not down there personally? A I told him that I had expected Mr. Miller to come down and go over the matter with me at that time.

Q Did you insist on his personal presence before you closed, or did you raise that as an issue? A No; I didn't raise that as an issue. 30

Q You made that as a comment? A I made that as a comment.

Q Did Mr. Buck present a letter from Mr. Miller? A Yes; he did. I meant to take it with me. I had it laid out to bring here. It was probably left in the office.

Q It is not in the papers that you have here? A No.

Q This letter was a letter from Mr. Miller to 40

William F. Headley, cross

you stating that Mr. Buck was presenting the check and to deliver the deed to him? A The letter was dated—

Q I didn't ask you when it was dated. I asked you if that was what it said in substance. A I think I can give what it said.

10 Q Is that what it said in substance? A That is not the exact form.

By the Court.

Q Was that the effect of the letter? A I think we ought to have the exact copy.

By Mr. Price.

Q I show you a copy which I have and ask you if that sets up what was in the letter presented to
20 you by Mr. Buck? A That is a copy of it; yes.

Mr. Price. I will read it into the record:

“Rockaway, N. J., May 14, 1931.

“Mr. William H. Headley,

128 Market Street,

Newark, N. J.

“Dear Mr. Headley:

30 “I am handing you through Mr. Fred H. Buck my certified check for \$3,500, the same being the balance of the purchase price of the premises known as ‘The Lake Shore Lot’ formerly owned by Roxbury Lumber Co., as per your agreement of April 9, 1931. Draw the deed for the property to John H. Miller, Borough of Rockaway, Morris County, and deliver the same to Fred H. Buck, it being impossible for me to see you to-day or to-morrow.

“Very truly yours,

“JOHN H. MILLER.”

William F. Headley, cross

Q The statement that you made to Mr. Buck was that you insisted on cash instead of a certified check. Is that correct? A I told him the agreement called for cash before he was entitled to any deed and that he was not entitled to a warranty deed under the agreement.

Q Why had you drawn a warranty deed? A I understood that that was what they were demanding. 10

Q From whom did you get that understanding? A I think Mr. Buck told me he insisted on a warranty deed.

Q When? A I think he came to my house on the 14th and told me or got word to me that he wanted a warranty deed to Mr. Miller.

Q He came to your house on the 14th of May? A I think so. 20

Q Then, when I asked you if he was at your office on the 14th of May and you said no, you meant he was at your house that day? A I think he came to my house the night of the 14th.

Q What did he say? A He said he wanted me to have a warranty deed drawn to Mr. Miller for the property.

Q Did he tender you a certified check? A No. He didn't have any certified check at that time that I knew of. 30

Q So that the place where you saw him was at your house. What time of day was it? A About half-past six, I think.

Q On May 14th? A Yes.
By the Court.

Q At night? A Yes.
By Mr. Price.

Q On May 14th? A I think that is right. 40

William F. Headley, cross

Q Did he tell you he was coming down the next day? A He said: "I will be down at your office to-morrow at eleven o'clock and have a warranty deed made to Mr. Miller."

Q And what did you say to him? A I told him I wanted to see Mr. Miller.

10 Q Did he, on the 14th day of May, present to you a certified check for \$3,500? A No; he did not.

Q Did you see a \$3,500 check from him? A No; I did not.

Q Or from Mr. Miller? A No; I did not.

Q I show you a paper and ask you whether that is your signature on it, disregarding the other writing on it—"W. F. Headley"? A It looks like it.

Q Is it? A Yes; that is my signature.

20 Q Then there is this writing: "May 14, 1931. Mr. Miller: Mr. Buck was here with check for \$3,500 but refused to leave check unless he got deed first.—W. F. Headley." Did you write that latter part, the part where the change in writing appears? A I don't remember ever writing that.

Q Isn't this part, beginning with the word "Refused" in your hand writing? A "Refused to leave check unless he got deed first" is my handwriting.

Q And "W. F. Headley" is your handwriting?

30 A That is my signature.

Q The part that says "Refused to leave check" is in your handwriting? A "Refused to leave check unless he got deed first."

Q What do you say now, having seen that statement over your own signature, as to whether Mr. Buck did present to you a check on the 14th of May? A I put that very question to Mr. Miller and he said—

40 Q I asked you: Having seen that statement over your own signature, what have you to say as to

William F. Headley, cross

whether Mr. Buck did present a check to you on the 14th of May? A I didn't see a check on the 14th.

By the Court.

Q Seeing this paper over your signature, what do you say about it now? A I will say that some one wrote that "Mr. Miller" here and "Mr. Buck" here. I would say that is someone else's writing. 10

By Mr. Price.

Q You don't say that was written after you signed it, when in your own handwriting you say "But refused to leave check"? A I say he might have had the check there that night. I don't know; but I understood from Mr. Miller he had the check on the 15th. I asked Mr. Miller that question one day, and he said he had not given Mr. Buck any check on the 14th. 20

Q Is that the only explanation you have to make on that? A My memory is not good on the 14th.

Q The Vice Chancellor asked you a question as to whether now that you see your signature and your own handwriting—"But refused to leave check unless he got deed first," your recollection is not refreshed to the extent that you can say that the check was tendered on the 14th. A It does not refresh my memory, but if that is the way it was, he must have had it; but I was positive he didn't have it. 30

By the Court.

Q The date, "May 14," is in your handwriting?

A The date is in my handwriting.

By Mr. Price.

Q It is? I didn't know that. A Yes; the date and "Refused to leave check" are in my handwriting. 40

William F. Headley, cross

Q Now, the Vice Chancellor has called your attention to the fact that the date is in your handwriting. Now, what do you say? A I had been convinced up to the present moment that he didn't have a check.

10 Q What do you say now? A He might have had the check there.

Q Don't you think— A It is awful hard to convince me. I was convinced the other way.

By the Court.

Q Why did you sign that paper? A I don't know.

Q Do you recall the circumstances under which you signed it? A I have no recollection of signing such a paper at all—not on the 14th.

20 Q At any time—what was the purpose of it? A I have no recollection of the paper at all.

Mr. Price. I ask to have this paper marked for identification.

(Marked CM-6 for identification.)

By Mr. Price.

Q After the 14th of May, on which you now say he was at your house, did you see him between the evening of the 14th at 6:30 and 11 o'clock on May 15? A No.

30 Q When did Mrs. Headley sign this deed? A I am not positive whether she signed on the 14th or 15th.

Q You told us a few minutes ago that you didn't draw it until the morning of the 15th. A If that paper is correct, I must have drawn it on the 14th.

Q And took it home with you? A I don't recollect what I did.

40 Q Eh? A I don't recollect, except I drew up the deed.

William F. Headley, cross

Q Have you got it with you, by the way? A I think so. I know I had it here somewhere.

Q Will you look later and try to find it? A Yes.

Q Do you recall who took Mrs. Headley's acknowledgment? A My father.

Q Does he live with you in Madison? A He lives in Madison. 10

Q Did you go to his home to have the acknowledgment taken? A I am not positive. My father has taken a good many acknowledgments for me. I don't know just what happened in this particular case. Either Mrs. Headley and I went down to his house on the morning of the 15th, or else I brought him down to my house to take the acknowledgment.

By the Court.

Q I understood you to say you had the deed already executed when Mr. Buck came to your house that evening? A No. That was the 15th. 20

By Mr. Price.

Q You did say you must have prepared the deed on the 14th. What you mean is that you acknowledged it after Mr. Buck was at your house on the evening of the 14th? A I think so.

Q You also told the Vice Chancellor that not having seen Mr. Buck or Mr. Miller from the 9th of April until the 14th of May, that at your house that evening you learned for the first time from Mr. Buck that Mr. Miller wanted a warranty deed? A I didn't say I had not seen Mr. Buck in that time. 30

Q Didn't you say you had not heard from him? A Up to the time I signed Mr. Hockenjos's agreement. 40

William F. Headley, cross

Q Between April 9, 1931, and May 14, 1931, did you see Mr. Miller? A Yes; I had seen Mr. Miller.

Q Where? A Up at Rockaway.

Q Was anything said by him that he wanted a warranty deed? A The time I saw him I was trying to return the deposit to him.

10 Q Was anything said by him about a warranty deed? A No.

Q You tried to give him back the \$500? A Yes.

Q Ad he refused to take it, did he? A Yes; he refused to take it.

Q And so, on May 14th, when Mr. Buck came to your house, am I correct in stating that that was the first time you heard that they wanted a warranty deed, with emphasis on the kind of deed? A
20 It is the first time they told me they wanted a deed to Mr. Miller.

Q Your contract said Mr. Miller. A It was not supposed to be in Mr. Miller's name.

Q Didn't your contract say John H. Miller? A Yes; his name was simply put in there.

Q You learned on May 14th that the deed was to be drawn to John H. Miller? A Yes.

Q I have shown you a copy of a letter dated May 14, 1931, signed by Mr. Miller. A Yes.

30 Q You saw that at your home? A Mr. Buck, I think, brought that to the office on the—let me see—I don't know when I got that.

Q You don't know anything about that letter?

A I know I got such a letter from Mr. Miller and Mr. Buck brought it.

Q You don't know when— A Mr. Buck brought that letter to me on the 14th.

Q To your home? A Yes.

40 Q That said to whom to draw the deed? A That said to draw the deed to Mr. Miller.

William F. Headley, cross

Q That does not say anything about the kind of deed, does it? A No.

Q Then you learned about the kind of deed that was to be drawn by reason of the fact that Mr. Buck told you, according to your own testimony so far, on the evening of the 14th, that a warranty deed was desired. Is that so, or is it not? A Mr. Buck said he would insist on a warranty deed. 10

Q Is that the first time that you heard that they were going to insist on a warranty deed? A Probably not; I don't know.

Q Why had you drawn the warranty deed? A Because Mr. Buck had told me that they would insist on a warranty deed.

Q You told the Vice Chancellor that you had already drawn that deed before you brought it to your home on the 14th, namely, that you drew it some time during the 14th. A No; I don't recollect saying that. 20

Q I asked you when you first drew the deed and you said on the 15th. Then, when I called your attention to the date of this letter, you said the 14th. A That letter was delivered to me at half-past six on the evening of the 14th.

Q When did you say you drew the deed? A I said I was not sure whether it was the 14th or 15th.

By the Court. 30

Q Tell us now. You have already testified that the deed was drawn—you had it—when Mr. Buck came to your house that night at 6:30 and the next morning you took it down to your father's house, or your father came to your house, and that your father took the acknowledgment on the morning of the 15th of May. Tell me when the deed was drawn. A I think it was drawn by my son on the 14th after six or seven o'clock; I am not positive. 40

William F. Headley, cross

Q Where? A At my home.

By Mr. Price.

Q Have you a typewriting machine at your home? A My son has a typewriting machine at home and does typewriting for me sometimes in the evening.

10

Q Then, your testimony is that your son drew the deed some time during the evening of the 14th of May? A I don't recollect—

By the Court.

Q What is your best recollection? You have assumed to testify rather definitely on some subjects. A The best of my recollection is that my son drew the deed the night of the 14th at home.

20

Q After Buck had left your house? A After Buck had left my house.

By Mr. Price.

Q And then you took the warranty deed down there at your home or at your father's home and had it acknowledged by yourself and Mrs. Headley? A Yes.

Q Before you went to Newark on the 15th? A That is right.

30

Q So, when Mr. Buck came into the office you had this deed ready and yet insisted on cash? Is that correct? A That is correct.

Q Did you mistrust a certified check for \$3,500? A No.

Q What was the reason for asking for cash? A The contract was not supposed to go to Mr. Miller at all. I did not intend to give him the deed.

40

Q You had drawn the deed ready to be delivered to John H. Miller, according to your own testimony? A I had.

William F. Headley, cross

Q If you did not intend to give the deed to Mr. Miller, why did you go to the trouble of having your son draw the deed to John H. Miller and go down to your father and acknowledge it and take it to your office in Newark in anticipation of Mr. Buck's definite appointment for eleven o'clock? Why did you do all of those things if you did not intend to draw the deed to Mr. Miller? A I presumed I ought to have a deed there ready for a tender. 10

Q You did not tender it, did you? A No.

Q Then, may I ask you again: Why did you prepare this deed, acknowledge it and take it down to Newark for the eleven o'clock appointment with Mr. Buck—a deed made to Mr. Miller—if your reason for refusing the check for \$3,500 was that you didn't expect the deed to go to Mr. Miller? Can you explain that in any way? A No; I don't know as I can. 20

Q Your reason for refusal to take the \$3,500 check is because you didn't want to give the deed to Mr. Miller. Is that right? A Yes.

By the Court.

Q What difference did it make to you to whom the deed was made? A Mr. Buck had been having these other agreements, and the deed was to go to this company, and when I found out that Mr. Miller had no intention of turning it over to the company, I didn't want to give it to him. 30

By Mr. Price.

Q You did not know that Mr. Miller was— A That was the original understanding, that Mr. Miller was putting up the money and the deed was to go to this new company.

Q Coming back to the point, you have stated under oath that the reason you refused to deliver 40

William F. Headley, cross

the deed to Mr. Buck with Mr. John H. Miller's name as grantee, was because you wanted cash instead of a certified check. A That was the excuse I put up, that I was entitled to the money.

10 Q So that the reason you were urging, that you were entitled to money instead of a check, was merely a subterfuge? A I had no right to give a deed to Mr. Miller without Mr. Gensel's consent. Mr. Gensel had not consented to it.

Q Your contract had stated, had it not, that this property was under foreclosure and that if you got title, you would convey the property to Mr. John H. Miller? A Provided \$3,500 is paid first.

Q Does it say "paid first"? A Yes; it does.

20 Q Where in this contract does it say that the \$3,500, the balance of the purchase price, is to be paid first? The balance of the purchase price, the balance of \$3,500, is to be paid on or before May 15. Why do you say "paid first"? A I didn't agree to give him that deed on the 15th. I agreed to assign the decree that I had or that Mr. Gensel had.

30 Q This says that the party of the first part agrees at his own expense to continue said foreclosure proceedings and in the event that he can purchase said property,—that means you, does it not? A Yes.

Q "For a sum in excess of the amount due on the first mortgage." You bought it for \$500? A Yes.

Q The first mortgage was in excess of that? A That was not the purchase price. The \$500 was a nominal sum to save foreclosure expenses.

Q What was the amount of the decree? A With costs, \$5,800.

40 Q With costs, \$5,800. "Provided the balance of \$3,500 is paid on or before May 15, 1931." There

William F. Headley, cross

is nothing in that which says it had to be paid first.

A Yes. I understand it that way. I understand it does not say when I am to deliver the deed.

Q As a lawyer, if your contract provides for the payment of \$3,500 on or before a certain date, do you think you have a right to hold the deed? A That was my understanding, that we had a right to the \$3,500 first. 10

Q How long were you to hold the deed? A I think I should have a right to consult with Mr. Gensel first.

Q You didn't give that reason to Mr. Buck, did you? A I told Mr. Buck if he would leave the certified check I would give him a written agreement to return the certified check in three days. I told him I was entitled to the cash first before he got a deed. 20

Q He told you he would go and get the cash, didn't he? A Yes; I guess he did.

Q You adjourned for lunch before you insisted on cash; is that correct? A Yes.

Q Up to the time you left the conference for lunch hour, what reason had you given to Mr. Buck for your refusal to deliver this deed that you had already prepared? A Well, we had been talking about dividing the property up into two parts.

Q What reason did you give him for your refusal to deliver the deed that you had already prepared? You had not mentioned the fact that you wanted cash. A I told him I would not give a warranty deed. 30

Q You told him that you would not give him a warranty deed? A Yes.

Q Why? A Because he was not entitled to it.

Q Why did you prepare it? A Because there were outstanding rights in the property that Mr. Buck knew about. 40

William F. Headley, cross

Q I asked you why did you prepare a warranty deed? A Why, I prepared the deed with the idea of putting different exceptions in it.

Q Did you put the exceptions in it? A No; because I said finally I would not give a warranty deed.

10 Q The deed had been already signed and acknowledged by your wife without exceptions being put in it? A Yes.

Q How could you put exceptions in the deed over your wife's signature when she was not present to re-sign and re-acknowledge? A Because I had no idea of delivering that warranty deed when I drew it.

20 Q When you drew it you didn't intend to deliver it? A No; not a warranty deed, unless I excepted the different rights that were there.

Q Suppose he had conceded that certain exceptions should go in the deed, how could you have done it that day? A I don't know as I could.

Q Mrs. Headley was not in your office, was she? A She was not there; no, sir.

30 Q Why did you go to the trouble of having her acknowledgment taken and your own? In other words, why did you go to the trouble of entirely executing an instrument when you did not intend to deliver a warranty deed in the form in which you drew it? A I don't know why I did it.

By the Court.

Q Why didn't you tell him on the night of the 14th that you would not give him a warranty deed, if that was your intention? A I told him Mr. Miller would have to come down.

40 Q Why didn't you tell him then that you would not give him a warranty deed? It was your intention, you say, then not to give him a warranty deed.

William F. Headley, cross

Why didn't you tell him? A I don't know why.

Q You had intended to give him some kind of a deed; is that it? A No—

Q Had you intended to give him no deed at all?

A I had intended to give him no deed, because—

Q Your intention was not to convey to him at all? A That was really my intention; yes.

10

By Mr. Price.

Q Why had you drawn a deed to John H. Miller? A Under the cases, I presume I should have a deed ready.

Q A deed ready for what? A I don't know.

Q For what? A I don't know.

Q You are a lawyer. How long have you been practicing law? How many years have you been at the bar? A I think since 1913. I am not sure.

20

Q Why do you say you had to have a deed ready for tender when your position was that you were not going to convey? A I cannot answer that.

Q You have made the statement to the Vice Chancellor that the reason why you drew the deed that evening and the reason why you went to the trouble of having it signed and acknowledged and in the name of the grantee, John H. Miller, was merely for the purpose of making tender— A No; I had that deed drawn to have it ready in case we wanted to use it.

30

Q What would you want to use it for? A I thought Mr. Miller would come down.

By the Court.

Q If Mr. Miller had come down, would you have let him have the deed? A If he agreed to carry out what Mr. Buck told me he was going to do, to put this property in the name of a new company that Mr. Buck was forming.

40

William F. Headley, cross

Q Mr. Buck told you to have this deed drawn to Mr. Miller? A Yes.

Q Mr. Buck evidently did not object to Mr. Miller. A No.

Q Why did you object? A Because I owned other properties that were in that deal.

10 Q This deed did not incorporate that other property. This was an entirely separate deed? A This was a separate deed.

Q The fact is, Mr. Headley—won't you be positive about something? Is not this the fact that if Mr. Miller himself had come to you on the 17th in person, with the cash, \$3,500, in his hand, you would not have given him the warranty deed which you had already prepared and executed? A I would not, unless he told me he was going to carry
20 out the agreement that Mr. Buck stated was the original purpose.

Q Why did you prepare the deed? Tell me that. A Simply to have it ready in case I could use it.

By Mr. Price.

Q Use it where? A With Mr. Miller down in the office.

Q You have just told the Vice-Chancellor that if he had brought the cash, you would not have
30 given the deed to Mr. Miller. So, how could you use it? I want to call your attention to your original testimony that you prepared it so that you could make a tender. Why did you prepare this deed, a warranty deed, and have it acknowledged, if you did not intend to deliver it? A Why, I drew it up simply so as to have it in case we did make an agreement there.

Q What kind of an agreement? A To turn the property over to some company.

40 Q The deed was drawn to John H. Miller. You have just told His Honor that you would not

William F. Headley, cross

have delivered that deed to him, even if he had come to your office with \$3,500 in cash in his hand. Isn't that what you said? A That is correct; unless he told me he was holding it for the corporation.

Q Suppose he told you he was going to hold it for some company to be organized, would you have given him the deed? A Yes. 10

By the Court.

Q You say you saw Mr. Miller between April 9 and May 15 at Rockaway. A Yes; that is so.

Q What date was it? A I imagine it was on a Saturday. We drove over to Flemington. I think it was April 27.

By Mr. Price.

Q What was the purpose of your visit? A I went up to see Mr. Miller to see if he would take half of the property for \$2,000. 20

By the Court.

Q You asked him this? A Yes. I offered to return the deposit to him. He would not take it. I asked him if he would take one-half of the property for \$2,000, and Mr. Miller said he would take it under consideration; that he was not the interested party; that he had to see someone else. 30

By Mr. Price.

Q Is that all that happened that time? A We went out to Flemington and looked at a piece of property over there, and we drew up a tentative agreement whereby I was to take over that property.

Q As a matter of fact, Mr. Headley, you had signed the agreement with Mr. Hockenjos before you went up to see Mr. Miller? A I had; yes. 40

William F. Headley, cross

Q And after you had signed that agreement with Hockenjos you made repeated attempts down to as late as four or five days ago, to get Mr. Miller to release this contract, did you not? A Yes.

10 Q And have endeavored to offer him various kinds of propositions for the return of the \$500 cash that you had and for the release of this contract? A Yes.

By the Court.

Q When you saw him on the 27th of April and he refused to take back the deposit, he insisted on going through with his contract, didn't he? A No; he said he would take it up and see if he could not put through the sale of one-half of the property.

20 Q He notified you that he could not put through the sale of half of the property? A No.

Q Did you see him at all after that? A Yes; I have seen him several times since the 27th of April.

Q Between the 27th of April and the 15th of May how many times did you see him? A I think two or three times.

30 Q Did you tell him on any one of those occasions that you understood that this property was being bought for a corporation that was to be formed? A I did.

Q And what did he tell you about it? A He said that he was not buying it for himself; that he was buying it for someone else.

Q What did he say about this corporation to be formed? A He said: "Mr. Buck may think he is going to do something like that, but he isn't."

40 Q He told you Buck had no interest in it? A Oh, no.

William F. Headley, cross

Q Did he tell you that Buck had an interest in it or that a company that Buck was to form had an interest in it? A He told me he was dealing through Mr. Buck.

Q Yet he told you that Buck thought that he was going to do something with this property, but that he was not going to do anything with it. A 10
He told me: "Buck may think he is going to turn this property to some company to be incorporated, but I think he won't."

By Mr. Price.

Q Despite all of these reasons which have been given and which we have gone over, the reason you urged to Mr. Buck when he re-convened with you after lunch hour, was that you wanted cash; is that right? A I told him I was entitled to cash. My 20
father was there and said I was entitled to cash.

Q Your father said so? A Yes.

Q What did you think about it? A I thought I was entitled to cash before I had to give the deed. My father told him he thought I was entitled to more than three days before I had to give the deed. He says: "You are entitled to a reasonable time before you have to give a deed."

Q When you told Mr. Buck that you wanted cash he said he would go and get it? A That was 30
about half-past two.

Q Did he say that? A Oh, yes.

Q He left your office with the announced statement to you that he was going to get the cash? A He said if I demanded cash he would get it.

Q Mrs. Buck was there? A Mrs. Buck was there.

Q When he left with the announcement that he was going to get cash, did you say: "If you don't 40

William F. Headley, cross

bring back cash, I will not go through with it"? A No; I didn't say anything.

Q You didn't say anything to him, did you? A He got up and went out of the office.

Q You didn't say that you would not give a deed to him, even if he got the cash, did you? A I
10 thought he understood that I would not.

Q Did you tell him that you would not? A I had been talking about one-half of the property.

Q Did you tell him that you would not deliver the deed to him? A No; I didn't tell him that when there was no money shown.

By the Court.

Q You have already testified that you didn't intend to deliver the deed. A Not to Mr. Buck; no.
20

Q It didn't make any difference whether he got the cash or not; you would not deliver that deed that you had drawn and executed? A That is right.

Q Or any other deed? A I told him I would have Mrs. Headley sign a bargain and sale deed and if that was not satisfactory to Mr. Miller I would give him his money back.

Q Was Mrs. Headley willing to sign a bargain and sale deed? A I presume Mrs. Headley would
30 sign.

Q How do you know? A I presume she would if I asked her.

Q How could you give a bargain and sale deed without talking to Mr. Gensel? A I expected to use those three days to take it up with Mr. Gensel.

Q You didn't tell him anything about Mr. Gensel's consent or anything about that? A I don't
40 think I did.

William F. Headley, cross

Q As a matter of fact, did you ever discuss this matter with Mr. Gensel? A Oh, yes.

Q After you signed this paper of April 9th? A Yes.

Q And Gensel told you that he would not give any deed— A Gensel was not willing to put it through. He wanted \$5,000.

10

Q You never told that to Mr. Buck or Mr. Miller in the conversations you had up to May 15th? A I told Mr. Miller at that time I could not give him a deed; yes.

Q At Rockaway, prior to May 15th? A No; not that, I didn't.

Q Although Mr. Gensel had already told you he would not go through with it? A Yes; he said to insist on \$5,000.

20

By Mr. Price.

Q What did you do right after Mr. Buck left your office? A I went home first. Then after that I went to Mr. Meyerson's office about four-thirty.

Q Was that visit to Mr. Meyerson's office by appointment? A I think I telephoned Mr. Hockenjos to meet me up there.

Q When did you make that telephone call? A I don't know. Probably the day before I think.

Q And what was the purpose of the meeting on the 15th at the office of Mr. Meyerson? A Why, I wanted to see if the papers were acceptable or not.

30

Q Well, you were closing the title then, were you not? A I asked him for a deposit there to see if we could close it.

Q You asked him for a deposit? A I mean the balance of the money.

Q You were closing title with him for part of the property mentioned in the agreement with Miller? A Yes.

40

William F. Headley, cross

Q There isn't any doubt about that, is there? A No.

Q You made the appointment with Mr. Hockenjos in the morning? A I am not positive.

10 Q Can you tell me when you made the appointment to be at Meyersons' office? Did you make it before Mr. Buck was at your home on the 14th? A I am not positive whether I called Mr. Hockenjos on the 'phone—I think it was the 14th. I asked him if he could meet me in Dover.

20 Q This arrangement to meet him in Dover had to do with closing the title to this piece of property which was included in the memorandum with Miller. Having that in mind, why did you sign the contract with Hockenjos which is before you and which has been offered in evidence in this case, when you had at that time outstanding that memorandum with Miller? A I presumed at that time that Buck was not going to put the Miller agreement through.

Q In other words, on April 23, 1931, you concluded that the Miller agreement was all off? A I had not heard from Mr. Miller and the offer had not been accepted and Mr. Gensel was not willing to accept the deposit.

30 Q Did you know that Mr. Miller knew that you had signed a paper with his name in it as purchaser? A I understood I was dealing with Buck entirely.

Q Despite the fact that the paper says John H. Miller? A His name was simply put in there.

Q You didn't get in touch with Mr. Buck after that time before you signed the Hockenjos agreement? A No; I think not.

40 Q And from April 23, 1931, to May 15, 1931, was the period wherein you saw Mr. Miller on some different occasions? A I did.

William F. Headley, cross

Q Did you disclose to him that you had attempted to sell half of this property to Hockenjos for \$3,000? A No; I did not.

Q Why not? A I think Mr. Buck knew it.

Q Why not? Why didn't you tell Mr. Miller?

A I didn't think it was necessary to tell him.

Q Your reason for not telling him was because you thought it was not necessary? A Yes. 10

Q In these conversations with Mr. Miller the subject of your discussion was the question of trying to give back the \$500 deposit; you said that in your conversations with Mr. Miller you tried to return the \$500 and make some other deal with him for half of the property. Is that correct? A Did I tell Mr. Miller that?

Q Yes. A I don't get your question.

Q Did you see Mr. Miller and discuss with him the fact that you wanted to give him back the \$500 deposit and try to make a bargain with him to sell him half of the property instead of all of it? A Yes. 20

Q Was that before or after you signed the Hockenjos contract? A That was after.

Q In your conversation did you disclose to him that by your signature you had at least made it a subject of litigation, because you had conveyed this property or attempted to convey it to Hockenjos or had signed an agreement with him? A No. 30

Q Why not? A I didn't think it was necessary.

Q The subject that you and he were discussing was whether he was going to hold you to this contract and you knew that, because you were trying to get him to take his \$500 back. A Yes.

Q Still you didn't think it necessary to say to him: "No matter what we do about this, I have con- 40

William F. Headley, cross

veyed half of this property"? A I could have gotten the contract at that time from Mr. Hockenjos.

Q You could have gotten the contract from Mr. Hockenjos? A Yes.

By the Court.

10

Q What makes you say that? A The agreement I had with Hockenjos was altered and changed on the 15th, the day I was up there; it was not acceptable to Mr. Meyerson.

Q You had your conferences with Mr. Miller, one of them at least, on the 27th of April. The contract with Hockenjos was signed the 23d. A Yes.

20 Q The change made in the Hockenjos contract was not made until the 15th of May and that change was only to fix a new date for closing the title. On the 27th of April, when you had this conversation with Mr. Miller, having already signed the contract with Hockenjos, how could you get the contract back from Hockenjos on the 27th of April? A Mr. Hockenjos at one time told me he would give it back if I would pay him \$250.

By Mr. Price.

30 Q When did he tell you anything like that? A That was about the time I had the discussion with Mr. Miller.

Q The only one you give any date for is April 27th? A Yes.

Q Was it before that date? A Before that date.

40 Q Some time between the date of the Hockenjos contract and the 27th of April, Hockenjos told you you could have the contract back for \$250. Is that right? A Yes.

William F. Headley, cross

Q Where did that conversation take place? A I think that was at the boat house.

Q At his boat house? A I think so.

Q At Lake Hopatcong? A Yes.

Q Did you tell him you might want the property back? A Yes; I think so.

Q Did you tell him why? A I gave him the fact about Mr. Buck and that I had met some trouble there. 10

Q Just what did you say? You didn't just say "Mr. Buck" and "some trouble." A I asked him in case it was necessary, whether he would turn it back for \$250 profit, and at that time he said he would.

Q On April 9, 1931—that date was the date of your contract with Mr. Miller, which was executed possibly on the 11th—between the 11th and the date of the contract with Hockenjos, did you ever in any conversation with Hockenjos tell him that Miller had a written contract with you? A No. 20

Q And when you signed the contract with Hockenjos did you say anything to him "I may want to get this back from you, because—"? A Yes.

Q Listen to my question. When you signed the contract with Hockenjos agreeing to convey half of this property to him, did you tell him at that time that you might want to get it back? A I think I did. 30

Q You did? Where was the contract signed? A At the boat house.

Q Did you understand my question? The contract was not at the boat house. A Yes.

Q With Hockenjos? A I think so.

Q Was anybody present besides you and Mr. Hockenjos? A I think nobody else. 40

William F. Headley, cross

Q At the very time when you signed this contract, you had an oral understanding with Hockenjos that if necessity arose, you could get the contract back for a profit of \$250 which you would pay him. Do you swear to that? A That was mentioned at the time.

10 Q Do you swear that that actually happened?
A I think those words were used.

Q Did you also want to give him back in addition the thousand dollar deposit? A Yes.

Q What did he say? A I understood he would do it.

Q What did he say? A I understood he would be willing to do it.

Q What did he say? A I don't know. He said something about the \$250 would be all right.

20 Q To digress on account of the adjournment hour. Did you sign a paper with the Co-Investors Building and Loan Association some time in May—possibly about the 18th of May—in which you leased to them a piece of property which included part of the property involved in the Miller contract? A I imagine about the first of June there was such a paper.

Q Did you sign such a paper? A I did.

30 Q And this paper, which was a lease, covered part of the property involved in the Miller contract? A It did.

Q I show you this paper and ask you if that is your signature and if that is the lease in question.

A Yes, it is.

Mr. Price. I ask to have this paper marked for identification.

(Marked CM-7 for identification.)

40 (At this point adjournment is taken to November 20, 1931, at 10 A. M.)

William F. Headley, cross

Court met pursuant to adjournment this 20th day of November, 1931, at 10 A. M.

Appearances as heretofore.

WILLIAM F. HEADLEY, one of the defendants, heretofore sworn, resumes the stand.

Cross examination (continued) by Mr. Price.

10

Q Since you were on the stand last time and in anticipation of this hearing, I served you with a subpoena and asked you to produce the deed which you and your wife had already executed. Have you done so? A I think this (producing document) is the paper you are asking for.

Q Is this the deed to which you referred in your prior testimony wherein you said that you and your wife had acknowledged it before your father? A Yes.

20

Mr. Price. I ask to have this deed marked for identification.

Marked CM-8 for identification.)

Q Referring to CM-8 for identification, I notice that it bears certificate of acknowledgment by William C. Headley, Master in Chancery of New Jersey. Is that your father? A That is my father.

30

Q Where does he live? A Madison.

Q That also shows that the certificate bears date the 14th day of May? A That is right.

Q That was on the morning of that day or the evening of that day? A That was the evening of that day.

Q Did you go to his home? A I think I went to his home about eight o'clock with Mrs. Headley and acknowledged it.

40

William F. Headley, cross

Q This deed bears date the first day of May. You had drawn it back at that time? A I notice I changed the name and put Mr. Miller's name. It was probably drawn to someone that Mr. Buck mentioned to me, and then Mr. Miller's name put in on the 14th.

10 Q At any event you drew the deed on the first day of May, did you not? A It is dated the first day of May.

By the Court.

Q Does that mean that you had drawn it at that time? A I really don't remember when I drew the deed. I have no recollection of drawing it or when I drew the deed. Probably I made the change on the 14th after Mr. Buck told me to draw
20 it to Mr. Miller.

Q Why would you give it the date of May first, if you had not drawn it on that day? A I don't remember why I did.

By Mr. Price.

Q You had this deed in your possession, in its executed condition, at your office on the 15th when Mr. Buck was down there, did you not? A I did; yes.
30

Q Do you remember making to Mr. Buck a statement on the morning of the 14th, as a reason for not giving the deed, that you had not secured your wife's signature? A I told Mr. Buck that I wanted to get my wife's acknowledgment again to it.

Q That you wanted to get your wife's acknowledgment? A Yes.

Q Did you tell him your wife had not signed?
40 A No.

William F. Headley, cross

Q Now, you have referred in your prior testimony to the fact that you had been in touch with Mr. Hockenjos concerning the sale of a part of this property? A Yes.

Q Did you telephone him or did he call you?

A I think I went up to Lake Hopatcong. That is the first I remember of meeting Mr. Hockenjos.

10

Q The testimony so far in this case, both from you and from him, is that when you went to Lake Hopatcong you took with you a prepared contract.

A I did; yes.

Q You must have had some conversation with him before you tendered a prepared contract to Hockenjos. A I believe there was a telephone conversation, but I don't know which one called the other.

Q Did you know Mr. Hockenjos personally? A I had met him before; yes. 20

Q Well, searching your recollection, can you think why you would have telephoned him? Is it not a fact that he called you? A I don't know which one called the other.

Q Why would you select Mr. Hockenjos as a person to telephone to? A I had spoken to Mr. Hockenjos about this particular property prior to this time, and Mr. Buck told me—

Q You don't know whether you called Hockenjos or not, do you? You don't know whether you called Hockenjos or he called you, do you? A I don't remember; no. 30

Q How soon after the telephone conversation took place did you take the contract up? A I imagine the next day.

Q Do you recall going to Mr. Miller's place on the day of the date of your conversation on the telephone and asking Mr. Miller to relieve you of this contract? A No; I did not. 40

William F. Headley, cross

Q Eh? A No.

Q You deny that you went to Mr. Miller's place on that day? A I do not know what date the telephone conversation was.

10 Q Regardless of the date of the telephone conversation, I am directing your attention to the telephone conversation between you and Mr. Hockenjos, and I ask you whether or not you can state that on that day you went to Mr. Miller and endeavored to be relieved of the contract you had with him. A Not on that day I didn't.

Q How soon did you go to him? A As I remember the first conversation I had with Mr. Miller was when we went to Flemington, and at that time the conversation was that—

By the Court.

20

Q Wait a minute, Mr. Headley. Mr. Price asked you how soon it was after your telephone conversation with Hockenjos that you asked Mr. Miller to be relieved of the contract? A The same day that Mr. Miller and I went to Flemington together.

Q What day was that—that is, how long after the telephone conversation with Mr. Hockenjos?

30 A May I ask for a letter of Mr. Miller that my brother has? It is my recollection it was about May 8th.

Q You testified before that you talked with Mr. Miller on April 27th, did you not? A I saw Mr. Miller several times.

Q Is your testimony correct that you saw him the 27th of April? A Yes; I think it is.

Q Is that the day you went to Flemington? A No; apparently not.

By the Court.

40

Q You said you saw him at Rockaway on the 27th of April. A Yes; I did.

William F. Headley, cross

Q Didn't you ask him then to take half of the property for \$2,000? A I may have.

Q You so testified. Is that correct or not? A Yes; I think it is.

By Mr. Price.

Q Now, I call your attention to the fact that in another place in your testimony you have testified: 10

"Q You say you saw Mr. Miller between April 9 and May 15 at Rockaway? A Yes; that is so.

"Q What date was it? A I imagine it was on a Saturday. We drove over to Flemington. I think it was April 27th.

"Q What was the purpose of your visit? A I went up to see Mr. Miller to see if he would take half of the property for \$2,000. 20

"Q. You asked him this? A Yes. I offered to return the deposit to him. He would not take it. I asked him if he would take one-half of the property for \$2,000, and Mr. Miller said he would take it under consideration; that he was not the interested party.

"Q Is that all that happened that time? A We went out to Flemington and looked at a piece over there, and we drew up a tentative agreement whereby I was to take over that property." 30

Does that refresh your recollection? A Apparently I am a week earlier. The letter I have from Mr. Miller, I said, is dated May 8. So I suppose it must have been within two days of May 8.

Q So, your testimony now is that May 8th is the first time you discussed this with Mr. Miller? A I told you before that I am perfectly rotten on 40

William F. Headley, cross

dates. I cannot remember. I saw Mr. Miller five or six times and I saw Mr. Buck maybe fifty times.

Q The conversation with Mr. Miller, whether it was on April 27 or May 8, was for the purpose of having him relieve you of the contract, was it? A No; it was for the purpose of his taking one-half of it for \$2,000.

10 Q I asked you a general question whether you had not made several attempts to have Mr. Miller take back the deposit and relieve you of the contract, and you said "Yes." A Yes.

Q Was not that what occurred at this time also?

A Yes; I think I offered him the \$500 deposit and also this other proposition.

Q However, before you signed the Hockenjos contract, you did not make any attempt to see Mr. Miller, did you, according to your testimony? A No. At that time I presumed there was no contract.

Q When did you learn that Miller thought that there was? A Why, shortly after I signed the contract with Mr. Hockenjos and Mr. Buck appeared again.

Q You had already signed a memorandum with Mr. Miller's name in it, had you not, on April 11, the exhibit in this case? A Yes.

30 Q Now, to digress for just a moment, do you recall having any dealings with Mr. Murray of Newark, attorney for the building and loan association? A I do.

Q Do you recall that your attempted to and did execute a lease to a building and loan association represented by Mr. Murray, in which you leased certain privileges on the waterfront of the part of the property that you had not conveyed to Hockenjos? A Yes.

40

William F. Headley, cross

Q Being part of the tract involved in the Miller memorandum? A Yes.

Q And do you recall that in the lease that you presented to Mr. Murray you left out the covenant of quiet enjoyment? A I don't remember that. I remember that there was a clause put in there to—

10

Q Do you remember the fact that in the lease as you prepared it, the lease had absent from it any reference to a covenant of quiet enjoyment and Mr. Murray called that to your attention and interrogated you as to why you were unwilling to give such a covenant, which would be an ordinary thing in any lease. Do you recall such an incident? A I know there was a conversation there about the—

Q My question is: Do you recall the fact that you discussed the absence of the covenant of quiet enjoyment in the lease? A No; it was a clause that I insisted on putting in the lease that we discussed.

20

Q You had no discussion with Mr. Murray about the absence of the covenant for quiet enjoyment from the lease, which he pointed out to you? A I don't remember his pointing that out to me.

Q Don't you recall a conversation wherein, in a discussion between you and him, he asked you why that clause was not in the lease? A The discussion was why I insisted on putting in a certain clause.

30

Q But you cannot recall the discussion about the absence of the covenant for quiet enjoyment; is that right? A Unless they are both the same thing.

Q Who prepared this lease originally? A Mr. Murray prepared the original lease.

40

William F. Headley, cross

Q In the lease which Mr. Murray prepared there was a covenant for quiet enjoyment, which you refused to approve. A He may have.

Q Don't you recall a discussion in which he asked you why and your answer at the time? A No; I do not recall what was said.

10 Q Are you willing to go so far as to deny that there was a conversation between you and Mr. Murray in which you insisted on the elimination of that covenant for quiet enjoyment? A No; I don't know as I will. I insisted on putting a certain clause in.

The Court. Never mind any other clause. He is talking about this covenant of quiet enjoyment.

20 Q I understand your testimony is that you do not deny it, but you do not recall it; is that it? A I do not recall it.

By the Court.

Q Do I understand that Mr. Murray prepared the lease originally? A Yes.

Q And then you re-drew the lease? A Yes.

Q And it was over the re-drawn lease that you had the discussion with Mr. Murray? A Yes; we had a meeting at Mr. Murray's office and went over
30 the matter.

Q And the lease, as re-drawn by you, omitted the covenant for quiet enjoyment that had been in the lease drawn by Mr. Murray? A Yes. If there was such a covenant, it was omitted.

Q Why did you omit it? A Because at the time I didn't have possession of the property.

By Mr. Price.

Q What was the date of the Co-investors' lease?

40 A It was finished up around the 28th of May. Do you want the date on the outside of the lease?

William F. Headley, cross

Q The date of the lease when you signed it. A The lease is dated on the 18th day of May, but it was not signed on that day.

By the Court.

Q Is there an acknowledgment on the lease? A Not on my copy.

10

By Mr. Price.

Q You say you didn't have possession? A No; I didn't have possession.

Q What do you mean? You had the deed from the sheriff for the property, had you not? A Yes.

Q What more do you want? A I had several sheriff's deeds, but I apparently didn't have possession.

Q What do you mean by not having possession? No one else had possession, did they? A I think Mr. Buck might have had possession. 20

Q You had title from the sheriff for this particular piece of property, had you not? What do you mean you didn't have possession. There was no one that had superior title, was there? A My experience is that a sheriff's deed does not give you possession; you have to go to the court to get possession.

Q Even after delivery? A Yes; I had several of them, and I found I was not in possession at all. 30

Q You related when you were on the stand the last time, that in your conversation with Mr. Hock-enjos at the time the contract was executed, you made an arrangement with him whereby you could have the property back for \$250. Is that correct?

Mr. Meyerson. Last time, when this testimony was first introduced, it was not made clear whether this arrangement was subsequent 40

William F. Headley, cross

to or prior to the making of the contract. I think that should be made clear.

The Court. The question is: At the time the contract was executed, you had this conversation.

10 *Mr. Meyerson.* Then I object to it because that would be merged in the contract and such testimony is inadmissible under the Statute of Frauds.

The Court. Objection overruled.

A I did.

Q What was the purpose of that? A Why, I presume I had in mind that I was not the owner of the property. Mr. Gensel, the man I represented, was the true owner of the property and I had bought that property in for him, and if I had trouble with
20 Mr. Gensel I thought I ought to have some way to let myself out of it.

Q If that was your reason, why didn't you put it in the written contract? A I dont know why I did a lot of this stuff. I seem to have done it.

Q Did you tell Mr. Hockenjos your reason for wanting the property back for \$250? A I think I told him that the reason was that I was afraid Mr. Buck might cause trouble.

30 Q That is the reason you gave to Mr. Hockenjos? A I think it was.

Q Although you say that was not the real reason? A That was one of the reasons; yes.

Q You just said that the reason was that you feared that your client might not approve of your action. A That was the reason; yes.

Q Now, you said that the reason was that Buck might cause trouble. A That was a reason. I think I have stated both of them.

40 Q But the one you told Hockenjos was the Buck situation? A Yes.

William F. Headley, cross

Q But it was, of course, because you already had outstanding this Miller memorandum or contract?

A No; I think not, because I thought that the Miller contract was at an end.

Q You had not done anything to get it back, had you? A I think I asked Mr. Buck for it once and he said he was going to keep it himself.

10

Q Did you produce under subpoena to-day the letter that I called for, for the delivery of the deed with the check for \$3,500? A (Paper produced.)

Q Did you receive this letter from John H. Miller on May 14, addressed to you? A I received a note from Mr. Miller. I am not sure whether it was that one. I asked Mr. Buck to have it put in writing.

Q Look at it. It is dated the 14th of May and apparently taken from your files, with the filing marks on it, and signed by John H. Miller, in which he says that he encloses check for \$3,500. Didn't you receive it on that day from Mr. Miller through Mr. Buck? A My impression is that that was given to me on the 15th, but my recollection may be wrong.

20

Q You know your recollection last time was refreshed to the extent that you did admit that you received that check on the 14th? A No. It was tendered to me and refused to be delivered unless I produced the deed.

30

Q That was at your home? A That was at my home, I think about 6:30; I am not sure.

Q Wasn't that letter handed to you at that time? A It may have been, but my impression is that it was the next morning.

Mr. Price. I ask that this letter be marked for identification.

(Marked CM-9 for identification.)

40

William F. Headley, cross

Q In other words, this was presented to you the next morning when Mr. Buck came down with the certified check for \$3,500? A I think that I made the request that he bring a written order from Mr. Miller. I don't think the other was in form like that.

10 Q Although it bears date the 14th of May. When it was delivered to you it was left with you? A It was either the 14th or 15th. I think it was the 15th it was given to me and left there.

Q Did you also produce at my request a letter referring to the delivery of the cash? A (Paper produced.)

Q Is this the letter? A I think that is the one that you asked for.

20 Q Isn't that the letter which was left either at your office or home when the \$3,500 in cash was counted out? A My impression was that that letter was left at my home.

Mr. Price. I ask that this letter be marked for identification.

(Letter is marked CM-10 for identification.)

Q (Showing witness.) Is this your signature?
A Yes; it is.

30 *Mr. Price.* I ask to have this marked for identification.

(Marked CM-11 for identification.)

Cross examination by Mr. Meyerson.

Q Mr. Headley, on page 82 of the transcript of your testimony previously given this question is asked by Mr. Price: "Between the 11th of April and the date of the contract with Hockenjos, did you ever in any conversation with Hockenjos tell
40 him that Miller had a written contract with you?"

William F. Headley, cross

and your answer was "No." That is correct, is it not? A That is correct.

Q Did you at any time ever tell Mr. Hockenjos that Mr. Miller was represented by Mr. Buck or that Mr. Buck was Mr. Miller's agent? A No; I did not.

Q Did you at any time before you finally consummated the deal with Hockenjos and delivered a deed to him, tell him that Buck was acting for Miller? A No. I thought he was acting for me. 10

Q Do you recall when this alleged oral agreement that you say you made with Hockenjos took place? Was it before the actual signing of the written agreement or after? A It was before this written agreement presented in evidence was signed.

The Court. You mean the oral agreement about the \$250? 20

Mr. Meyerson. Yes. May I move at this time to strike out the testimony of Mr. Headley with respect to this alleged oral agreement, on the ground that it now appears that it was prior to the signing of the agreement in evidence and that it merged in the written contract.

The Court. I will let it stand. Whether it will have any bearing on the decision of the case remains to be seen. 30

Q You also stated at the previous hearing that this alleged oral agreement was made the very night that the contract was signed and that the place of signing and delivery of the contract was at the boat house at Lake Hopatcong. Is that right? A That is my recollection.

Q As a matter of fact, is it not true that this contract was not signed at the boat house but was 40

William F. Headley, cross

signed at the home of Mr. Hockenjos in the presence of his wife? A May I see the contract referred to?

Q Yes; here it is. A We may have gone to the house after we left the boat house. I met Mr. Hockenjos at the boat house, and we might have
10 gone up to Mr. Hockenjos's home from there.

Q You also stated, did you not, Mr. Headley, that the reason you felt free to execute this contract with Mr. Hockenjos after you had given Mr. Miller a written memorandum for the same property, was this oral agreement by which you thought you could get it back for \$250; that that was the reason why you felt free to make this contract with Hockenjos? Is that also correct? A No. I always thought that I had no agreement with Mr.
20 Miller. It had not been accepted.

Q It was pretty important to you, was it not, to retain the right to buy back this property? At least, you considered it pretty important, did you not? A I must have; yes.

Q Can you give us any reason why you did not incorporate that in your agreement when you were up to Mr. Hockenjos's house that night in view of the fact that you yourself drew the agreement? A No; I can not give the reason.

Q Is it not a fact, Mr. Headley, that the very
30 first time you ever made any mention of your desire to retain the right to buy back that property, was when you came to my office on the afternoon of the 15th of May to close title and refused to hand over the deed unless such an agreement was made with you. Isn't that the fact? A No; it was not.

Q If that is not the fact, Mr. Headley, why, instead of pleading with us to give you such an agreement, did you not insist that you already had made
40 such an agreement? A Why, I did mention the

William F. Headley, cross

fact that Mr. Hockenjos had told me that he would do that. I mentioned that in your office.

Q Did you mention in my office the fact that Mr. Hockenjos had agreed to permit you to buy back that property for \$250? A That statement was made in your office.

Q Did you make that statement? A I did.

10

Q Why, then, if such an agreement existed, did you not file a bill for relief in our suit, asking for specific performance of this agreement to permit you to buy back this property, instead of letting this suit go by default? A I thought Mr. Hockenjos was entitled to the property.

Q But you also thought that you were entitled to buy it back, did you not? A Not at that time I didn't.

Q When did you first think you had the right to buy it back? A I don't know exactly the date—

20

Q I am not asking for dates. You said that when you were in my office on the 15th of May, you at that time knew that you had a right to buy it back and that you made mention of it. Isn't that so? A Yes.

Q Subsequent to that we filed this suit in Chancery against you, did we not? A You did.

Q Why, in this suit in Chancery that we filed against you, did you not file an answer or counterclaim asking for specific performance of your contract with Hockenjos by which you had a right to a reconveyance of this property? A I had no defense to your bill.

30

Q Why didn't you ask for affirmative relief as far as we were concerned? A I had no ground for affirmative relief.

Q You just said you had a contract with Hockenjos? A I said simply that Mr. Hockenjos told me he would do that.

40

William F. Headley, cross

Q Then, you didn't have a contract with him?
A No; there was no written contract.

Q I didn't ask you whether it was written. You just said it was a contract. Was it a contract or was it a conversation? A It was a conversation.

10 Q Did any consideration pass between you and Hockenjos with reference to your right to buy back that property for \$250? A No; no consideration.

Q When Mr. Price filed his bill against you in this court, you didn't answer that you had a right to buy back this property and would be in a position to convey to Miller as soon as Hockenjos conveyed to you under that agreement, did you? A No.

20 Q In our suit that we filed against you you filed an answer admitting our allegations and joining in our prayer for relief, did you not? A I think that is so. My brother filed the paper we sent you.

Q When you delivered the deed for the property on the 20th of May, did you make any attempt to reserve in that deed a right to re-buy this property at any future time for a profit of \$250? A No; I did not.

Q You delivered a warranty deed without reservation? A I did.

30 Q Do you remember spending several hours in my office on the 14th of May, in which I tried to induce you to close title on that day? A I am not sure what date—whether the 14th or 15th.

Q Was it the 15th? A I think it was the 15th.

Q Did you spend several hours there at that time? A Yes; I did.

40 Q Do you remember my numerous attempts to get you to tell Mr. Hockenjos and myself the specific reason why you would not deliver title on that day? A I was there an hour and a half I think, from half-past four to six.

William F. Headley, cross

Q Do you remember me pleading with you and begging you to close title that day instead of making an appointment for another day? A You would not accept the deed. You wanted certain changes made in that deed at that time.

Q There were errors in the description, were there not? A Yes.

Q There was nothing else to revise or change? A I think I told you that I wanted to go back and re-draw the deed.

Q Was that the only reason? A No; we had other conversation there.

Q Did I not plead with you to give me some definite reason why you refused to close title when you had come there with an executed deed and we had a certified check for you? A I don't remember any pleadings; no.

Q Do you not remember my urging you to close title and asking you for any valid reason why title could not be closed that day? A I told you the agreement called for the 20th and and we could have a deed ready for the 20th and I would be up again.

Q Why did you call on the 15th with an executed deed unless you were ready to close title? A I think it is always wise to take a deed round first and have the title gone over.

Q Did you not call up Hockenjos and ask him to meet you on the 15th and to have a certified check? A I asked him to meet me; I don't remember about the certified check.

Q Didn't you ask him to have the balance of the money there? A I might have suggested that he better have it. I am not positive.

Q If you simply came to my office to let us inspect the deed, why was it necessary for Mr. Hockenjos to have a certified check for \$2,000 with

William F. Headley, cross

him? A I presume he brought it in case we could put the deal through, so we would not have to meet again.

10 Q Do you remember meeting Mr. Miller, Mr. Price, Mr. Hockenjos and myself in Mr. Price's office subsequent to your delivery to Mr. Hockenjos of his deed and subsequent to the institution of this suit against you? A Yes; I do.

Q Why didn't you mention there, in Mr. Price's presence or in mine at that meeting, that you had a right to buy back this property for a profit of \$250? A I thought you people were taking a very unfair advantage of me by getting me up to Mr. Price's office. When I was there I told you I would not say anything.

20 Q You came there of your own volition? A I did not. I came there on an understanding that Mr. Hockenjos and you were not to be there—just a settlement between Mr. Miller and myself.

Q You were there, as a matter of fact? A Yes; but you were not supposed to be there.

Q We spent several hours in Mr. Price's office? A Yes; we did.

30 Q You tried to get Mr. Hockenjos to re-convey the property to you and you even offered as high as a thousand dollars if he would do so, did you not? That calls for a "Yes" or "No" answer. Did you not? A I offered him what?

Q You made an offer to give him a thousand dollars. Didn't you go as high as a thousand dollars profit to Hockenjos? A I might have. I don't remember that.

40 Q Why didn't you at that time tell either Mr. Price or myself that you had a right to buy this property back for a profit of \$250? Why did you offer as high as a thousand dollars there at that

William F. Headley, cross

time, if you had a right to buy it back for \$250?

A My recollection is at that time I told you I would not say anything. You got me there on false pretenses.

Q You did say something? A No; I did not.

By the Court.

Q You didn't sit in Mr. Price's office for several hours without saying anything? A I tried not to say anything because I went there on an understanding—

Q Why did you stay for several hours? A I don't know why.

Q Did you on that occasion attempt to induce Mr. Hockenjos to re-convey the property to you?

A I don't think I did. I think whatever proposition came up came from Mr. Buck—

Q Never mind what Mr. Buck did. Did you on that occasion attempt to induce Mr. Hockenjos to reconvey the property to you? A I don't remember that I did. No.

By Mr. Meyerson.

Q Mr. Headley, when this suit was started you also made various attempts, did you not, to get Mr. Miller to either release you from your contract or to take a conveyance for the other half of the property which was left? A Yes; I did.

Q Why did you never tell Mr. Miller that you could give him title to the whole thing by payment of \$250 to Hockenjos, instead of trying to get Miller to release you from your contract? A Why, the property was not supposed to go to Mr. Miller.

Q That is the only reason that you can give? A That is the only reason I know of. I had no dealings with Mr. Miller.

William F. Headley, cross

Q Will you also explain to me why, when you closed title in my office on May 20th, you did not disclose at that time that suit in chancery had already been instituted against you by Mr. Miller and that you had already been served on the 18th? A I didn't inform you anyway.

10 Q Neither did you inform Mr. Hockenjos? A No; I didn't inform Mr. Hockenjos.

By the Court.

Q Why? A I presume I wanted Mr. Hockenjos's deal to go through. I don't know why I should not, I had signed a written contract with Mr. Hockenjos that he could enforce.

By Mr. Meyerson.

20 Q Knowing that, you sat still there and delivered a warranty deed with full covenants? A I called up Mr. Price, on the 20th I think it was, and asked him what the suit was that was pending and he said: "It is nothing but what you know about."

Mr. Headley. At the last hearing the papers were not brought down by mistake, and I though it would be a good thing to introduce as exhibits, if there is no objection, the bond and mortgage and final decree.

30 *The Court.* In the Gentzel suit?

Mr. Headley. Yes.

The Court. Is there any objection?

Mr. Price. I don't see the materiality. The contract provides that he convey if he gets title.

The Court. What bearing will they have on this suit? I don't want to shut out any evidence that might be at all material, but I cannot see what bearing the bond and mortgage may have.

40

William F. Headley, cross

Mr. Headley. The final decree may have a bearing.

The Court. If there is no objection to the use of a certified copy—because the original is not produced—I will admit it in evidence.

Mr. Price. No objection.

The Court. It is not a certified copy. It is a true copy. Mr. Headley offers in evidence true copy of the final decree in the suit of John Gentzel against Roxbury Lumber Company, dated March 3, 1931, Docket 80, page 227. 10

(Marked Exhibit DH-1.)

Mr. Headley. I also wish to introduce in evidence this letter of May 8, 1931, that has been referred to.

Mr. Price. I never heard of this letter before. This is not the letter that I referred to. 20

The Court. There is no testimony about it.

Mr. Headley. I would like to have it go in evidence.

By Mr. Headley.

Q I show you this letter and ask you when you got it. A That letter I received on May 8, about two days after my trip to Flemington.

By the Court.

Q You got it by mail? A I got it by mail from Mr. Miller. 30

Q From whom was the letter? A The letter is from Miller to me.

Q It purports to be from John H. Miller and is dated May 8, 1931? A Yes.

Mr. Headley. I offer the letter in evidence. (Marked Ex. D-Headley 2.) 40

William F. Headley, cross

By Mr. Price.

Q This mortgage that was foreclosed in the proceedings in which you were solicitor for the complainant, was for \$5,000, was it not? A That is right; yes.

10 Q There was also a second mortgage for a considerably greater sum, held by the National Bank of Dover? A Given as security for notes; yes.

Q It was cut off in the foreclosure? A Yes.

Q And the first contract that you had, which you said was followed later by the exhibit signed on April 11, but dated April 9, the first price you suggested was \$4,250 and the second \$4,000? A I object to the use of the word "contract." The first proposition was \$5,000, and it finally got
20 down to \$4,250, and then Mr. Miller did not accept it and then I made it \$4,000.

Q It was \$4,250 and later \$4,000? A I think so.

Q When you were talking to Mr. Murray you never made any suggestion to him that you were acting for anybody except for William F. Headley yourself individually, did you? A No; I did not.

Q You did not offer that to him as any reason why you were hesitating to insert the covenant of quiet enjoyment, did you? A The final lease was
30 about the first of June.

Q In your discussion with Mr. Murray you never suggested to him as a reason for your hesitancy about signing the lease with the covenant of quiet enjoyment, that you represented some client and therefore were not free to act? A No; I did not.

By Mr. Meyerson.

40 Q Mr. Headley, although you were served by Mr. Price on the 18th of May, and on the 20th you delivered a deed to Mr. Hockenjos for half of this

William F. Headley, cross

property in dispute, can you explain to me why, on May 25th, knowing that the property was the subject of litigation, you wrote a letter to Mr. Hockenjos offering him the balance of the property which you had agreed to convey to Mr. Miller, for \$2,000? A This is \$3,000.

Q Well? A That would have been enough to settle up with Mr. Gentzel. 10

Q Even at that time you never told Mr. Hockenjos that Miller had an interest in that property, did you? A No; I did not.

Q And the very first intimation that Mr. Hockenjos or myself as his attorney had, was on the 29th of May, the day before Decoration Day? A It was the day I was up there, just before Decoration Day.

Q This is your letter? A This is the letter I sent up there. 20

Mr. Meyerson. I ask to have this letter marked.

(Marked Exhibit D-Hock. 6.)

By Mr. Price.

Q This letter that Mr. Meyerson has just offered, marked Exhibit D-Hock. 6,—in this letter you offer to sell half of the property, namely, the half other than what you had already conveyed to him, for \$3,000? A Yes. 30

Q And that was while this suit of Mr. Miller was pending? A That was before you mailed me the bill.

Q What has that to do with the question? It was after the suit was pending, was it not? A Apparently, but I didn't know there was any lis pendens filed or anything. 40

William F. Headley, cross

Q Mr. Headley, you have already testified that right after the 18th you had telephoned to me and asked me what the bill was about? A On the 20th I think; yes.

Q And I told you you knew what it was about, didn't I? A I think you used some words like that.

10

Q That is what you testified. A You gave me some answer like that.

Q Didn't I further tell you that it was a suit to enforce the contract with Miller? A No.

Q You had no business relations with Mr. Miller other than this contract? A I knew the suit was on this contract.

20

Q Then you knew, we will say a day or two after May 18, that the suit by Miller in which you had been served with subpoena, was a suit concerning the contract of April 9 signed by you? A Yes.

Q And on May 25th you wrote a letter to Hock-enjos in which you offered to sell to him the other half of the property which was in litigation with Miller, did you not? A Yes.

30

Q You gave as an explanation just now, that you didn't know there was a lis pendens filed. A That was not the reason. That was an excuse. I had a reason for writing that letter. If I could have got \$3,000 from him, I could probably make a settlement that would have been—

Q Are you disregarding the fact that Mr. Miller's suit was for the specific performance of a contract to convey property? A I did not sign a contract. I simply wanted to know whether he would buy it or not.

40

Mr. Meyerson. I wish to make a correction in the testimony which I gave at the last hearing. I testified that my search disclosed that

William F. Headley, cross

the title as of May 15th was in the Kenvil Lumber Company, that the mortgage had been foreclosed and that Mr. Headley was the purchaser at the sheriff's sale. I checked up my office copy of the abstract of title and I found that the title was not in the Kenvil Lumber Company but in the Roxbury Lumber Com-
pany. 10

The Court. What you want to do is to correct your testimony, to say that on May 15, the date up to which you had made your search, you found title in the Roxbury Lumber Company, and not in the Kenvil Company.

Mr. Meyerson. Yes.

The Court. Is there any objection to the correction?

Mr. Headley. No objection. 20

DEFENDANTS REST.

30

40

Norbury C. Murray, direct

REBUTTAL

Mr. Price. May I take the stand to make a correction in my former testimony?

The Court. All right.

10 HAROLD A. PRICE, heretofore sworn as a witness on the part of the complainant John H. Miller, resumes the stand.

Direct examination

20 When Mr. Morrison called me the other day about the lis pendens, I stated that Mr. Boyd Headley or Mr. Headley—I forget just how I designated him—was the man who acted as messenger for me in taking the bill to Trenton. My recollection has been refreshed and I realize that that was an error. It was Mr. Buck. Mr. Buck at my request came to my house about seven o'clock on the morning of the 18th and acted as my messenger in going to the Clerk in Chancery's office in Trenton and it was he who telephoned me from Trenton of the filing of the bill. The other facts are as I stated them the other day. I want to correct my error in testifying that Mr. Headley acted as messenger for the filing of the bill by me. I previously had asked Mr. Buck to stop at Mr. Miller's home and get his affidavit signed, which he
30 did in the early morning of that day.

NORBURY C. MURRAY, sworn as a witness on the part of the complainant John H. Miller, testifies as follows:

Direct examination by Mr. Price.

Q You are an attorney and counsellor at law of the State of New Jersey? A I am.

40 Q Will you please relate to the Vice-Chancellor your relation with Mr. Headley with reference to

Norbury C. Murray, direct

a lease with the Co-Investors Building and Loan Association of which, I understand, you are attorney? A That is correct.

Q And which lease involved a portion of the property in this suit? A Some time prior to May 14th of this year a committee of the Association of which I am counsel, met in my office with Mr. Headley and among other things we discussed the proposition of leasing from Mr. Headley a part of the property which we called the Lake Shore Cottage. Subsequent to that, I drew a lease from Mr. William F. Headley to the Co-Investors Building & Loan Association for a part of the Lake Shore Cottage property, running from June 1, 1931 to October 1, 1931, for \$250 rent, payable in advance. I drew that lease and sent it to Mr. Headley. That lease contained an informal covenant of quiet enjoyment without any limitation on the amount for which Mr. Headley as landlord would be liable in damages to the tenant if the latter were ousted from possession. A few days later Mr. Headley came to my office and brought with him the lease which I had drawn and he objected to the presence in the lease of that covenant of quiet enjoyment in the form in which I had it and said that he did not wish to be liable for the amount which that might involve and I asked him why not, if he didn't own the property, and he said he did. I asked him why, then, he was not willing to sign such a covenant, and he did not make it clear to me. He said something about having acquired it through foreclosure. I asked him if he had acquired it at first mortgage foreclosure and he said he had and I again asked him why he objected to that clause, but I could not make out what his reason was; he did not make it clear to me. I finally agreed, however, to modify that covenant of quiet enjoyment or that portion of the lease and

Norbury C. Murray, direct

10 re-drew the lease. Either I re-drew it or he re-drew it, but I think I re-drew it right then and there. In any event, whoever re-drew it, it was subsequently signed and I have it here. It has been marked C-M-7 for identification. I sent that to him and subsequently I obtained from the Building and Loan Association a check for \$250 dated May 21, 1931, to the order of William F. Headley, which I have before me, and which bears a bank endorsement collection stamp of May 29, 1931, and bears a perforation "Paid" stamp.

20 I asked Mr. Beldon, one of our committee, to accompany me to Mr. Headley's office to pay the money and get the lease. We went to Mr. Headley's office and we paid the money and got the lease, and in the presence of Mr. Beldon I asked Mr. Headley if this property was all right and if he was the owner of it and if this lease was all right, and if there was anything against it, and he assured me there was not.

30 I might add that the last hearing was the first I ever heard any intimation from any source that Mr. Headley was only acting as attorney in connection with this property. As to the date, I have here a copy of a letter dated May 14, addressed to William F. Headley written by myself, reading: "Enclosed find memorandum agreement re lease of the Lake Shore Cottage. Upon receipt of word from you that you have signed the agreement I will obtain check and advise you when you may call for same, and at which time you can deliver the agreement. Very truly yours."

By the Court.

40 Q That refers to the re-drawn lease? A I think that refers to the original agreement, but I cannot say positively whether it refers to the re-

Norbury C. Murray, direct

drawn or to the originally drawn lease. One or the other was sent to Mr. Headley with that letter on May 14 or at the latest the day following.

Q What is the date of the check you speak of?

A May 21.

Mr. Price. The check in question which the witness refers to is No. 1735, dated May 21, 1931, signed by the president of the Co-Investors Building & Loan Association, in the sum of \$250, and is made to William F. Headley, with no further designation after the name and is endorsed "William F. Headley." 10

The Witness

I would like to add: I cannot fix the date of the delivery of the check any more definite than by saying it was some time between that date May 21 and the date of the apparent cashing of the check, May 29. 20

By Mr. Price.

Q At any time when you were interrogating Mr. Headley did he disclose to you who the third party was whose interest might be paramount to that of your client, the lessee? A No. There was no third party discussed.

Q You notice that it says in the lease that in the event that the rights so given to the tenant are defeated or terminated by any third party? A I drew that. 30

Q The original start of the conversation which led to this form was the refusal on his part to sign a lease with a covenant of quiet enjoyment? A That is it exactly.

Mr. Price. I offer the agreement in evidence. (Paper heretofore marked C-M-7 for identification is marked Exhibit C-M-7.) 40

John H. Miller, direct

By Mr. Meyerson.

Q This lease in question does not affect the part of the property which was sold to Mr. Hockenjos?

A No. That is to the left of the entire property. This is to the right of that purchased by Hockenjos as you face the lake.

10

By Mr. Price.

Q It is part of half? A No; it is the entire half.

By Mr. Meyerson.

Q The entire half remaining after Hockenjos's half was purchased by him? A Exactly.

Cross examination by Mr. Headley.

20

Q (Showing witness.) Is this the letter which you signed in connection with that matter? A That is.

Q By that letter can you refresh your memory that you gave the check on the 28th of May, 1931?

A I cannot remember positively, but using this letter to refresh my recollection, as well as I can, I would say that it was within a day one way or the other of the 28th.

30

JOHN H. MILLER, one of the complainants, heretofore sworn as a witness on his own behalf, recalled in rebuttal.

Direct examination by Mr. Price.

Q Following the 11th day of April, which is the day that the check of \$500 was delivered, and what has been referred to as a memorandum signed, did you have a visit from Mr. Headley, and if so, how

40

frequently after? A I saw him several times be-

John H. Miller, direct

tween the signing of the agreement and the 15th day of May when the deed was to be made. I would say four or five times perhaps.

Q What were the circumstances of those visits and where did they take place? A At my place. Mr. Headley called several times and on every visit he brought up the question of this agreement and wanted to compromise it or cancel it or do away with it for some reason.

10

Q In what way did he manifest that intention of wanting to be relieved? A By having me consent to take a portion of the property.

Q Did he submit any propositions to you? A Verbally.

Q And what was your reply to those propositions when he asked you to compromise and relieve him from the contract? A I told him I was not interested in one half of the property; I wanted all of it.

20

Q And what reply did he make to that? A The reply would be that the same time I would see him he would make a similar proposition.

Q I show you a paper marked C-M-11 for identification and I ask you: Is that a letter which he sent to you having to do with one of the propositions to relieve him on the contract? A Yes.

Q This memorandum at the bottom is in your handwriting? A Yes. I told them there would be thirty-nine feet of property after Hockenjos's was taken out.

30

Q That was not on the letter when you received it? A No.

Q That is a memorandum which you made since? A That is just a memorandum.

Q Did you receive a letter from Mr. Headley having to do with an attempt to have the deposit returned? A Yes.

40

John H. Miller, direct

Q Do you recall a trip to Flemington that you took? A I do.

10 Q And Mr. Headley has offered in evidence today a letter marked Exhibit D-2 in which it is stated: "You will find the agreement signed as suggested." Did that agreement have anything to do with this property in question? A Nothing what-
ever.

Q I show you a paper which purports to be a copy although bearing an original signature, a carbon copy of an agreement, bearing date May 8, 1931, and ask you if that is the paper writing referred to in the letter of May 8, in the first paragraph? A It is.

20 Q What have you to say as to whether the paper you sent in that letter of May 8 was a copy— A An exact duplicate.

Q Of the one which I now show you? A Yes.

Mr. Price. I offer it in evidence.

Mr. Headley. I object. It has nothing to do with this matter.

The Court. It has. William F. Headley testified that the agreement referred to in this letter had to do with the contract here in suit. Mr. Price is showing that it is some other agreement. Objection overruled.

30 (Marked Exhibit C-M-12.)

Q Were these propositions that he submitted to you with reference to the property involved in this suit, and in which he sought to return the deposit and give you some other property, or to give you half of the property—were those proposals or propositions different or were they always the same? A Various kinds.

40 Q There is a letter which they have referred to, which is marked Exhibit D-2, in the last paragraph

John H. Miller, direct

of which you refer to the release of the Hopatcong property. What was the occasion of writing that portion of the letter? A Mr. Headley's proposition was for me to take half of the property and I was not interested in that until I first consulted my bankers who were financing the purchase price.

Q Did you at any time accept any of these propositions that he made? A I never did. 10

Q Do you recall Mr. Buck coming to your place after he had had a conversation with Mr. Hockenjos—without your being permitted to state what the conversation was—do you recall Mr. Buck coming to your place and speaking to you on the subject matter of a conversation or the fact that he had a conversation with Hockenjos on the street? A I do.

Q Having in mind that day, without recalling the exact day of the month it was, do you recall when with reference to that particular date Headley came to your place with reference to your contract which he had already signed on April 9th? A It was between the signing of the contract and the 15th of May. 20

Q You misunderstood my question. I am calling to your mind your having met Buck at your place of business or at your home and your having a talk with him in which he referred to a conversation which he had had with Hockenjos. Do you recall that? A I do. 30

Q When, with reference to that day when you had that talk with Buck, was it that Mr. Headley came to you with reference to the contract which you had signed with him on the 9th of April? A I think it was the same day.

Q What was Headley's request that day? A Well, it was one of his propositions to call the deal off. 40

John H. Miller, cross

Q Did he disclose to you at that time that he had been in touch with Hockenjos? A He did not. He said to call the deal off and he tried to get me interested in accepting half of the property in lieu of the agreement.

10 Q Did you at any time have any dealings with Mr. Headley wherein this property that you had contracted to purchase was being acquired by anybody else except yourself? A No, sir.

Cross examination by Mr. Headley.

Q Didn't you agree on this Flemington trip that you would take half of this property for \$2,000? A I did not.

20 Q Did you say that you would consider it? A I might have said that because of the financing of it, as I have already testified.

Q Did you ask Mr. Headley at that time to put the proposition in a letter and mail it to you? A I did.

Q Is this the letter that you received in return? A I think it is.

The Court. That is the letter marked Exhibit C-M-11.

30 Q And at the meeting at Mr. Price's office, is it not a fact that you were willing to take half of this lot for \$2,000? A It is not a fact.

Q Didn't Mr. Price advise you that that would not straighten things up? A I do not know what Mr. Price said. But I know I never consented to any compromise. This proposition was rejected.

Q Was this agreement that you had assigned by you to anybody? A No, sir.

40 *The Court.* You mean the agreement that is the subject of this suit?

Mr. Headley. Yes.

John H. Miller, cross

Q In this letter where you say that you have to see the other parties interested, who were they? A My bankers.

Q Were you taking this property for Mr. Buck or one of his corporations? A In no way. I bought it in my own name and for my own use and no other persons were interested in it in any manner, direct or indirect. 10

Q What did you expect to pay for this property? A I expected to pay the price that was agreed upon.

Q What was that? A The agreement shows that.

By Mr. Price.

Q Answer the question. A It was \$4,000.

By Mr. Headley. 20

Q Did you ever offer any more than \$4,000 for it? A I did not.

Q Did you agree to pay \$4,250? A I did not.

Q Did you agree to take this property subject to all encumbrances against it? A The agreement was that Mr. Headley would continue the foreclosure proceedings and convey to me.

By the Court.

Q What kind of title? A Free and clear title. I am not so sure that a warranty deed was mentioned in it, but the title was to be free of all encumbrances. 30

By Mr. Headley.

Q Didn't you agree to buy this decree from Mr. Gentzel? A I never saw Mr. Gentzel. I do not know Mr. Gentzel.

Q Did you ever hear of buying a decree. 40

John H. Miller, cross

Mr. Price. Objected to.

The Court. Objection sustained.

Q Did William F. Headley offer you the \$500 back? A Not singly; no. He offered me more than that. He never offered me just \$500. He
10 offered me \$1,000.

By the Court.

Q For what? A For the release of this agreement.

Q When? A Do you want me to tell when and where?

Q I just asked you when—after this suit was commenced? A Yes.

Q After the suit was commenced? A Just let
20 me think about that.

Q You can answer this question yes or no. A He offered me \$1,000 in Mr. Price's office in Morristown.

Q That was after the suit had been commenced, was it not? A That day he laid ten hundred dollar bills down, but prior to that it had not been cash. He offered to buy me off in some way, but I cannot give the specific date. I am not too sure that he offered me any cash prior to the 15th of
30 May. He always wanted to compromise with me accepting a portion of the tract, one-half of it, as we are speaking of it—a little more than a half.

Mr. Price. I now offer in evidence C-M-6 for identification, C-M-9 for identification and C-M-10 for identification.

The Court. They may be admitted.

(Paper heretofore marked C-M-6 for identification is marked Exhibit C-M-6. Paper heretofore marked C-M-9 for identification is
40

Helen Hockenjos, direct—cross

marked Exhibit C-M-9. Paper heretofore marked C-M-10 for identification is marked Exhibit C-M-10.)

HELEN HOCKENJOS, sworn as a witness on the part of the complainants, William Hockenjos, Sr. et al., testifies as follows:

10

Direct examination by Mr. Price.

Q You are the wife of William Hockenjos, Jr., the complainant? A Yes, sir.

Q Were you present at your home on April 23, 1931, at the execution of the paper which has been offered in evidence and marked Exhibit D-3? A Yes.

Q Did you see this paper signed by your husband and Mr. Headley? A Yes, I did.

20

Q Were you present at any conversation that occurred prior to the signing of this agreement? A Yes.

Q Were you there when Mr. Headley arrived at your house? A Yes.

Q You heard Mr. Headley testify, did you not, that your husband agreed to sell him back this property at a profit of \$350? A Yes.

Q Did any such conversation take place? A No; there was nothing of that sort mentioned at all.

30

Q Was any request made by Mr. Headley for a right to re-purchase this property? A No.

Q Did your husband make any remark about ever selling it back to him? A No; he did not.

Cross examination by Mr. Headley.

Q Did Mr. Headley see you at the house before he saw your husband? A No.

Q Don't you recollect directing Mr. Headley to go down to the boat house where your husband would be? A No; I do not recollect that.

40

William E. Hockenjos, Jr., direct

Q Do you recollect that your husband and Mr. Headley came from the boat house to your house?

A No. My recollection was that Mr. Hockenjos was there when Mr. Headley arrived.

10 Q Did they go to the boat house afterwards? A No; they executed the agreement right there; they did not go to the boat house.

By Mr. Price.

Q Did they have more than one agreement there? A No; they had only one.

WILLIAM E. HOCKENJOS, JR., heretofore sworn as a witness in his own behalf, recalled and further examined as follows:

Direct examination by Mr. Meyerson.

20 Q Where was the agreement which is in evidence signed? A In my home.

Q Who was present? A Mr. Headley, my wife and myself.

Q Was there any conversation between you and Mr. Headley with reference to a right given by you to Headley to re-buy the property? A No, sir.

Q Did you agree to re-sell it to him or re-convey to him for a profit of \$250? A I did not.

30 Q Did you make any remark of that kind in the course of your conversation? A If I did I would not have bought that property.

Q What do you mean by that? A Why should I buy the property and sell it back.

Q What was the purpose of buying this property? A For extension of my place.

Q And a profit of \$250 did not interest you? A Not at all.

40 Q What business are you in? A I am in the boat business.

Samuel G. Meyerson, direct

Q And your boat landing adjoins this property?

A Yes.

Q Did you hear Mr. Headley testify a few minutes ago that in my office he made the remark that he had made an agreement with you to buy back for \$250 profit? A I did.

Q Was there any such remark made by Mr. Headley in my office? A No, sir. 10

By Mr. Price.

Q Was more than one contract presented to you by Mr. Headley? A No.

Q Was there not a contract in which there was something about water right? A Not to my knowledge.

Q He presented one to you and you signed it? A Yes. 20

Q No cross examination.

Mr. Meyerson. In view of Mr. Headley's testimony, I will have to take the stand.

SAMUEL G. MEYERSON, sworn as a witness on the part of the complainants, William Hockenjos, et al., testifies as follows:

Direct examination.

I heard Mr. Headley testify about an alleged conversation in my office. There was no mention made by Mr. Headley at any time in my office that Mr. Hockenjos had agreed to re-convey this property to Mr. Headley for a profit of \$250. Mr. Headley made no such remark in my office at any time. 30

No cross examination.

CASE CLOSED

TRANSCRIPT EVIDENCE

CONCLUSIONS

V. C. HON. JAMES F. FIELDER

Filed Jan. 14, 1932.

Dated January 13, 1932.

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IN CHANCERY OF NEW JERSEY

84-413

20	Between JOHN H. MILLER, <i>Complainant,</i> <i>and</i> WILLIAM F. HEADLEY, et al., <i>Defendants.</i>	} <i>On Bill For Specific Performance.</i>
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CONCLUSIONS, V. C. FIELDER

1. A contract for the sale of lands signed by the vendor only ceases to be unilateral when the vendee filed his bill for specific performance.

30 2. Such a contract complies with the statute of frauds, if from its terms, it appears that it is intention of vendor to convey, although an agreement to sell is not specifically stated and if the lands, although not particularly described, can be ascertained with reasonable certainty.

40 3. Such a contract is not uncertain or indefinite because no place or hour is named, for closing title, if the parties subsequently agree on a place, date and hour; or for failure to state the nature of the estate to be conveyed and the kind of deed to be

given, because a conveyance in fee, by deed of bargain and sale, will be supposed to have been intended.

4. Tender by the vendee of the purchase price in cash is unnecessary, when it appears that the vendor would have refused such tender if made.

5. When bill for specific performance and lis pendens are filed by the vendee, the decree will bind the vendor, and all persons thereafter acquiring from him an interest in the lands. 10

6. One may be bound by a decree in a suit in equity who has in fact defended the suit, though not a party on the record.

7. Upon the delivery of a contract for sale of lands the vendee becomes the equitable owner of the lands, and the vendor trustee of the legal title for the vendee. 20

8. When the vendor in a contract to convey subsequently contracts to sell the same lands to another purchaser, the second vendee is not a *bona fide* purchaser, unless he has paid his full purchase price, without notice of the prior contract.

9. The second purchaser is entitled to protection only to the extent of his payments made without notice, of the prior contract. The decree for specific performance of the first contract should provide for adjustment of the rights of the second purchaser as against the vendor. 30

10. Where the wife of the vendor has not joined in the contract to convey and has not expressed refusal to join in a conveyance specific performance by the vendor may be decreed. If the wife then refuses to release her dower the vendor may be required to give an indemnity bond against her claim, or in default thereof an abatement of the purchase price to the extent of the value of the wife's dower may be decreed. 40

Conclusions, V.-C. Fielder

Messrs. King & Vogt for complainant.

Mr. William F. Headley and Mr. Elroy Headley
for defendants William F. Headley et al.

Mr. Samuel C. Meyerson, for defendants William
Hockenjos, Jr. et al.

Fielder, V. C.

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April 11, 1931, the defendant William F. Headley, a member of the bar of this state, signed an agreement in writing dated Newark, N. J., April 9, 1931, whereby (it is alleged) he agreed to convey lands at Lake Hopatcong to the complainant John H. Miller. The agreement reads as follows:

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"Whereas under a certain decree dated March 3, 1931, in foreclosure, John F. Gentzel vs. Roxbury Lumber Company, there is due J. F. Gentzel \$5,450.00 principal and interest \$213.67 costs and sheriff's fees, which amount to about \$5,800.00, and

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"Whereas the party of the second part hereto has offered \$4,000.00 for an assignment of this mortgage, party of the first part, William F. Headley, agrees to procure an assignment of said mortgage and decree, for said sum of \$4,000.00 to be paid \$500 check herewith, and balance thirty-five hundred dollars, on or before May 15, 1931. Party of the first part further agrees at his own expense to continue said foreclosure proceedings and in event he can purchase said property, for a sum not in excess of amount due on said first mortgage, to convey said property to John H. Miller, party of the second part hereto, provided balance of \$3,500.00 is paid on or before May 15th, 1931."

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All dates hereinafter mentioned refer to the year 1931, and I shall designate the lands in question as tracts A and B. Said lands were under foreclosure, and were advertised for sale in the suit men-

tioned in said agreement, and Headley was Gentzel's solicitor, of record therein. Headley proceeded with the sale, purchased the tracts for \$500, in his own name, had the sale confirmed and took title in his name by Sheriff's deed dated April 13. Headley entered into a written agreement with Notwithstanding his agreement with Miller, William Hockenjos, Jr., dated April 23, to convey tract A to him, for the consideration of \$3,000, of which \$1,000 was paid on the execution of the contract, and the balance of \$2,000 was to be paid May 20, on which day Headley was to deliver his warranty deed conveying tract A to Hockenjos free from encumbrance. May 14 Headley made an appointment to meet Hockenjos the following day in Dover, at the office of Mr. Meyerson, attorney for Hockenjos, to close title under the Hockenjos contract. On the night of May 14 Buck, Miller's representative, called on Headley at his home, in or near Newark, presented Miller's certified check for \$3,500 and a letter from Miller requesting Headley's deed pursuant to Headley's agreement for the sale of tracts A and B and Headley made an appointment to meet Buck at his (Headley's) office the following morning and the two met there. Buck requested Headley's deed to Miller and again tendered Miller's certified check, which check Headley refused, saying he wanted cash. Headley had prepared a warranty deed to Miller, which he and his wife had executed and acknowledged, and he testified he believed he had prepared it after Buck's call the night of May 14, and he produced the deed at the trial. It is dated May 1 and bears the signature of Headley and his wife, and a certificate of acknowledgment dated May 14 and describes tracts A and B as the land to be conveyed.

Conclusions, V.-C. Fielder

He further testified that he had no intention of delivering the deed, even had Buck tendered him cash therefor, but did not so state to Buck. When Headley told Buck he wanted cash, Buck said he would return to Headley's office that afternoon with the cash, and Buck left for Rockaway, where
10 Miller lived, got the cash and was back at Headley's office before 5 P. M. Headley was not there and Buck made tender of the cash to the person in charge of the office and upon refusal of acceptance went to Headley's home, and after a fruitless wait of two hours, for Headley, made tender to the latter's son. The next morning Buck went to Headley's office to make further tender, but Headley was not there. Miller thereupon placed the matter in the hands of his solicitor who on May 18 filed the
20 bill of complaint in this cause for specific performance of Headley's contract to convey tracts A and B and named as defendants therein Headley, his wife and John F. Gentzel. He also issued subpoena to answer, filed a *lis pendens* and had the subpoena served on Headley, all on May 18. A prolix and involved joint answer was filed for all defendants, from which I gather that the defense intended to be interposed to the bill is that Headley's agreement was not accepted by Miller, but was repudi-
30 ated; that the defendants were willing and offered to assign the mortgage and decree mentioned in the agreement and to convey the property in question to Miller, but he refused to accept the same; that there was no consideration for the agreement and that Miller made no tender of performance. The answer does not set up as defense that Headley was not authorized by Mrs. Headley or by Gentzel to enter into the agreement, or that Headley did not acquire title for himself at the Sheriff's sale.
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After Headley had refused Miller's certified check on the morning of May 15, and had refused to deliver his deed for tracts A and B, ostensibly because he wanted cash, Headley went to Mr. Meyerson's office the afternoon of that day, and there met Mr. Meyerson and Hockenjos. He was then tendered a certified check for the balance due under the Hockenjos contract and his deed was requested, which deed Headley declined to deliver unless Hockenjos would agree to reconvey to him within thirty days, to which condition Hockenjos refused assent, whereupon Headley said he would not close title that day, but would return May 20, the date fixed in the Hockenjos contract. Mr. Meyerson was suspicious that Headley intended to default on his contract and he filed the Hockenjos contract for record in the County Clerk's office May 16. On May 20 Headley met Hockenjos again at Mr. Meyerson's office, and delivered a warranty deed executed by himself and his wife to Hockenjos for tract A, dated May 18, and received the \$2,000 balance under the Hockenjos contract. This deed was recorded May 21. Two days before the delivery of this deed Headley had been served with subpoena to answer in the Miller suit, but he concealed the pendency of that suit from Hockenjos and Meyerson. Meyerson had expected to close title for tract A May 15, and had made a title search to that date, at which time no cloud appeared on Headley's title, and when closing title May 20, Meyerson did not continue his title search, and was without knowledge of the pendency of the Miller suit, but relied on the assurance of Headley, a brother lawyer, that the title was clear. He did not learn of the Miller suit until May 29, and on June 10 he filed a bill for Hockenjos against Headley and Miller, praying that his client's rights in tract A be adjudged para-

Conclusions, V.-C. Fielder

mount to the rights of Miller therein or in the event that Miller's rights be found superior to Hockenjos' and that Headley should be decreed to convey tracts A and B to Miller that Miller be directed to apply the consideration for conveyance of tracts A and B toward the return of the \$3,000 consideration paid by Hockenjos to Headley and the expense of title examination and the damages suffered by Hockenjos for Headley's breach of the Hockenjos contract. In the Hockenjos suit Miller answered asserting his claim to a conveyance of tract A to be superior to Hockenjos' title and a decree pro confesso was entered against Headley. Both suits were referred to me for hearing and by consent of all counsel were heard together.

By Headley's contract with Miller Headley purported first to bind himself to obtain an assignment of mortgage and decree from his client Gentzel, who was the owner of a mortgage upon the foreclosure of which a final decree had been entered, and second he bound himself, not as Gentzel's solicitor but personally, to convey tracts A and B to Miller in case he (Headley) should purchase the property at the foreclosure sale. In his answer Gentzel states that he was willing and offered to assign the mortgage and decree to Miller, but there is no evidence that such an offer was ever made and the contract specifically gives Miller until May 15 to take such assignment. Advertisement of sale under the decree had been published fixing the sale for the second day after Headley signed the Miller contract, and instead of adjourning the sale and waiting until May 15, for Miller to take an assignment and pay the balance of the agreed purchase price Headley proceeded with the sale, purchased the property and took title in his own name, thus making it impossible for Miller to obtain an assignment of the

mortgage and decree. The contract contemplated the possibility that the mortgage and decree might not be assigned to Miller and that the foreclosure sale would proceed and that Headley would be the purchaser thereat. As I have said, Headley bound himself upon the happening of that event to convey to Miller. Headley contends that he never had notice that Miller accepted the contract, but as down payment on the contract Miller gave his check for \$500 drawn to Headley's order as solicitor for Gentzel, which check Headley endorsed as such solicitor and again as an individual and Headley received, kept and still has the proceeds, and Miller's check was sufficient evidence of acceptance. Moreover, subsequent to signing the contract, Headley discussed it with Miller and made several attempts to induce Miller to cancel it and accept return of the \$500 deposit, but Miller refused, and there is not the slightest evidence that Miller repudiated the contract at any time. Gentzel was not called as a witness, and it does not appear that in the purchase of the property at the Sheriff's sale, Headley was acting as Gentzel's agent. The answer filed by Headley and Gentzel does not set up any such defense, and Gentzel has allowed Headley to hold himself out as the true owner of the property. After his purchase of the property, Headley dealt with it as his own. He executed a lease for part of it to a corporate lessee; he endeavored to induce Miller to accept conveyance for tract B alone; he executed but refused to deliver a deed to Miller for the whole, and he executed and delivered a contract and deed to Hockenjos for tract A, and to none of these acts of ownership did Gentzel object or does he now appear to object. It seems clear that after Headley acquired the title, he was free to deal with it as he wished.

Conclusions, V.-C. Fielder

Headley raises some technical objections that the contract is unilateral and too indefinite and uncertain for enforcement. He drew the contract himself on a sheet of his business paper, bearing his name and office address. As a lawyer of twenty-five years standing he must have intended it to have binding force and he can not be suspected of deliberately preparing the agreement in such a manner as to provide legal means of escaping its performance; hence all doubts and omissions should be resolved against him so far as possible. Objection that the contract is unilateral because not signed by Miller is without force. Upon Miller's offer of performance by filing his bill, the contract became mutual. (Krah v. Wassmer, 75 N. J. Eq. 109; aff. 78 N. J. Eq. 305; Lean v. Leeds, 92 N. J. Eq. 455; South Jersey Furniture Co. v. Dorsey, 95 N. J. Eq. 530, affd. 99 N. J. Eq. 433.)

The contract discloses an agreement by Headley to sell.¹ (Wollenberg v. Rynar, 96 N. J. Eq. 38; Celendano v. Blazejewski, 98 N. J. Eq. 45; Franklin v. Welt, 98 N. J. Eq. 602.) The land is sufficiently described. (Camden & Amboy R. R. v. Stewart, 18 N. J. Eq. 489; King v. Ruckman, 21 N. J. Eq. 599; Lewis v. Reichy, 27 N. J. Eq. 240; Champion v. Genin, 51 N. J. Eq. 38; Riley v. Hodgkins, 57 N. J. 278; Bateman v. Riley, 72 N. J. Eq. 316; Wollenberg v. Rynar supra.)

The contract was drawn and executed at Headley's office and is dated at Newark. Tender of the balance of the purchase price at Headley's office on the day fixed by the contract at any time during the usual business hours of the day would be held to be reasonable compliance with the terms of the contract. (King v. Ruckman supra; Reynolds v. O'Neill, 26 N. J. Eq. 223; Cramer v. Mooney, 59

N. J. Eq. 164; *Leen v. Leeds* supra.) But Miller sought out Headley and they agreed on a place and hour. Tender of the purchase price in cash was not necessary under the circumstances. Headley's conduct prevented such tender and his testimony being that he would not have delivered a deed to Miller had cash been tendered. (*Thorne v. Mosher*, 20 N. J. Eq. 257; *Trenton Street Railway v. Lawlor*, 74 N. J. Eq. 828; *Meyer v. Reed*, 91 N. J. Eq. 237.) The contract failing to provide for the kind of deed to be given, a conveyance in fee is supposed to have been intended by deed of bargain and sale. (*Lounsbury v. Locander*, 25 N. J. Eq. 554; *Sargent v. Realty Traders*, 82 N. J. Eq. 331.) Headley had prepared and executed a conveyance in fee to Miller, which indicates his understanding of the contract requirements in this respect.

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I am satisfied that Miller had a contract with Headley which he was entitled to have Headley perform on May 15, and the question now is as to the effect on Miller's right of Headley's conveyance of tract A to Hockenjos May 20. Hockenjos is not a party to the Miller suit, although he should have been made a defendant because of his record interest in tract A under his contract recorded before the Miller bill was filed, but as to the further interest which Hockenjos subsequently acquired by Headley's deed he will be bound by a decree against Headley at Miller's suit because he (Hockenjos) acquired such further interest after the Miller suit was filed and subpoena issued and after the filing of notice of pendency of that suit. (*Haughwout v. Pomeroy*, 22 N. J. Eq. 531; *Straus v. Loudenslager*, 96 N. J. Eq. 678; *Feld v. Kantrowitz*, 99 N. J. Eq. 847.) As already stated, the suits of Miller against Headley and Hockenjos against Headley were heard together. Through his counsel, Hockenjos

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participated in the trial of the suit of Miller against Headley practically to the same extent as though he was a party thereto, so that the absence of Hockenjos' name in the pleadings in the Miller suit will not absolve him from the binding force of a decree therein. (Lyon v. Stanford, 42 N. J. Eq. 411; Straus v. Loudenslager supra.) In fact, when Hockenjos learned of the suit of Miller against Headley, he could have applied to be made a party thereto instead of filing an independent bill, and to keep the record straight, I shall direct that the Miller bill be amended by making Hockenjos a party thereto; that the bill of complaint filed by Hockenjos against Headley and Miller be taken as Hockenjos' answer and counterclaim to the Miller bill, and that Miller's answer to Hockenjos' bill be considered as an answer to the counter-claim.

Upon the delivery of Headley's contract with Miller, the latter became the equitable owner of tracts A and B and Headley held the legal title as trustee for Miller. (Haughwout v. Pomeroy supra; Dean v. Anderson, 34 N. J. Eq. 496; Flattau v. Logan, 72 N. J. Eq. 338; McCoy v. Baumann, 93 N. J. Eq. 360-638, Kotok v. Rossi, 94 N. J. Eq. 327.) When Hockenjos contracted with Headley to purchase tract A and paid \$1,000 on account of the purchase price he did not know of Headley's prior contract with Miller and as a bona fide purchaser, without notice, he is entitled to be protected for such payment, but when he accepted Headley's deed for tract A and paid the balance of his purchase price, he was not a purchaser without notice, because a lis pendens in the suit of Miller against Headley was then on record and under the lis pendens act (P. L. 1930, chap. 119) he is deemed to have acquired his further interest with knowledge of the Miller contract. To the extent of the \$2,000

balance of the purchase price, Hockenjos paid for his deed, he was not a bona fide purchaser without notice, and he is not entitled to hold title to tract A as against Miller, the equitable owner thereof. (Haughwout v. Pomeroy supra; Dean v. Anderson supra; Brinton v. Scull, 55 N. J. E. 747; reversed on other grounds 55 N. J. Eq. 489; Flattau v. Logan supra; Weidenbaum v. Raphael, 83 N. J. Eq. 17; Bridgewater v. Ocean City Assn., 85 N. J. Eq. 379; affd. 88 N. J. Eq. 351; Kotok v. Rossi supra; Schwarz v. Munson, 94 N. J. Eq. 754; Toplan v. Hoover, 100 N. J. Eq. 466; Mosher v. Van Buskirk, 104 N. J. Eq. 89.)

There will be a decree in the Miller suit, setting aside Headley's conveyance to Hockenjos of tract A and directing conveyance of tracts A and B by Headley to Miller in fee simple free from encumbrances. Headley prepared, executed and acknowledged a full covenant and warranty deed to Miller, but he may claim now that such deed was executed in the mistaken belief that the contract provided for a deed in that form, or that when he executed it, he had no intention of delivering it. In any event a full covenant and warranty deed is not required by Headley's contract, and therefore the decree will direct the delivery by him of a bargain and sale deed.

Headley's wife, the defendant Etta M. Headley, did not execute and acknowledge the Miller contract, but she executed and acknowledged the warranty deed prepared by her husband. The answer filed by her does not specifically allege that she disavows the contract, and is unwilling to join with her husband in a deed conveying her dower right. She did not appear at the trial, and her absence was unexplained and no evidence was offered touching her willingness or unwillingness to execute a deed

to Miller. She was not a party to her husband's contract with Hockenjos, and yet she executed the deed which carried out its terms and thereby released her dower right in tract A. In the absence of evidence to show her attitude toward joining in a deed to Miller, I regard her failure to assert by answer her unwillingness to convey; her failure to testify with respect thereto; and the fact that she executed and acknowledged the aforementioned warranty deed to Miller, as evidencing her willingness to convey and I would advise a decree that the executed warranty deed be delivered to Miller. (Hulmes v. Thorpe, 5 N. J. Eq. 415; Krak v. Wassmer supra; Luczak v. Mariove, 92 N. J. Eq. 377, affd. 93 N. J. Eq. 501; South Jersey Furniture Co. v. Dorsey supra; Hollander v. Abrams, 99 N. J. Eq. 254, affirmed on other grounds 100 N. J. Eq. 298) were it not that such a deed is not demanded by the contract. The decree will provide that for the full balance of the contract price, Headley shall deliver a deed conveying tracts A and B free from encumbrance or should his wife refuse to join in such deed, then the decree will direct his conveyance subject to her right of dower and in that alternative to deliver to Miller a bond of indemnity for an amount to be fixed by the decree, with security to be approved by a Master, to indemnify Miller against any claim of dower by Mrs. Headley. The decree will further provide that in case Headley fails to provide the indemnity bond Miller may retain in his hands out of said balance of the purchase price the value of Mrs. Headley's dower right which amount will be ascertained in accordance with our mortality tables and will be stated in the decree. (Young v. Paul, 10 N. J. Eq. 401; Stein v. Francis, 91 N. J. Eq. 205; Schefrin v. Wilensky, 92 N. J. E. 109-705.

Conclusions, V.-C. Fielder

All parties being before the Court, the decree should provide for complete adjustments of their rights. (Brinton v. Scull supra; Weidenbaum v. Raphael supra; Schwarz v. Munson supra; Mosher v. Van Buskirk supra.) The balance of the purchase price to be paid by Miller to Headley for a conveyance free from encumbrance is \$3,500, and the decree should direct that from that sum Miller shall deduct his costs of this suit, and then apply the balance to pay Hockenjos the sum of \$3,000 (the consideration money which Hockenjos paid Headley) with interest from the dates of payment thereof and Hockenjos' costs of suit on his counter claim against Headley. Any balance then remaining should be paid to Headley. Hockenjos' claim against Headley for expense of title examination and for damages for breach of contract can not be determined here, but must be left to suit at law. The bill of complaint in the suit of Hockenjos against Headley and Miller should be dismissed without costs.

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Dismissal of Hockenjos Suit

Dismissal of suit: Hockenjos v. Headley, *et als*
84-584

Filed January 25, 1932
84/584

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IN CHANCERY OF NEW JERSEY

Between

WILLIAM HOCKENJOS, SR. and
WILLIAM HOCKENJOS, JR.,

*Complainants,**and*

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WILLIAM F. HEADLEY and
JOHN H. MILLER,

Defendants.

On Bill, &c.
Final Decree.

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This matter coming on to be heard for final hearing in the presence of Samuel C. Meyerson, Solicitor of the Complainants, Harold A. Price, of King & Vogt, Solicitors of the Defendant, John H. Miller, and Elroy Headley and William F. Headley, Solicitors for William F. Headley, and testimony having been taken and the arguments of counsel heard, and the issues involved in this suit having been tried in a suit instituted by John H. Miller against William F. Headley, docket number 84/413, and the complainants herein having participated in the said suit referred to, and the issues involved in this suit having been fully determined in that suit;

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Dismissal of Hockenjos Suit

It is, on this 25th day of January, 1932, Ordered,
Adjudged and Decreed that this complaint be dis-
missed, without costs or counsel fees to either side.

E. R. WALKER,

C.

Respectfully advised,

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JAMES F. FIELDER, V.-C.

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Order for Amendment of Bill

ORDER FOR AMENDMENT OF BILL

Filed January 25, 1932

IN CHANCERY OF NEW JERSEY

84-413

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Between

JOHN H. MILLER,

*Complainant,**and*WILLIAM F. HEADLEY, *et als.*,*Defendants.**On Bill for
Specific
Performance.**Order for
Amendment
of Bill.*

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This matter being opened to the Court by Harold A. Price, of the firm of King & Vogt, Solicitors of Complainant, and it appearing that the above entitled cause was tried with a certain other cause pending in this Court in which William Hockenjos, Sr. and William Hockenjos, Jr. were complainants and William F. Headley, one of the defendants herein, and John H. Miller, the complainant herein, were defendants, (84-584), and the Court being

30 of the opinion that the said causes should be consolidated,

It is, on the 25th day of January, 1932, Ordered, that the bill of complaint herein be amended by making said William Hockenjos, Sr. and William Hockenjos, Jr. parties thereto and that the bill of complaint filed by William Hockenjos, Sr. and William Hockenjos, Jr. against said Headley and Miller be taken as the answer and counterclaim of Wil-

40 liam Hockenjos, Sr. and William Hockenjos, Jr. to the bill of complaint herein and that the answer

Order for Amendment of Bill

of John H. Miller to the bill complaint of William Hockenjos, Sr. and William Hockenjos, Jr. be considered and treated as his answer to said counterclaim.

E. R. WALKER,
C.

Respectfully advised,

JAMES F. FIELDER, V.-C.

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Amendment of Bill

AMENDMENT OF BILL

Filed January 25, 1932

IN CHANCERY OF NEW JERSEY

84-413

10

Between

JOHN H. MILLER,

*Complainant,**and*WILLIAM F. HEADLEY, *et als.*,*Defendants.**On Bill for
Specific
Performance.**Amendment
to Bill of
Complaint.*

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Pursant to the order of the Court herein, let the bill of complaint herein be amended by adding thereto the following paragraphs to be designated as Paragraphs 6 (a) and 6 (b):

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"6 (a): On May 20, 1931 the defendants, William F. Headley and Etta M. Headley, his wife, delivered to defendants, William Hockenjos, Sr. and William Hockenjos, Jr., a deed for a portion of the property, described in paragraph I, which said property so conveyed is bounded and described as follows:

All that tract of land situate, lying and being in the Township of Jefferson, Morris County, New Jersey.

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Being part of a tract conveyed by J. Ludlow Kitchell, et als., Trustees of the Hopatcong Pioneer Association to the Kenvil Lumber & Store Company, by deed dated 28th day of March, 1910, recorded in Morris County Clerk's Office in Book F-20 of deeds, pages 523 and the part hereby intended to be conveyed.

Amendment of Bill

Begins at a brass pipe at the Beginning corner of a tract sold to William Hockenjos and William Hockenjos, Jr., and runs thence (1) along the fourth line of said Hockenjos tract reversed South 26 degrees 59 minutes west 131.14/100 feet to a point in the fourth line of the whole tract; thence (2) along the fourth line of the whole tract North 44 degrees 30 minutes west 43.97/100 feet; thence (3) North 28 degrees 15 minutes East 100 feet more or less to a point in the first line of the whole tract, thence along same (4) South 79 degrees east 27.30 feet to an iron bound in the right of way of the Central Railroad of New Jersey and being the third corner of the whole tract (5) along the right of way of the Central Railroad Company, south 61 degrees and 46 minutes east 12.70 feet to the brass pipe set for the point of beginning.

Together with the right, title and interest of the party of the first part in and to all the land above and under water lying between the extension of the first line in this deed into Lake Hopatcong, a distance of one hundred and eighty-five and eighty-nine (185.89) hundredths feet on a course of South 26 degrees 59 minutes west from the first corner of this tract, and the extension of the third line reversed, on a course of south 28 degrees 15 minutes West a distance of 200 feet more or less into Lake Hopatcong.

Also the right, title and interest of the party of the first part in and to the roads and roadways, over the right of way of the Lake Hopatcong Railroad Company."

"6 (b). Complainant alleges that the said conveyance to said William Hockenjos, Sr. and

Amendment of Bill

William Hockenjos, Jr. is subordinate to the contractual rights of complainant, John H. Miller and that the said William F. Headley and Etta M. Headley, his wife, and the said William Hockenjos, Sr. and William Hockenjos, Jr. were without right, respectively, to give or receive said deed."

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And by adding the names of William Hockenjos, Sr. and William Hockenjos, Jr. to paragraph I of the prayer in said bill and by adding to the prayer of said bill a paragraph to be known as 2 (a), to read as follows:

"2 (a). That it be decreed that the aforesaid conveyance to William Hockenjos, Sr. and William Hockenjos, Jr. from William F. Headley and Etta M. Headley, his wife, be set aside and that the rights of complainant in said tract of land so conveyed be deemed and treated as superior to those of said defendants, William Hockenjos, Sr. and William Hockenjos, Jr."

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E. R. WALKER,
C.

Respectfully advised,
JAMES F. FIEDLER, V.-C.

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Final Decree

FINAL DECREE

Filed January 25, 1932

IN CHANCERY OF NEW JERSEY

84-413

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Between

JOHN H. MILLER,

*Complainant,**and*WILLIAM F. HEADLEY, *et als.*,*Defendants.**On Bill for
Specific
Performance.
Final Decree.*

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This cause coming on to be heard in the presence of Harold A. Price of the firm of King & Vogt, solicitors of complainant, William F. Headley and Elroy Headley solicitors of defendants William F. Headley and Etta M. Headley his wife, and John F. Gentzel; and Samuel C. Meyerson solicitor of defendants William Hockenjos, Sr. and William Hockenjos, Jr.; and the Court having examined the pleadings, and taken proof orally in open Court, and having heard and considered the arguments of counsel, and being satisfied that the complainant shall prevail; and said counsel now agreeing that the defendant Etta M. Headley is now 46 years of age.

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It is on this 25th day of January, 1932, Ordered, Adjudged and Decreed; that the conveyance made by William F. Headley, and Etta M. Headley his wife, to William Hockenjos, Sr. and William Hockenjos, Jr., dated May 18, 1931, and recorded in the

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Final Decree

Clerk's office of the County of Morris in Book Q. 32 of deeds for Morris County on pages 317, covering property located in Jefferson Township, Morris County, New Jersey, and bounded and described as follows:

10 "Being part of a tract conveyed by J. Ludlow Kitchell et als trustees of the Hopatcong Pioneer Association to the Kenvil Lumber & Store Company by deed dated 28th day of March 1910, recorded in Morris County Clerk's office in Book F. 20 of Deeds, pages 523, and the part hereby intended to be conveyed;

20 Begins at a brass pipe at the beginning corner of a tract sold to William Hockenjos and William Hockenjos, Jr. and runs thence (1) along the fourth line of said Hockenjos tract reversed, South 26 degrees 59 minutes West, 113.14/100 feet to a point in the fourth line of the whole tract; Thence (2) along the Fourth line of the whole tract, North 44 degrees 30 minutes West 43.97/100 feet; Thence (3) North 28 degrees 15 minutes East 100 feet more or less to a point in the first line of the whole tract; Thence along same (4) South 79 degrees East 27.30 feet to an iron bound in the right of way of the Central Railroad Company

30 South 61 degrees 46 minutes East 12.70 feet to the brass pipe set for the point of beginning.

40 Together with the right title and interest of the party of the first part in and to the land above and under water lying between the extension of the first line in this deed, into Lake Hopatcong a distance of one hundred and eighty-five and eighty nine (185.89) hundredths feet on a course of South 26 degrees 59 minutes West from the first corner of this tract and the extension of the third line reversed, on

Final Decree

a course of South 28 degrees 15 minutes West
a distance of 200 feet more or less into Lake
Hopatcong.

Also the right title and interest of the party
of the first part in and to the roads and road-
ways over the right of way of the Lake Hopat-
cong Railroad Company.

10

Be set aside;

That the said defendant William F. Headley
and Etta M. Headley his wife are directed to
execute and deliver to the complainant John
H. Miller on February 23, 1932, at 11 A. M.
at the office of King & Vogt, Morristown, N. J.
a bargain and sale deed conveying to said John
H. Miller, free from encumbrances all that tract
of land and premises situate lying and being
in the Township of Jefferson Morris County
New Jersey, bounded and described as follows:

20

Being part of a tract conveyed by J. Ludlow
Kitchell et als Trustees of the Hopatcong
Pioneer Association to the Kenvil Lumber &
Store Company, by deed dated 28th day of
March 1910 recorded in Morris County Clerks
office in Book F. 20 of deeds page 523; and the
part hereby intended to be conveyed begins at
an iron pin driven in the ground being the be-
ginning corner of the said whole tract distant
one hundred thirty five (135) feet on a course
of South seventy nine degrees East from an
iron pin driven in the stump on a buttonball
tree and running thence (1) South seventy
nine degrees East seventy-seven and twenty five
hundredths (77.25) feet to an iron bound along
the Southerly line of the right of way of the
Central Railroad of New Jersey; thence (2)
along said right of way, South Sixty-one de-
grees forty-six minutes East, twelve and sev-

30

40

Final Decree

enty-hundredths (12.70) feet to a brass pipe, the beginning corner of a tract heretofore sold to William Hockenjos and William Hockenjos Jr. Thence (3) along the fourth line of said Hockenjos tract reversed, South twenty-six degrees fifty-nine minutes West one hundred thirty-one, and fourteen hundredths (131.14) feet to a point in the fourth line of the whole tract; Thence (4) along the fourth line in part of the whole tract; North forty-four degrees thirty minutes West ninety-three and forty-seven hundredths (93.47) feet to the fifth corner of the whole tract; Thence (5) North twenty-eight degrees fifteen minutes East eighty and fifteen hundredths (80.15) feet to an iron pin in the point of beginning.

Together with all the land above and under water lying between the extension of the third line in this deed into Lake Hopatcong a distance of one hundred and eighty-five and eighty nine hundredths (185.89) feet on a course of South twenty-six degrees fifty-nine minutes West from the fourth corner of this tract and the extension of the fifth line reversed, on a course of South twenty-eight degrees fifteen minutes West a distance of two hundred and sixteen (216) feet more or less into Lake Hopatcong.

Together with the right title and interest of the party of the first part in and to the roads and roadways over the property hereinabove described, and across the right of way, of the Lake Hopatcong Railroad Company.

In the even that the said Etta M. Headley should refuse to join in such deed, it is ordered that the said defendant William F. Headley execute and deliver said bargain and sale deed

Final Decree

to the complainant John H. Miller, covering said last mentioned property, subject to the right of dower of his wife, Etta M. Headley and in that event, execute and deliver to the said complainant, a bond of indemnity in the sum of \$1100.00 with surety to be approved by Joshua R. Salmon A Master of this Court, to indemnify the complainant John H. Miller, against any claim of dower, by said Etta M. Headley. In the event of the failure or neglect of the said defendant William F. Headley to furnish said indemnity bond as herein ordered, the said complainant, John H. Miller, may retain in his hands out of the balance of the purchase price, the value of the dower right of the said Etta M. Headley which amount, determined in accordance with the mortality tables, is the sum of \$559.39.

Upon the execution and delivery of the aforesaid deed by defendant, William F. Headley to the complainant John H. Miller, the said complainant John H. Miller, shall deduct his costs of this suit, including counsel fee, from the sum of \$3500.00 (being the balance of the agreed purchase price) and apply the balance of said sum to pay William Hockenjos Sr. and William Hockenjos, Jr. the sum of \$3000. (representing the consideration money paid by William Hockenjos Sr. and William Hockenjos Jr. to the said William F. Headley) with interest at six per cent, from the dates when the payments totaling \$3000. were made together with the costs of William Hockenjos Sr. and William Hockenjos Jr. on their counter-claim including counsel fee, and that said John H. Miller pay any remaining sum to the said defendant William F. Headley.

Final Decree

The defendant, William F. Headley is hereby directed to pay a counsel fee of two hundred dollars to said Samuel C. Meyerson solicitor of William Hockenjos Sr. and William Hockenjos Jr. and that said Williams Hockenjos Sr. and William Hockenjos Jr. may have execution therefor.

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The defendant William F. Headley is hereby directed to pay a counsel fee of \$300.00 to King & Vogt Solicitors of said Complainant, John H. Miller, and that said complainant may have execution therefor.

E. R. WALKER,
C.

Respectfully advised,

JAMES F. FIELDER, V.-C.

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Notice of Appeal

thirty two, said decree decreeing specific performance, setting aside deed, counsel fee for complainant's solicitors. and counsel fee for the solicitor of defendants' Hockenjos &c, in all said respects; and these defendants appeal from the whole and every part of the said above mentioned final decree in
10 this Court, made as aforesaid, to the New Jersey Court of Errors and Appeals, in the last resort in all causes.

WILLIAM F. HEADLEY,

Solicitor for and of counsel with the defendants, William F. Headley, and Etta M. Headley his wife and John F. Gentzel; also in names of William Hockenjos Sr. and William Hockenjos Jr. above mentioned.

20

Dated Newark, N. J.

February 1, 1932.

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

WILLIAM F. HEADLEY,

Of counsel with the defendants, William F. Headley, Etta M. Headley his wife and John F. Gentzel; also in names of William Hockenjos Sr. and William Hockenjos Jr. above mentioned.

30

Service of a copy of the above notice of appeal is hereby acknowledged this February 1, 1932, by me.

KING & VOGT,

40

Solicitors for Complainant John H. Miller.

Notice of Appeal

Service of a copy of the above notice of appeal is hereby acknowledged this February 1, 1932, by me.

SAMUEL C. MEYERSON,

*Solicitor for defendants, William Hockenjos Sr.
and William Hockenjos Jr.*

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Petition of Appeal

PETITION OF APPEAL

Filed February 20, 1932

New Jersey Court of Errors and Appeals

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Between

JOHN H. MILLER,

Complainant-Appellee,
*and*WILLIAM F. HEADLEY, *et als.*,*Defendants-Appellants.**On Appeal*
from the
Court of
*Chancery.**Petition of*
Appeal.

20

To the Honorable, The Court of Errors and Appeals, in the last resort in all causes.

The petition of William F. Headley, Etta M. Headley his wife, and John F. Gentzel, defendants-appellants as to said complainant-appellee, and also as defendants-appellants against their co-defendants, William Hockenjos, Sr. and William Hockenjos, Jr. being all the parties to said suit, respectfully show:

30

That your petitioners find themselves aggrieved by a final decree made in the Court of Chancery of New Jersey, by His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of the Honorable James F. Fielder one of the Vice-Chancellors, bearing date January 25, 1932, wherein John H. Miller was Complainant, and William F. Headley et als were defendants, in that said decree adjudges that a certain conveyance made by

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William F. Headley and Etta M. Headley his wife

Petition of Appeal

to William Hockenjos, Sr. and William Hockenjos, Jr. dated May 18, 1931, and recorded in the Clerk's office of the County of Morris, in Book Q. 32 of Deeds for Morris County, on page 317 &c. be set aside and the said defendants William F. Headley and Etta M. Headley his wife are directed to execute and deliver to the complainant, John H. Miller, on February 23, 1932 at 11 A. M. at the office of King & Vogt, Morristown, N. J., a bargain and sale deed, conveying to said John H. Miller said property described in Book Q. 32 of deeds for Morris County on pages 317 &c. together with other property described in the final decree free from encumbrances, and in the event Etta M. Headley should refuse to join in such deed, that the said defendant, William F. Headley execute and deliver to said complainant, a bond of indemnity in the sum of \$1100.00 with surety to be approved by Joshua R. Salmon A Master in the Court of Chancery, against any claim of dower by said Etta M. Headley. In the event of the failure or neglect of the said defendant William F. Headley to furnish said indemnity bond as herein ordered the said complainant John H. Miller may retain in his hands out of the balance of the purchase price the value of the dower right of the said Etta M. Headley, which amount determined in accordance with the mortality tables is the sum of \$559.39.

Petitioners appeal from the said decree on the ground that the same is erroneous in that:

(a) Said decree was based upon the finding by the learned Vice-Chancellor, that a certain check drawn by the complainant John H. Miller to William F. Headley as attorney for John F. Gentzel and referred to in said agreement as a payment on account of a certain mortgage and decree dated March 3, 1931 in foreclosure John F. Gentzel *vs.*

Petition of Appeal

Roxbury Lumber Company, was an acceptance by John H. Miller of an alleged agreement by defendant William F. Headley to convey to him the property covered by said decree in the event said Headley should purchase same.

10 (b) Said decree adjudges the complainant is entitled to a deed for said premises free and clear of all encumbrances.

(c) Said decree was based on a finding by the learned Vice-Chancellor, that alleged agreement was valid as a conveyance and upon an alleged delivery of the agreement to Fred H. Buck, complainant John H. Miller became the equitable owner of said lands, title to which was still in the name of the Roxbury Lumber Company.

20 (d) Said decree adjudges that the refusal of Fred H. Buck acting as agent for John H. Miller complainant to deliver check for \$3500.00 except upon receipt of a warranty deed free and clear of all encumbrances, signed by both William F. Headley and Etta M. Headley, his wife, complied with the terms of said alleged agreement.

Your petitioners appeal from the whole of every part of said decree on the ground that said findings were erroneous and contrary to the evidence and the law.

30 Your petitioners therefore pray that the said decree of the Chancellor may be wholly reversed, and for nothing holden, and that your petitioners may have such relief in the premises as to this Court may seem just and proper.

WILLIAM F. HEADLEY,
Solicitor for and of counsel with
Defendants-Appellants.

Dated February 15, 1932.

40 A True Copy,
THOMAS A. MATHIS, *Clerk.*

Acknowledgment of Service

ACKNOWLEDGMENT OF SERVICE

Filed February 24, 1932

NEW JERSEY COURT OF ERRORS AND
APPEALS

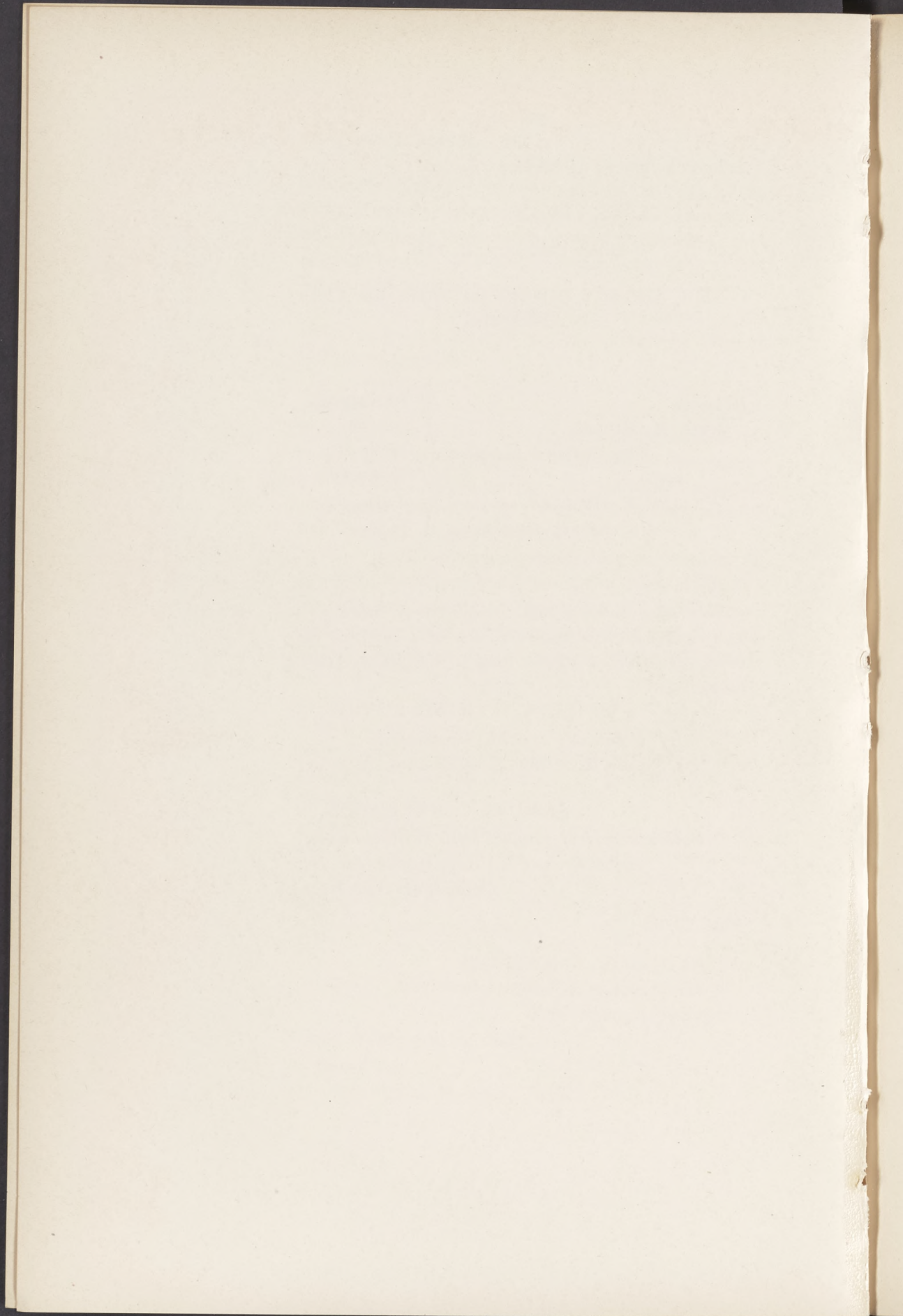
<i>Between</i> JOHN H. MILLER, <i>Complainant-Appellee,</i> <i>and</i> WILLIAM F. HEADLEY, <i>et als.,</i> <i>Defendants-Appellants.</i>	}	<i>On Appeal from the Court of Chancery. Petition of Appeal.</i>
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We, the undersigned, respectively hereby acknowledge service upon us each of a certified copy of the petition of appeal filed in the above entitled cause.

KING & VOGT,
Solicitors and of counsel with
John H. Miller, Complainant-Appellee.

SAMUEL C. MEYERSON,
Solicitor and of counsel with William Hock-
enjos, Sr. and William Hockenjos, Jr.,
Defendants-Appellees.

Feb. 23/32



27 OCT. T. 1932

New Jersey Court of Errors and Appeals.

Between

JOHN H. MILLER,
Complainant-Respondent,

AND

WILLIAM F. HEADLEY, *et al.*,
Defendants-Appellants.

On Bill for Specific
Performance.

On Appeal from the
Court of Chancery.

BRIEF ON BEHALF OF COMPLAINANT.

Facts.

This is an appeal by defendants from a final decree in the Court of Chancery, advised by Honorable James F. Fielder, *V. C.*, which decree directed the defendant William F. Headley to perform specifically a contract to convey to complainant property located in Jefferson Township, Morris County, New Jersey (149) (151). *The defendant, Headley, is a member of the bar of this state.*

On April 11, 1931, defendant, William F. Headley, entered into a written contract with John H. Miller, complainant, bearing date April 9, 1931, for the conveyance of property at Lake Hopatcong, N. J. This property is described as follows in the foreclosure proceedings hereinafter referred to:

"All the following tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Jefferson, in the County of Morris and State of New Jersey.

Being part of a tract conveyed to J. Ludlow Kitchell *et als*, Trustees of the Hopatcong Pioneer Association, to the Kenvil Lumber & Store Company, by deed dated 28th day of March, 1910, recorded in Morris County Clerk's Office in Book F-20 of Deeds, page 523; and the part hereby intended to be conveyed BEGINS at an iron pin driven in the ground, being the beginning corner of the said whole tract, distant one hundred thirty-five (135) feet on a course of South seventy-nine degrees East from an iron pin driven in the stump on a buttonball tree, and running thence (1) South seventy-nine degrees seventy-seven and twenty-five hundredths (27.25) feet to an iron bound, along the Southerly line of the right of way of The Central Railroad of New Jersey, thence (2) along said right of way, South sixty-one degrees forty-six minutes East twelve and seventy hundredths (12.70) feet to a brass pipe, the beginning corner of a tract hereinbefore sold to William Hockenjos and William Hockenjos Jr.; thence (3) along the fourth line of said Hockenjos tract reversed South twenty-six degrees fifty-nine minutes West one hundred thirty-one and fourteenth hundredths (131.14) feet to a point in the fourth line of the whole tract; thence (4) along the fourth line in part of the whole tract North forty-four degrees thirty minutes West ninety-three and forty-seven hundredths (93.47) feet to the fifth corner of the whole tract; thence (5) North twenty-eight degrees fifteen minutes East eighty and fifteen hundredths (80.15) feet to an iron pin in the point of Beginning.

Together with all the land above and under water lying between the extension of the third line in this deed into Lake Hopatcong, a distance of one hundred and eighty-five and eighty-nine hundredths (185.89) feet on a course of South twenty-six degrees fifty-nine minutes West from the fourth corner of this tract and the extension of the fifth line reversed, on a course of South twenty-eight degrees fifteen minutes West a distance of two hundred and sixteen (216) feet more or less into Lake Hopatcong.

Together with the right, title and interest of the party of the first part in and to the roads and roadways, over the property hereinabove described and across the right of way of the Lake Hopatcong Railroad Company."

The above property is referred to by Vice-Chancellor Fielder in his conclusions as *Tracts A and B* (130).

It was uncontradicted in the case that on April 9, 1931, a similar contract had been prepared by Headley except that a previous one called for a purchase price of \$4,250 which Mr. Miller was unwilling to pay. As the result of an offer by Miller to pay \$4,000, the contract in question was drawn, the original date of April 9, 1931 being preserved. A check was given by the complainant, Miller, dated April 11, 1931, payable to the order of William F. Headley, Attorney for John F. Gentzel, in the sum of \$500, which check was delivered April 11, 1931 to Headley and was marked in evidence Ex. CM-2 (29). This check bears the endorsement of William F. Headley as attorney for John F. Gentzel and then, Headley's individual endorsement (29). This \$500 payment was the initial payment called for by the contract hereinafter set forth (29). Said payment of \$500 was referred to in the agreement of April 9, 1931, by the use of the word "check herewith". The property in question which Headley bargained to sell to Miller was the same property as was described in a certain foreclosure suit of *John F. Gentzel vs. Roxbury Lumber Company*, in which cause defendant, Headley, was solicitor for the complainant (31). The foreclosure suit was being prosecuted and had gone to final decree which bore date March 3, 1931. The agreement recognized the fact that the foreclosure suit had to be further prosecuted to the extent of having sale of the property made. The agreement recited that defendant, Headley, was proceeding to

complete said foreclosure proceedings and, in the event *he could purchase* said property for a sum not in excess of the sum due on the first mortgage, would convey the property to Miller upon the payment of the balance of \$3,500. This would make the total consideration of \$4,000. The payment of \$3,500 was, by the terms of said agreement, to be made on or before May 15, 1931.

Said agreement was as follows (*italics ours*) (CM-1) [Introduced in evidence on page 29. Defendants have not printed it as an exhibit, but it appears in Schedule A annexed to the complaint (p. 6)]:

"Whereas, under a certain decree dated March 3, 1931, in foreclosure John F. Gentzel *vs.* Roxbury Lumber Company, there is due J. F. Gentzel \$5450.00 principal and interest \$213.67 costs and Sheriff's fees which amounts to about \$5800.00 and

Whereas, the party of the second part hereto has offered \$4000.00 for an assignment of this mortgage, *party of the first part, William F. Headley*, agrees to procure an assignment of said mortgage and decree for said sum of \$4000.00 to be paid \$500 check herewith and balance Thirty-five hundred dollars on or before May 15, 1931. *Party of the first part* further agrees at his own expense to continue said foreclosure proceedings and in the event he can purchase said property for a sum not in excess of amount due on said first mortgage to convey said property to John H. Miller, party of the second part hereto provided balance of \$3500.00 is paid on or before May 15th, 1931.

WILLIAM F. HEADLEY

Witness:

Fred H. Buck."

Said property was sold at foreclosure sale. In other words, Headley continued to prosecute said foreclosure proceedings as the agreement contem-

plated. At the foreclosure sale, *he personally bought said property as contemplated by said agreement*, for \$500 (74) which was less than the amount of the first mortgage, which with costs was \$5,800 (74) and secured a deed from the Sheriff of the County of Morris to him dated April 27, 1931 which was duly recorded in the Clerk's Office of the County of Morris in Book Q-32 of Deeds, page 319 (Ex. CM-5) (pp. 31-32). The sale by the Sheriff of Morris County to William F. Headley took place on *April 13, 1931*, and the deed to him was dated *April 27th, 1931*. Headley thereby became the owner of the property as contemplated by the said agreement of April 9, 1931.

The proof also shows that on *May 14, 1931* complainant, Miller caused a certified check for \$3,500, to be tendered to William F. Headley (30 and 31) (Ex. CM-3, p. 31) (33). This tender to Mr. Headley was accompanied by a letter, as follows (64) (p. 99, lines 10 and 40) (p. 125, line 3) :

"I am handing you through Mr. Fred H. Buck my certified check for \$3500.00 the same being the balance of the purchase price of the premises known as 'The Lake Shore Lot' formerly owned by the Roxbury Lumber Co. as per your agreement of April 9, 1931. Draw the deed for the property to John H. Miller, Borough of Rockaway, Morris County, New Jersey and deliver the same to Fred H. Buck, it being impossible for me to see you to-morrow.

Very truly yours,

JOHN H. MILLER"

Headley at that time, refused to deliver the deed unless he could have the check first and make delivery of the deed later (66). As the deed was supposed to be exchanged for the check, Mr. Buck, who was acting as Mr. Miller's agent for the delivery of the check, wanted something to take with

him to show Mr. Miller Mr. Headley's attitude and Headley signed the following statement:

May 14, 1931

MR. MILLER:

Mr. Buck was here with check for \$3500 but *refused to leave the check unless he got the deed first.*

W. F. HEADLEY

This communication was offered in evidence and bears exhibit marked CM-6 (66, 68). The portions underlined were admitted by Headley to be his handwriting (66, line 26) (67, line 35).

On May 14, 1931, according to the testimony of the defendant Headley, Mr. Buck, acting for Mr. Miller, stopped at Mr. Headley's home in Madison. This was the time when Headley gave to Buck the written statement above mentioned, which is referred to on page 56 of the testimony and at that time Headley admits that Buck told him that he would be down on Mr. Miller's behalf at Headley's office on the following day, May 15, 1931, and for Mr. Headley to have the deed for Mr. Miller ready.

On the following day, May 15th, Buck met Headley at Headley's office and gave to Headley a letter which Miller had given to Buck to deliver to Headley, which letter reads as follows (p. 100, lines 14 and 20, p. 125, line 1) :

MAY 15, 1931

"WILLIAM F. HEADLY Esq.,
128 Market St.,
Newark, New Jersey.

DEAR SIR:—

Pursuant to contract of April 9, 1931 I am tendering to you herewith the sum of \$3500 in cash, for which sum you agreed to convey to me property now owned by you situated at Lake Hopatcong, \$500 has heretofore been paid to you on account of the purchase price, and the \$3500 herewith tendered as stated above, represents the balance.

In consideration of this sum of \$3500 plus the \$500 I ask for the immediate delivery of a properly executed deed for the property as called for by the contract.

The property in question is Lake Shore property at Lake Hopatcong formerly owned by Roxbury Lumber Company and purchased by you at foreclosure sale, being bound on one side by Lake Hopatcong, on another by the Hockenjos property, on another by the Central Railroad property and on another by the property of the South Orange Club.

Very truly yours,

JOHN H. MILLER"

This letter was delivered to Headley. He refused to deliver a deed.

Although Buck did not know it, Headley had in his possession at that very conference on May 15, 1932 a *warranty deed executed by himself and his wife to John H. Miller complainant, covering the whole tract, which deed had been both signed and acknowledged by defendant Headley and his wife* (p. 90, line 25; pp. 68, line 34; 69, line 27; p. 71, line 29; p. 71, line 39; p. 72, line 30).

At pages 72 and 73 Headley testified as follows:

"Q. So, when Mr. Buck came into the office, you had this deed ready and yet insisted on cash? Is that correct? A. That is correct.

Q. Did you mistrust a certified check for \$3,500? A. No.

Q. What was the reason for asking for cash? A. The contract was not supposed to go to Mr. Miller at all. I did not intend to give him the deed.

Q. You had drawn the deed ready to be delivered to John H. Miller, according to your own testimony? A. I had.

Q. If you did not intend to give the deed to Mr. Miller, why did you go to the trouble of having your son draw the deed to John H. Miller and go down to your father and acknowledge it and take it to your office in

Newark in anticipation of Mr. Buck's definite appointment for eleven o'clock? Why did you do all of those things if you did not intend to draw the deed to Mr. Miller? A. I presumed I ought to have a deed there ready for a tender.

Q. You did not tender it, did you? A. No.

Q. Then, may I ask you again: Why did you prepare this deed, acknowledge it and take it down to Newark for the eleven o'clock appointment with Mr. Buck—a deed made to Mr. Miller—if your reason for refusing the check for \$3,500 was that you didn't expect the deed to go to Mr. Miller? Can you explain that in any way? A. *No; I don't know as I can.*

Q. Your reason for refusal to take the \$3,500 check is because you didn't want to give the deed to Mr. Miller. Is that right? A. Yes."

Also pages 76, 77 and 78.

"By the Court:

Q. Why didn't you tell him on the night of the 14th that you would not give him a warranty deed if that was your intention? A. I told him Mr. Miller would have to come down.

Q. Why didn't you tell him then that you would not give him a warranty deed? It was your intention, you say, then not to give him a warranty deed. Why didn't you tell him? A. I don't know why.

Q. You had intended to give him some kind of a deed; is that it? A. No——

Q. Had you intended to give him no deed at all? A. I had intended to give him no deed, because——

Q. Your intention was not to convey to him at all? A. *That was really my intention; yes.*

By Mr. Price:

Q. Why had you drawn a deed to John H. Miller? A. Under the cases, *I presume I should have a deed ready.*

Q. *A deed ready for what?* A. *I don't know.*

Q. *For what?* A. *I don't know.*

Q. You are a lawyer. How long have you

been practicing law? How many years have you been at the bar? A. I think since 1913. I am not sure.

Q. Why do you say you had to have a deed ready for tender when your position was that you were not going to convey? A. *I cannot answer that.*

Q. You have made the statement to the Vice-Chancellor that the reason why you drew the deed that evening and the reason why you went to the trouble of having it signed and acknowledged and in the name of the grantee, John H. Miller, was merely for the purpose of making tender—— A. No; I had that deed drawn to have it ready in case we wanted to use it.

Q. What would you want to use it for? A. I thought Mr. Miller would come down.

By the Court:

Q. If Mr. Miller had come down, would you have let him have the deed? A. If he agreed to carry out what Mr. Buck told me he was going to do, to put this property in the name of a new company that Mr. Buck was forming.

Q. Mr. Buck told you to have this deed drawn to Mr. Miller? A. Yes.

Q. Mr. Buck evidently did not object to Mr. Miller. A. No.

Q. Why did you object? A. Because I owned other properties that were in that deal.

Q. This deed did not incorporate that other property. This was an entirely separate deed? A. This was a separate deed.

Q. The fact is, Mr. Headley—won't you be positive about something? Is not this the fact that if Mr. Miller himself had come to you on the 17th (should be 15th), in person, with the cash, \$3,500, in his hand, you would not have given him the warranty deed which you had already prepared and executed? A. I would not, unless he told me he was going to carry out the agreement that Mr. Buck stated was the original purpose.

Q. Why did you prepare the deed? Tell me that. A. *Simply to have it ready in case I could use it.*"

It will be noted from the testimony that Headley gave various excuses at the hearing for his refusal to deliver the deed. He told Buck that he, Headley, would have to secure his wife's signature (this despite the fact that, as it developed at the hearing, he then had in his possession, his wife's executed deed). He further told Buck that he wanted to have Mr. Miller personally present to close the matter and then, finally, just before the noon hour on May 15, told Buck to come back at 2 o'clock and he would give him his answer (34). Buck returned at two o'clock and Headley then took the position that he insisted upon cash and stated he had a right to cash and a reasonable time to deliver the deed (34). Buck told him that he would get cash and return (34). Buck started for Rockaway, New Jersey, had his wife telephone to Miller, while he was en route; Miller got the cash from the Rockaway bank before closing hour, and delivered it to Buck who, with an officer, went to Headley's office, arriving there at about five o'clock in the afternoon of May 15, 1931 (33) (35). Buck tendered the \$3,500 in cash to a representative of Headley in his office at 128 Market Street, Newark, New Jersey (35) and was informed that Headley had gone the early part of the afternoon and that he would not be back that day. Buck then went to Headley's home at Madison, New Jersey, where he was also informed that Headley was away (35). Buck, with the officer, waited at the house until about 8:30 o'clock in the evening and then, while he and the officer were having a brief supper in Madison, Headley came in, put his car in the garage and went to bed (35). Buck returned to Headley's house and Headley sent word that he refused to see him. *All this is undenied.* Buck made tender of the money to Headley's son at Headley's house that evening, which tender was refused (36).

At the very time that Buck was en route from Newark to Rockaway to secure \$3,500 in cash pursuant to Headley's demand, Headley was on his way to Dover, New Jersey, to meet Mr. Samuel C. Meyerson, attorney, for a man named William Hockenjos, Jr. (83, line 23).

It developed later that on *April 23, 1931*, notwithstanding his agreement with Miller, Headley had entered into a written agreement with Hockenjos to convey to him for \$3000, *a portion of the whole tract which he had agreed to convey to Miller (131, line 10).* This portion, which he had so agreed to convey to Hockenjos, is described in the agreement (Ex. D (Hockenjos) 3, introduced at p. 40) *and is referred to by Vice-Chancellor Fielder in his brief as Tract A (130-131).* Hockenjos had paid him \$1000 at the time of the signing of the contract (April 23, 1931) (40, line 15). Under the agreement the balance of \$2000 was to be paid by Hockenjos to Headley on *May 20, 1931* (see decree, p. 131, line 15) at which time Headley was to deliver a *warranty deed* to Hockenjos conveying *Tract A* free from encumbrance (Ex. D; Hockenjos, 3).

At the conference at Mr. Meyerson's office on *May 15, 1931*, title was supposed to have been closed (the date for closing having been advanced from the date named in the contract which Headley had entered into with Hockenjos on *April 23rd, 1931*), for the conveyance of Tract A. (50, line 40) (40, line 34). The testimony of Meyerson and Hockenjos is that Headley, on May 15, 1931, said he wasn't ready to close and refused to give any reason, but when pressed as to whether there was anything the matter with the property said "no" and left the office without delivering the deed (40) (51). Headley testified, however, that, at that time, he told Hockenjos he was willing to give him a deed provided Hockenjos would agree to re-con-

vey the property to Headley upon the payment of \$250 (88) (98). *Headley said nothing to Meyerson or Hockenjos about the fact that at that very time Buck, for Miller, was supposedly on his way back to Headley's office with cash to close the title for the whole tract.*

Headley met Meyerson and Hockenjos at Dover, N. J., at 4 o'clock on *May 20, 1931*, which was the following Wednesday, and closed title with Hockenjos for the property, for which he had signed an agreement to convey, *and received \$2000 from Hockenjos*, the balance of the agreed purchase price, and gave him a *warranty deed*, dated May 18, 1931, passing title to him (52, line 35) (Ex. D; Hockenjos, 5). *At that time Headley made no disclosure of the fact that on the 18th day of May, 1931, Miller had started suit in the Court of Chancery against him for the conveyance of the whole property and had filed a lis pendens on that date and that process of subpoena to answer had been served on Headley and his wife that date* (108).

As soon as complainant John H. Miller found that Headley was not going to perform his contract he filed a bill in the Court of Chancery of New Jersey within three days, namely on May 18, 1931.

Hockenjos closed title with Headley for Tract A on May 20th, without having his counsel continue the search to date. If the search had been made they would have found on file in the Morris County Clerk's office the *lis pendens* filed on May 18th, 1931, by the complainant Miller.

After the institution of the suit by *Miller vs. Headley*, Hockenjos instituted a suit against Miller and Headley (7) and that action was tried together with the case of *Miller vs. Headley*, which is the subject of this appeal. By the bill which Hockenjos had filed in the Court of Chancery, he

sought to have it decreed that his rights in *Tract A* by virtue of the conveyance from Headley were superior to the rights of Miller therein. But if he should be unsuccessful then he sought a decree compelling Headley to return to him the \$3,000 which he had paid to Headley. The Court's disposition of the *Hockenjos* case is found on page 137, &c., of the State of the Case. The Court found that the rights of Miller were superior to Hockenjos (see p. 138), and said that Hockenjos should have applied to the Court to be made a party in the main suit of *Miller vs. Headley* and he directed by his decree that the Miller bill be amended by making Hockenjos a party thereto, that the bill of complaint filed by *Hockenjos vs. Headley and Miller* be taken as Hockenjos' answer and counterclaim to the Miller Bill and that Miller's answer to Hockenjos' bill be considered as an answer to the counterclaim (p. 138).

The Court further held that there should be a decree in the Miller suit setting aside Headley's conveyance to Hockenjos of Tract A and directed the conveyance of Tracts A and B by Headley to Miller, in fee simple, free from encumbrance. The Court further held (p. 141) that, since all parties were before the Court, the decree should provide for complete adjustment of their rights (p. 141) and accordingly provided in his opinion as follows:

"The balance of the purchase price to be paid by Miller to Headley for a conveyance free from encumbrance is \$3,500, and the decree should direct that from that sum Miller shall deduct his costs of this suit, and then apply the balance to pay Hockenjos the sum of \$3,000 (the consideration money which Hockenjos paid Headley) with interest from the dates of payment thereof and Hockenjos' costs of suit on his counterclaim against Headley. Any balance then remaining should be paid to Headley. Hockenjos' claim against Headley for expense of title examination and

for damages for breach of contract can not be determined here, but must be left to suit at law. The bill of complaint in the suit of Hockenjos against Headley and Miller should be dismissed without costs."

Pursuant to the conclusions of the Vice-Chancellor, amendment to the bill was filed and the Court's final decree was entered on January 25, 1932 (p. 149).

No appeal was taken by Hockenjos from the decree in the Court of Chancery.

We have examined the brief of the defendants. The brief is not arranged in accordance with the rules of court and it is difficult to tell from the brief the exact bases upon which the defendants rest their appeal.

We respectfully submit that the decree of the Court of Chancery should be affirmed. We present the following arguments in opposition to the contentions made at the trial by the defendants and apparently urged by them on appeal.

FIRST.

The decree of the Court of Chancery, holding that Headley had bound himself personally to convey the property to Miller, is entirely justified by the evidence and should be affirmed (see conclusions) (p. 137, line 20).

The appellant, in his brief, claims that he was only agent for Gentzel (p. 8 of brief; p. 14 of brief, &c.). This contention totally ignores the bases upon which Headley was held by the court below. As set forth by Vice-Chancellor Fielder in his conclusions, Headley, by his contract with Miller (p. 6) purported, first, to bind himself to obtain an assignment of mortgage and decree from his client, Gentzel, who was the owner of the mortgage upon

the foreclosure of which a final decree had been entered, and second, he bound himself, not as Gentzel's solicitor, but personally, to convey Tracts A and B to Miller in case he, Headley, should purchase the property at the foreclosure sale.

The Court, in the conclusions filed, further shows the fallacy of his claim in the following language (p. 134, line 27) :

"In his answer Gentzel states that he was willing and offered to assign the mortgage and decree to Miller, but there is no evidence that such an offer was ever made and the contract specifically gives Miller until May 15 to take such assignment. Advertisement of sale under the decree had been published, fixing the sale for the second day after Headley signed the Miller contract and instead of adjourning the sale and waiting until May 15 for Miller to take an assignment and pay the balance of the agreed purchase price, Headley proceeded with the sale, purchased the property and took title in his own name, thus making it impossible for Miller to obtain an assignment of the mortgage and decree. The contract contemplated the possibility that the mortgage and decree might not be assigned to Miller and that the foreclosure sale would proceed and that Headley would be the purchaser thereat. As I have said, Headley bound himself, upon the happening of that event, to convey to Miller."

The reason that the check of \$500 was made by Miller to Headley, as attorney for Gentzel, is that at that time the property had not yet been sold by the Sheriff of the County of Morris and the check was drawn in exact conformity with the conditions existing April 11th, 1931, which conditions were recited in the contract, Ex. CM-1.

It is uncontradicted that thereafter Headley, in conformity with the contract proceeded with the prosecution of the foreclosure proceedings and purchased the property personally and therefore met

the conditions called for by Exhibit CM-1 and became personally liable to convey the property to Miller. The agreement contemplated the individual purchase by Headley, which was done. The deed from the Sheriff was to Headley personally. It is of the utmost significance that Headley, at no time during this proceeding, called Gentzel as a witness and the only reference in the whole case to sustain a claim of agency, is a casual statement he made during the hearing that he was acting as attorney only.

The Vice Chancellor, in his conclusion, at page 135 called attention to the fact that Gentzel was not called as a witness and that it does not appear that at the purchase of the property at the Sheriff's sale, Headley was acting as Gentzel's agent. Gentzel had allowed Headley to hold himself out as the true owner of the property. The Court also found at page 135 that Headley, after his purchase of the property, dealt with it as his own, for :

(a) He made a lease with Co-Investors Building and Loan Association, Ex. CM-7, which lease had originally been drafted by Mr. Murray, Attorney for the Building and Loan Association, and which lease contained the usual clause of a covenant of quiet enjoyment. This Headley refused to sign and upon being pressed by Murray could give no justifiable excuse for his reluctance (p. 115, line 32) and finally signed a lease which had a clause in it which reads as follows (Ex. CM-7 introduced at p. 117) :

"It being agreed that in the event the rights given to the tenant are defeated or terminated by any third party, that on payment to the tenant the proportion of rent at the rate of Sixty-two Dollars and Fifty Cents per month for the unexpired term, the Landlord shall be released from any further liability under the lease."

(b) Headley testified that he appeared at the office of Samuel C. Meyerson on May 15th as set forth above, tried to get out of the Hockenjos contract by asking Hockenjos to agree if he (Hockenjos) took title, to reconvey to Headley upon the payment of \$250. Headley made the statement that he was somewhat fearful that Buck might do something (p. 54, line 20).

(c) He made repeated visits to Miller in which he endeavored to have him take back the \$500 and cancel the contract and as Miller said, repeatedly endeavored to be released from his obligation. Headley then went so far as to put a proposition in writing to Miller under date of May 9, 1931 (Ex. CM-11) (pp. 100, 122), which read as follows:

MAY 9, 1931

JOHN H. MILLER,

DEAR SIR:

I will deed you lot 50 x 100 including bungalow and dock for \$2000, \$1500 cash and return of \$500 deposit.

Very truly yours,

WILLIAM F. HEADLEY

The testimony shows that the bungalow referred to therein was the bungalow on the property that was on the portion thereof referred to by the Vice Chancellor as Tract B, and was the same property which he leased to the Co-Investors Building and Loan. Headley admitted on the witness stand that he had attempted to return the deposit to Miller. This exhibit, CM-11, together with Miller's testimony of repeated requests by Headley to be released from his contract, demonstrates conclusively that Headley knew he had a contract with Miller and was doing his best to get out of it.

(d) There is evidence to the effect that Headley endeavored to be released from his contract with Miller by paying \$1,000 (124).

(e) He executed the contract with Hockenjos for Tract A and delivered a deed to Hockenjos for Tract A, and as the Court said, on page 135, "to none of these acts of ownership did Gentzel object nor does he now appear to object."

SECOND.

Headley's contract was with Miller.

Headley endeavored to avoid the effect of his contract with Miller by making claim that he had some sort of informal understanding with Buck that Buck was to buy this and other property, but, as that proposition was never consummated, he never knew that Miller's contract was outstanding.

Headley's testimony was shown to be faulty in so many particulars, his statements on the witness stand were contradicted by so many witnesses, and so frequently on cross-examination he was obliged to retract former testimony that it seems that his suggested defense is of no merit. It is completely inconsistent. It is in direct contradiction to the language of the written contract and is opposed to his course of action. His repeated visits to Miller to endeavor to have Miller release him from the contract are significant. It is also significant that, on May 14th, 1931, Headley prepared and executed and had his wife sign and acknowledge a deed to Miller to the property in question, and as set forth heretofore, refrained from disclosing such fact to Miller or Buck, acting for him. The Court's finding that Headley had a contract with Miller is amply justified.

THIRD.

Headley was bound by his contract with Miller.

Headley makes the contention in effect that the contract was not unilateral and too indefinite for enforcement. The Court completely disposes of these contentions at page 136 of the State of the Case. As the Court says, Headley drew the contract himself on a sheet of his business paper. He was a lawyer of some twenty-five years standing and "he cannot be suspected of deliberately preparing an agreement in such a manner as to provide legal means of escaping its performance."

Upon Miller's offer of performance by filing his bill and by his tender of certified check and cash, the contract became mutual (*Krah vs. Wassmer*, 75 N. J. E. 109, affirmed, 78 N. J. E. 305, and further cases cited by the Court in its conclusions). The Court also disposes of the contention that the land was not sufficiently described. The cases cited amply sustain the Court's finding in this regard (136). Similarly, the conclusions correctly answer the allegation that the time of closing was not definitely stated (136).

FOURTH.

Miller was acting solely for himself.

There is no substantial evidence in this case which can controvert this statement. Miller's testimony that he was acting solely for himself in this matter and desired and wanted the property is uncontradicted. The contract between the parties (Ex. CM-1) is made directly between Headley and Miller.

Miller's check was the check by which the payment of \$500 was made on April 11, 1931, Miller's certified check for \$3,500 (30), drawn on the First National Bank of Rockaway, was the one which was tendered to Headley on May 14th and re-tendered to him on May 15th. It was Miller's cash (30) of \$3,500 which was tendered at Headley's office and at his house on May 15th. Headley's suggestion that he was not dealing with Miller is a subterfuge and an attempt to relieve himself from the obligation of his written contract.

It is also of the utmost significance that on May 14, 1931, at his home, Headley had his son draw a warranty deed to Miller and he and Mrs. Headley executed it before his father, a lawyer.

Headley admits he had the executed deed in his possession on May 15, 1931, at his office when Buck was there (90, line 29), although he did not disclose that fact to Buck nor disclose that he and his wife had signed it.

If Miller had not been ready to close title that day Headley would have made the claim that he had the deed ready for delivery and that Miller thereby forfeited the \$500.

The deed Headley prepared is dated May 1, 1931 (90, line 20).

It is easy to understand why Headley wanted to be relieved of the Miller contract. He apparently realized that he could secure more money for this property and had actually bargained with Hockenjos to sell $\frac{1}{2}$ of it to him for \$3,000. His repeated visits to Miller also indicated that he realized that Miller had claim upon him and that he was in a position where Miller's claim for specific performance might be asserted successfully. We also think it is important to note that the uncontradicted testimony in the case is that when Buck, for Miller,

returned to Headley's office on the morning of May 16, 1931, Headley's son stated that his father had told him to tell Mr. Miller that the purchase price had gone up and that it was \$5,000 and that \$4,500 would be required to close instead of \$3,500 (36).

FIFTH.

The Court below was correct in decreeing specific performance against Headley.

All of the essential elements of a contract were present. No real defense was urged at the final hearing in the Court of Chancery in opposition to the prayer of complainant's bill.

We have examined the cases cited in the brief of appellant in this court, and in no case can we find that they have application to the facts of the case at bar.

No appeal is being taken by Hockenjos in this cause, although when the appeal was taken by Headley, he signed his name to the notice of appeal and styled himself as follows: "Solicitor for and of counsel with defendants, William F. Headley, Etta M. Headley, his wife, and John F. Gentzel; also for names of William Hockenjos, Sr. and William Hockenjos, Jr., above mentioned." And in the body of the notice of appeal, he made the statement that Hockenjos Sr. and Jr. were joined in this appeal, "this appeal being also taken in their names as defendants" (see Notice of Appeal, State of Case, p. 155).

Mr. Meyerson is the solicitor for Hockenjos Sr. and Jr. in this matter. He has taken no appeal and has advised us that he has informed the Court

that Headley was without any right or authority to include his clients' names in the appeal.

Headley has not printed the exhibits in the State of the Case, and his failure to do so is the subject of a motion.

We respectfully submit that the decree of the Court of Chancery should be affirmed, with costs.

KING & VOGT,
Solicitors of Complainant.

HAROLD A. PRICE,
Of Counsel.

BRIEF FOR APPELLANTS

New Jersey Court of Errors and Appeals

Between

JOHN H. MILLER,

Complainant-Appellee,
and

WILLIAM F. HEADLEY, *et als*,
Defendants-Appellants.

On Bill, &c.

Appeal from
the Court of
Chancery.

BRIEF FOR DEFENDANTS-APPELLANTS

First: as to the evidence of the case.

Second as to the Law of the Case.

This is an appeal from the whole of the decree of the Court of Chancery in the above entitled suit, dated the twenty-fifth day of January, 1932, adjudging that the deed from William F. Headley and wife to William Hockenjos, Sr., and William Hockenjos, Jr., be set aside and said William F. Headley convey the whole of said property to John H. Miller complainant in suit for specific performance.

The title to said property was in Roxbury Lumber Company. John F. Gentzel owned a mortgage and decree on the property. William F. Headley was solicitor for John F. Gentzel in his foreclosure proceedings. William F. Headley gave a writing to an agent Fred H. Buck, whom he supposed to be acting for him, which alleged an offer by one, complainant, John H. Miller, to give \$4,000 for the mortgage and decree of John F. Gentzel upon which was due about \$5,800.00. A check

for \$500 made by John H. Miller to the order of William F. Headley, attorney of John F. Gentzel, was left with William F. Headley for the contemplated negotiations. John F. Gentzel refused the deposit and refused all negotiations. Under the decree William F. Headley bought the property in for John F. Gentzel, and sold part of it to Hockenjos, as no agreement was made between Miller and Gentzel. This deed the decree adjudges be set aside and the entire property be conveyed to John H. Miller, the complainant in specific performance.

BRIEF FOR APPELLANTS

NEW JERSEY COURT OF ERRORS AND
APPEALS

<i>Between</i>	}	<i>On Bill, &c.</i>
JOHN H. MILLER,		<i>Appeal from</i>
Complainant-Appellee,		<i>the Court of</i>
and		<i>Chancery.</i>
WILLIAM F. HEADLEY, et als,	}	<i>Sat below:</i>
Defendants-Appellants.		<i>Walker, C.</i>
		<i>Fielder, V.-C.</i>

BRIEF FOR APPELLANTS
AS TO THE EVIDENCE

This is an appeal from the whole of the decree of the Court of Chancery in the above entitled suit dated on the twenty-fifth day of January, 1932, which decree adjudges that a deed given by William F. Headley and wife to William Hockenjos, Sr., and William Hockenjos, Jr., be set aside and that William F. Headley and wife convey the whole of said property to John H. Miller complainant in suit for specific performance.

The title to said property was in Roxbury Lumber Company. (State of case, page 55, lines 30-32; page 113, lines 1-20).

John F. Gentzel owned a mortgage and decree on the property. (Schedule "A," page 6, State of case, page 54, lines 34-35.) William F. Headley was solicitor in foreclosure of John F. Gentzel, mortgagee at the time said writing Schedule "A" was signed purporting to be a proposition whereby

John H. Miller, complainant, would negotiate to take over the decree and rights thereunder from said John F. Gentzel, mortgagee. (State of case, page 6; Schedule "A": page 54, lines 37-38.) (State of case, page 98, lines 15-21; page 57, lines 35-40.) Complainant John H. Miller made a check for \$500 to William F. Headley, attorney for John F. Gentzel. (State of case, Schedule "A," page 6; page 29, lines 15-35.) John F. Gentzel refused the deposit and refused the negotiations, and nothing further was done about it. (State of case, page 58, lines 1-13. State of case, page 84, lines 21-28.) Thereafter the Sheriff of Morris County sold said property under said decree and William F. Headley purchased the property for John F. Gentzel. (State of case, page 31, lines 30-40; page 32, lines 1-7; page 98, lines 15-21.) Nothing further followed the proposition which Mr. Gentzel refused and William F. Headley considered that no proposition was pending and conveyed part of the property to Hockenjos. (State of case, page 61, lines 32-37; page 79, lines 38-40.) Hockenjos had a search made and received a deed. (State of case, page 42, lines 1-12.) Complainant, John H. Miller made no search or preparations; he did demand a warranty deed for the whole of the property and on failure to obtain same started this suit for specific performance under the alleged paper writing Schedule "A" (State of case, page 6; State of case, page 65, lines 3-18; page 66, lines 6-7; page 71, lines 9-10.)

Complainant, John H. Miller, dealt entirely through an agent, Fred H. Buck, while William F. Headley thought that Fred H. Buck was acting for him. (State of case, page 101, lines 11-13.) Defendant, John F. Gentzel never accepted the Miller proposition. (State of case, page 102, lines 18-20; page 107, lines 32-40.) Final decree had

been entered in foreclosure of John F. Gentzel *vs.* Roxbury Lumber Co. (State of case, page 109, lines 1-16.) Besides the mortgage of John F. Gentzel on the property, there was a second mortgage of The National Bank of Dover on the property for a considerably greater sum. (State of case, page 110, lines 8-11.) William F. Headley held the property purchased under sheriff's sale for John F. Gentzel and consulted with him on the occasions. (State of case, page 75, lines 12-14; page 82, lines 35-40; page 83, lines 1-20; page 102, lines 18-20; page 107, lines 32-40; page 54, lines 37-38; page 57, lines 35-40; page 98, lines 15-21; page 58, lines 1-13; page 84, lines 21-29.)

The paper writing which is the basis of this suit is set forth on page 6 of the State of the case; "Schedule A" to complainant's bill of complaint as follows:

Schedule "A."

Newark, N. J., April 9, 1932.

Whereas under a certain decree dated March 3, 1931 in foreclosure, John F. Gentzel *vs.* Roxbury Lumber Company, there is due John F. Gentzel \$5,450.00 principal and interest: \$213.67 costs, and Sheriff's fees which amount to about \$5,800. and

Whereas the party of the second part hereto has offered \$4,000.00 for an assignment of this mortgage, party of the first part, William F. Headley, agrees to procure an assignment of said mortgage and decree, for said sum of \$4,000.00 to be paid \$500 check herewith and balance thirty-five hundred dollars on or before May 15, 1931.

Party of the first part further agrees at his own expense to continue said foreclosure proceedings and in event he can purchase said property for a sum not in excess of amount due on said first mortgage to convey said property to John H. Mil-

ler, party of the second part hereto, provided balance of \$3,500.00 is paid on or before May 15th, 1931.

William F. Headley.

Witness Fred H. Buck.

On this paper a check for \$500 was left with William F. Headley payable to the order of William F. Headley, attorney for John F. Gentzel. The paper is a proposition that John H. Miller offers \$4,000 for a mortgage and decree subject to acceptance by the owner John F. Gentzel, completion of any sale consummated to carry with it the services of the solicitor William F. Headley to complete the foreclosure. The proposition appears on the face of the paper to be incomplete.

The paper writing shows on its face that it is not a completed agreement to purchase the final decree but merely a submitted proposition.

1. No time of day to close is stated as it contemplates an offer for a mortgage and decree.

2. No place to close is named, as the paper states it is conditional on further payments to be deposited, for the contemplated negotiations.

3. No kind of deed is mentioned as the paper states it contemplates a proposition for a decree assignment.

4. No wives are mentioned for the same reason that the contemplation is that John F. Gentzel would be later contracted with to assign his decree.

5. The paper is not signed, accepted, delivered, or made certain in any of its parts, being intended to be submitted to John F. Gentzel, the mortgagee.

6. The paper contains full recitals and all information of the situation, merely a proposition in writing for John F. Gentzel to consider, and subject to acceptance.

This paper was dictated by Fred H. Buck. (State of case, page 59, lines 37-38.) William F. Headley supposed Fred H. Buck was acting for him. (State of case, page 101, lines 11-13.) John F. Gentzel refused to accept the proposition; and would not go through with it, and insisted on \$5,000.00. (State of case, page 83, lines 1-20.) There was no agreement between John F. Gentzel and John H. Miller made. (State of case, page 56, lines 34-40; page 57, lines 1-5.)

The writing Schedule A is the basis of the suit. Fred H. Buck received the paper and left the check for John F. Gentzel, payable to William F. Headley, attorney for John F. Gentzel, to open negotiations. John F. Gentzel refused the check and refused the negotiations. The evidence discloses that all attempted negotiations completely failed.

NEW JERSEY COURT OF ERRORS AND
APPEALS

<i>Between</i> JOHN H. MILLER, <i>Complainant</i>; <i>et als</i>; <i>Appellees,</i> <i>and</i> WILLIAM F. HEADLEY, <i>et als</i>, <i>Defendants-Appellants.</i>	<i>On Bill, &c.</i> <i>On Appeal from</i> <i>the Court of</i> <i>Chancery.</i> <i>Sat below</i> <i>Walker, C.;</i> <i>Fielder, V.-C.</i>
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POINTS FOR DEFENDANTS-APPELLANTS.
SECOND AS TO THE LAW OF THE CASE.

POINT ONE.

Alleged contract names the principal: and deposit made to principal: the agent of the principal can not be liable as a principal. Cases cited on point one.

(A) *Savage vs. Vanderhoof*, 132 Atl. Rep., 662.

(B) *Anselmo vs. Frank*, 158 Atl. Rep., 103.

(C) *Halpern vs. Cafarelli*, 118 Atl. Rep., 684; 98 N. J. L., 77.

POINT TWO

Error in decreeing deed be given. Cases cited on point two.

(A) *Schenck vs. Spring Lake*, 19 Atl. Rep., 881; 47 N. J. E., 44.

- (B) Newark Sav. Ins. *vs.* Jones, 37 N. J. E., 449.
 (C) Wittingham *vs.* Lighthipe, 46 N. J. E., 429.

POINT THREE

Equitable title never acquired by complainant.
 Cases cited on point three.

- (A) Kotok *vs.* Rossi, 120 Atl., 208; 94 N. J. E., 327.
 (B) Freeman *vs.* Anders, 143 Atl., 550; 103 N. J. E., 430.
 (C) Ten Eyck *vs.* Manning, 52 N. J. E., 47.
 (D) Halpern *vs.* Cafarelli, 118 Atl. 684; 98 N. J. L., 77.
 (E) Sooy *vs.* Henkelman, 142 Atl., 17; 104 N. J. L., 540.

POINT FOUR

Alleged contract repudiated by demand for warranty deed. Cases cited on point four.

- (A) Acquackanonk B. & L. *vs.* Parsonnet, 151 Atl., 865; 107 N. J. E., 48.
 (B) Meidling *vs.* Trefz, 23 Atl., 824; 48 N. J. E., 638.
 (C) Kuskin *vs.* Guttman, 130 Atl., 829; 98 N. J. E., 617.

Respectfully submitted,

WILLIAM F. HEADLEY,
Solicitor for and of Counsel with
Defendants-Appellants.

POINTS FOR DEFENDANTS-APPELLANTS.

BRIEF FOR APPELLANTS

NEW JERSEY COURT OF ERRORS AND
APPEALS

<i>Between</i> JOHN H. MILLER, <i>Complainant</i>; <i>et als</i>; <i>and</i> WILLIAM F. HEADLEY, <i>et als</i>, <i>Defendants-Appellants.</i>	}	<i>On Bill, &c.</i> <i>On Appeal from</i> <i>the Court of</i> <i>Chancery.</i> <i>Sat below:</i> <i>Walker, C.</i> <i>Fielder, V.-C.</i>
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GROUNDS OF ERROR FOR
DEFENDANTS APPELLANTS.

Petitioners appeal from said decree on the grounds that the same is erroneous in that;

(a) Said decree was based upon the findings by the learned Vice-Chancellor that a certain check drawn by the complainant John H. Miller to William F. Headley as attorney for John F. Gentzel, and referred to in said agreement as a payment on account of a certain mortgage and decree dated March 3, 1931, in foreclosure, John F. Gentzel *vs.* Roxbury Lumber Company, was an acceptance by John H. Miller of an alleged agreement by defendant William F. Headley to convey to him the property covered by said decree in the event said Headley should purchase same.

Point One: The alleged agreement names the principal John F. Gentzel with whom the intent was to negotiate; and the alleged agreement shows the check was left for negotiations to be entered into with John F. Gentzel for his decree; and the check was made to William F. Headley as attorney for John F. Gentzel; and that when alleged contract names the principal, and deposit money is paid to the principal, the known agent of the principal can not be held as a principal.

Cases cited on point one:

(A) *Savage vs. Vanderhoof*, 132 Atl. Rep., 662.

(B) *Anselmo vs. Frank*, 158 Atl. Rep., 103.

(C) *Halpern vs. Cafarelli*, 118 Atl. Rep., 684; 98 N. J. L., 77.

(b) Said decree adjudges the complainant is entitled to a deed for said premises free and clear of all encumbrances.

Point Two. The alleged agreement contemplated negotiations to take over a decree, which would be as a Sheriff sells subject to all the then encumbrances. The wording of the alleged contract is the basis of the suit.

The decree is not according to the alleged contract in the Bill of Complaint.

Cases cited on point two:

(A) *Schenck vs. Spring Lake*, 19 At. Rep. 881; 47 N. J. E., 44.

(B) *Newark Savings Ins. vs. Jones Ex.* 37 N. J. E., 449.

(C) *Wittingham vs. Lighthipe*, 46 N. J. E., 429.

(c) Said decree was based on a finding by the learned Vice-Chancellor that alleged agreement was valid as a conveyance; and upon an alleged delivery of the agreement to Fred H. Buck, complainant, John H. Miller became the equitable owner of said lands, title to which was still in the name of the Roxbury Lumber Company.

Point three: That John F. Gentzel, the contemplated vendor was not the owner when the alleged contract was made. That William F. Headley, solicitor and agent of John F. Gentzel, was entirely remote from and unconnected in any way with the title. No forfeiture of alleged deposit was possible. The vendee could not acquire equitable title from William F. Headley; and did not acquire equitable title, either from alleged paper, or from alleged check.

Cases cited on point three:

(A) *Kotok vs. Rossi*, 120 Atl. 208; 94 N. J. E., 327.

(B) *Freeman vs. Anders*, 143 Atl. 550; 103 N. J. E., 430.

(C) *Ten Eyck vs. Manning*, 52 N. J. E., 47.

(D) *Halpern vs. Cafarelli*, 118 Atl. 684; 98 N. J. L., 77.

(E) *Sooy vs. Henkelman*, 142 Atl., 17; 104 N. J. L., 540.

(d) Said decree adjudges that the refusal of Fred H. Buck acting as agent for John H. Miller, complainant, to deliver check for \$3,500.00 except upon receipt of a warranty deed free and clear of all encumbrances, signed by both William F. Headley and Etta M. Headley his wife, complied with the terms of said alleged agreement.

Point Four: Complainant demanded a Warranty deed free and clear of all encumbrances, in

violation of the terms and amounting to repudiation and entirely at variance with the alleged agreement. No searches had been made, and no preparations arranged, and no attorney is mentioned. Under which circumstances, complainant did not rely on contract. His only act was to demand a Warranty deed for \$3,500.00 which he was not entitled to, and which was persisted in, amounting to repudiation of alleged contract.

Cases cited under point four:

(A) Acquackanonk B. & L. *vs.* Parsonnet, 151 Atl. 865; 107 N. J. E. 48.

(B) Meidling *vs.* Trafz, 23 Atl. 824; 48 N. J. E. 638.

(C) Kuskin *vs.* Guttman, 130 Atl. 829; 98 N. J. E. 617.

Respectfully submitted,

WILLIAM F. HEADLEY,

Solicitor for and of Counsel with

Defendants-Appellants

THE LAW

1. The decree is erroneous for reasons following in points of law; Alleged agreement names John F. Gentzel as owner of decree. Alleged deposit is a check for \$500, given by John H. Miller drawn to order of William F. Headley, Attorney for John F. Gentzel. William F. Headley had no connection personally either with the alleged contract or with alleged property.

FIRST POINT OF LAW

When alleged agreement names the principal; and the deposit money is paid to the principal; the agent can not be held as liable as a principal to perform the alleged contract.

Citing case *Savage vs. Vanderhoof*, 132 Atl. Rep. 662.

(A) In case of *Savage vs. Vanderhoof*, quote:

"The proof showed that the deposit was paid to the defendant on the day preceding the day of execution of the contract. The receipt given by the defendant was as follows:

"May 22, 1922: Received Mrs. C. Savage a deposit of \$100 on lots (description). Selling price \$1,000. Balance \$900 if owners are satisfied or money refunded.

W. L. Vanderhoof."

(1) If the facts were as alleged in the state of demand it was the defendant's duty as agent of the owner to turn the deposit over to his principal; if he failed in this duty, the right to its payment vested in the principal and not in the plaintiff. *Lewis vs. Morris Realty Co.* (N. J. Sup.), 128 Atl. 576, affirmed in (N. J. Err. & App.), 130 A. 560. The Court found as a fact "there was no disclosure of the principal, or that there was a principal beyond the defendant until after the money had been paid.

(2) We conclude that the defendant received the deposit as a bailee, trustee, or stakeholder, under terms which imposed upon him, a personal liability to refund the deposit upon a certain contingency; i. e. if owners were not satisfied with the offer."

(B) Citing case *Anselmo vs. Franck*, 158 Atl. Rep. 103; quote:

"But whether or not Franck told complainants' attorney at the time he executed the contract, that he was acting as trustee or agent for another, the complainants had notice by the very terms of the contract that he was entering into it in a representative capacity, and not as an individual, and complainants should not be permitted in this suit to convert into a personal liability what they must have known was not intended to be such.

* * *

"Courts of equity will not interfere to decree specific performance except in cases where it would be strictly equitable to make such a decree. *Blake vs. Flatley*; 44 N. J. E. 228; 10 A. 158; 14 A. 128, 6 Am. St. Rep. 886: *Bettcher vs. Knapp*; 94 N. J. E. 433, 120 A. 139; *Degheri vs. Carobine*, 102 N. J. E. 264; 140 A. 406: *Bowen vs. Pursel*, 109 N. J. E. 67; 156 A. 649: The complainants seek to compel the defendant to take title to land they had notice he was not purchasing for himself, and to require him to pay \$2,000 of his own money therefor. They entered into the contract knowing that the defendant was acting as representative of another, and now they insist that he shall perform in his individual capacity. They could have declined to contract unless he personally or his principal was named as vendee, but they chose to deal with him as a trustee rather than personally: as agent, rather than with his principal. It is entirely their own fault if they cannot have specific performance against Dessel Realty Company because it is not named

as vendee, or against Franck, because he is not named individually as vendee. They should be left to such remedy as they have at law."

(C) Citing case: *Halpern vs. Cafarelli*: 118 At. 684: 98 N. J. L. 77. Title to property was passed and \$340 was held in escrow to pay an \$800 mortgage off, which the mortgagee agreed to. But after title was passed, the mortgagee's assignee demanded the full \$800. In such situation, quote:

"So it has been generally held, that an agreement to do something in futuro, relieved of all the elements indicating specific fraud (none of which is in evidence here) is regarded as a mere expression of opinion, or a mere promise or conjecture, upon which the other party has no right to rely, particularly where the means of information or investigation are equally within the range of both parties. 12 R. C. L. 252 and cases cited."

2. Said decree erroneously adjudges the complainant is entitled to a deed for said premises free and clear of all encumbrances.

FIRST POINT OF LAW

The wording of the alleged contract set forth in the bill of complaint is the ground of the suit.

(A) *Schenck vs. Spring Lake*, 19 Atl. Rep. 881—47 N. J. E. 44. "Where the action is by a vendee against a vendor, as it is in this case: and complainant puts his right to relief exclusively on a written contract as the complainant does here: it would seem to be clear beyond question that unless the writing set out in the bill shows on its face that the defendant

is the vendor, the complainant's case has no foundation."

(B) *The Newark Savings Institution vs. Jones Extrs.*, 37 N. J. E. 449. Agreement to take property over after Sheriff's Sale is agreement to take same "as is" and not warranty deed free and clear and not free and clear.

(C) *Wittingham vs. Lighthipe*, 46 N. J. E. 429-431. Here agreement was: "We the undersigned do hereby pledge ourselves to Mrs. Israel Condit that if we become the purchasers of the mill property and the water rights of the same that are now advertised to be sold at Sheriff (or master's) sale * * * shall be transferred to Mrs. Israel D. Condit or her assigns." The case holds: "Under the bill as at present framed the agreement constitutes the sole foundation of the complainant's right to relief. The principle is well settled that every valid contract for the conveyance of land creates in the view which equity takes of such transactions the relation in a qualified sense of trustee and cestui que trust * * *" This case notes the lack of consideration and that no trust arises of the vendor for the vendee: and the demurrer to the bill of complaint is sustained.

3. Said decree erroneously adjudges that alleged agreement, was valid as a conveyance between complainant and William F. Headley; the title being in Roxbury Lumber Company when alleged agreement was made, complainant's suit being based upon the written paper: and the written paper shows by its recitals that no equitable title passed by it from William F. Headley to said complainant, John H. Miller.

FIRST POINT OF LAW

In cases of specific performance, the vendee's right must rest upon an equitable title derived from the alleged contract at the time it was made.

(A) *Kotok vs. Rossi*, 120 At. 208: 94 N. J. E. 327: "But the vendee's right of action in equity is very different from his right of action at law. The former rests upon the validity of the contract, not as a mere contract but as a conveyance. His right in equity is upon the theory that the contract has conveyed to him an equitable title to the land; that the vendor is left with the legal title as trustee for the vendee. * * * Obviously then if a contract is invalid as a conveyance the vendee has no equitable title for none was conveyed to him thereby. He has therefore no cause of action to compel conveyance to him of the legal title, either as against the vendor or a subsequent grantee. *Ten Eyck vs. Saville*, 64 N. J. E. 612-614.

(B) *Freeman vs. Anders*, 103 N. J. E., 430; 143 Atl. Rep. 550. Cites title essential at inception of agreement. Cites *Ten Eyck vs. Manning*, 52 N. J. E. 47, that where no reciprocity of remedy exists there is no right to Specific Performance.

In the alleged contract of John H. Miller in no possible manner was John H. Miller ever bound. In no possible manner could his deposit of \$500 left in escrow for John F. Gentzel ever be forfeited. While John H. Miller may be considered as having offered to take a warranty deed free and clear; and in fact demanded a warranty deed free and clear; this was not in accordance with alleged paper un-

der which there was nothing to bind him; and he in no way relied on the alleged paper.

(C) *Ten Eyck vs. Manning*, 52 N. J. E. 47—27 Atl. 900:

Adjudication: "I find no adjudication in this State in which complainant's ability to confer a perfect title at final hearing has been made the ground for awarding a decree in his favor, in any case in which complainant has been a stranger to the title at the time of his execution of his contract to convey."

(D) *Halpern vs. Cafarelli*, 118 Atl. 684; 98 N. J. L. 77:

"So it has been generally held that an agreement to do something in future relieved of all the elements of specific fraud (none of which is in evidence here), is regarded as a mere expression of opinion, or a mere promise or conjecture upon which the other party has no right to rely. * * *

(E) *Sooy vs. Henkelman*, 104 N. J. L. 540; 142 Atl. Rp. 17:

That no forfeiture of alleged deposit being possible under the situation is criterion that the situation did not develop any agreement.

"(3) An option and not a contract to purchase is effected by an agreement to sell real estate for payments to be made within a specified time, and providing for forfeiture of money paid upon failure to make payment where the purchaser (as here) does not agree to purchase, to make payment or to bind himself in any way, other than the forfeiture of the payments made.

Stelson vs. Haigler, 63 Colo. 200; 165 P. 265; No. 3 A. L. R. 55."

4. Said decree adjudged that the refusal of Fred H. Buck acting as agent for John H. Miller complainant, to deliver check for \$3,500 except upon the receipt of a warranty deed free and clear of all encumbrances, signed by both William F. Headley and Etta M. Headley his wife, complied with the terms of said alleged agreement.

FIRST POINT OF LAW

The only alleged offer of performance of alleged contract by complainant was a demand for a warranty deed free and clear of all encumbrances, in violation of the terms and amounting to repudiation, and entirely at variance with the alleged agreement.

(A) *Acquackanonk B. & L. Asso. vs. Parsonnet*, 151 Atl. 865, 107 N. J. E. 48, &c.

Reverses decree for specific performance where complainant demanded premium, not called for by agreement, to take over property, after Sheriff sale. Page 866.

Recites. "The main issue is whether the complainant has held itself ready to perform. The general rule is that he who seeks performance of a contract for the conveyance of land must show himself ready desirous prompt and eager to perform the contract on his part. *Meidling vs. Trefz*, 48 N. J. E., 638:644: 23 Atl. Rep. 824. The contract toward which such attitude must be shown is the contract made by the parties, as the Court of Chancery can not make a contract for them. *Kuskin vs. Guttman*, 98 N. J. E. 617:620. 130 Atl. Rep. 829. *Id.* 99 N. J. E. 887; 132 At. 922. * * *"

The case is quite similar to the *Miller vs. Headley* case. The defendant in *B. & L. vs. Parsonnet* likewise urged no contract, no consideration, no mutuality, and no intent to contract. The defendant urged alleged agreement was violated by complainant, in demanding premium not called for therein. Defendant urged the decree was erroneous in requiring defendant to pay taxes, &c.

The Court of Errors and Appeals decided: "The condition imposed by the complainant on the consummation of the agreement was in opposition to the terms of the agreement and was a breach thereof.

Equity will not hold the defendant to an agreement from which the complainant holds aloof."

The case of *Aquackanonk B. & L. Asso. vs. Parsonnet* is quite similar to the case of *Miller vs. Headley* in respect to the repudiation of the alleged agreement. But in the case of *Miller vs. Headley* it appears by the paper writing that it was merely an offer to John F. Gentzel, which necessarily involved an acceptance by John F. Gentzel before any contract could be complete. The evidence is uncontradicted that John F. Gentzel refused the offer.

The situation was therefore left the same as in the case of *Savage vs. Vanderhoof* above cited 132 At. 662, in which the agent held in escrow an unaccepted deposit. In the case of *Savage vs. Vanderhoof*, agreements with the principal were afterwards made, while in *Miller vs. Headley*, the principal John F. Gentzel refused the offer and no agreement was ever made.

The situation was thereupon similar to the situation in the case of *Halpern vs. Cafarelli*, above cited; 98 N. J. L. 77; where the parties had no agreement. As in *Aquackanonk B. & L. Asso. vs.*

Parsonnet, a demand was made contrary to alleged agreement and in repudiation thereof; but this merely tends to show in the case of Miller *vs.* Headley that no agreement was made, and the paper writing is only a rejected proposition. There was therefore under the paper writing, no equitable title to said property acquired by complainant, John H. Miller; and equitable title in complainant, essential to specific performance is therefore lacking, wherefore said decree should be reversed. Klausner *vs.* Watson, 98 A. 271; 86 N. J. E. 220; Freeman *vs.* Anders, 143 A. 550; 103 N. J. E. 430, and cases cited.

Defendants respectfully submit that the decree of the Court of Chancery should be reversed.

Respectfully submitted,

WILLIAM F. HEADLEY,

Solicitor for and of Counsel with

Defendants-Appellants.

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Stipulation.

Stipulation.

**NEW JERSEY COURT OF ERRORS
AND APPEALS.**

<i>Between</i>	{		
JOHN H. MILLER,		<i>On Bill, &c.</i>	10
<i>Complainant-Appellee,</i>		<i>On Appeal</i>	
<i>and</i>		<i>from</i>	
WILLIAM F. HEADLEY, <i>et als.,</i>		<i>Chancery.</i>	
<i>Defendants-Appellants.</i>			

It is hereby stipulated and agreed that the following exhibits hereinafter set forth are the exhibits to be printed in the above-entitled suit. 20

KING & VOGT,
Solicitors for Appellee, John H. Miller.

SAMUEL C. MEYERSON,
Solicitor for William Hockenjos, Sr.,
and William Hockenjos, Jr.

WILLIAM F. HEADLEY,
Solicitor for Appellants.

30

40

Exhibit CM-1.

Exhibit CM-1.

Residence Telephone 811 Madison
Telephone 7666 Market

William F. Headley
Attorney and Counsellor at Law
128 & 130 Market Street

10

Newark, N. J. April 9, 1931

Whereas, under a certain decree dated March 3, 1931, in foreclosure John F. Gentzel, vs Roxbury Lumber Company, there is due J. F. Gentzel \$5450.00 principal and interest \$213.67 costs and Sheriff's fees which amount to about \$5800.00 and Whereas the party of the second part hereto has offered \$4000.00 for an assignment of this mortgage, party of the first part, William F. Headley, agrees to procure an assignment of said mortgage and decree for said sum of \$4000.00 to be paid \$500 check herewith and balance Thirty five hundred dollars on or before May 15, 1931. Party of the first part further agrees at his own expense to continue said foreclosure proceedings and in event he can purchase said property for a sum not in excess of amount due on said first mortgage, to convey said property to John H. Miller party of the second part hereto provided balance of \$3500.00 is paid on or before May 15th, 1931.

20

30

WILLIAM F. HEADLEY.

Witness FRED H. BUCK.

40

Exhibits CM-2, CM-3, CM-4.

Exhibit CM-2.

Rockaway N. J. Apr. 11, 1931

THE FIRST NATIONAL BANK OF ROCKAWAY

Pay to the Order of W. F. Headley, Atty for
John F. Gentzel \$500.

Five Hundred 00/100.....Dollars 10

JOHN H. MILLER.

Exhibit CM-3.

Rockaway N. J. May 14, 1931

THE FIRST NATIONAL BANK OF ROCKAWAY,

Pay to the Order of William F. Headley \$3500.00
3500 Dols. 00 cts, Dollars 20

JOHN H. MILLER.

Certified, Redeposited by John H. Miller.

Exhibit CM-4.

Rockaway N. J. 5/15/31

THE FIRST NATIONAL BANK OF ROCKAWAY,

Pay to the Order of CASH \$3500.00 30
Thirty-Five Hundred.....Dollars

JOHN H. MILLER.

Exhibit C-5.

Exhibit C-5.

10 Fred S. Myers, Sheriff Book Q. 32 of Deeds
 of Morris County, for Morris County page
 to 319 etc.
 William F. Headley. Dated April 27, 1931
 Proved April 27, 1931
 Rec'd May 21, 1931
 8:19 A. M.
 Cons. \$500.

20 Cites: "Whereas on the third day of March, 1931, by a certain decree made in our Court of Chancery before our Chancellor at Trenton, in a certain cause therein depending wherein John F. Gentzel is Complainant and Roxbury Lumber Co., National Union Bank of Dover, William F. Headley, Dorson S. Drake, Igoe Bros., and Frost and Davis Lumber Co. are the defendants; it was ordered, adjudged and decreed, that certain mortgaged premises, with the appurtenances, in the bill of complaint in the said cause particularly set forth and described that is to say; All the following tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Jefferson in the County of Morris and State of
 30 New Jersey.

40 Being part of a tract conveyed by J. Ludlow Kitchell et als as trustees of the Hopatcong Pioneer Association, to the Kenvil Lumber & Store Company, by deed dated 28th. day of March, 1910, recorded in Morris County Clerk's Office in Book F. 20 of deeds, page 523; and the part hereby intended to be conveyed; Begins at an iron pin driven in the ground, being the beginning corner of the said whole tract, distant

Exhibit C-5.

one-hundred thirty-five (135) feet on a course of South seventy nine degrees East from an iron pin driven in the stump on a button-ball tree, and running thence (1) South seventy-nine degrees East, seventy-seven and twenty-five hundredths (77.25) feet to an iron bound, along the southerly line of the right of way of The Central Railroad of New Jersey; thence (2) along said right of way, South sixty-one degrees, forty six minutes East twelve and seventy hundredths (12.70) feet to a brass pipe, the beginning corner of a tract, heretofore sold to William Hockenjos and William Hockenjos Jr. thence (3) along the fourth line of said Hockenjos tract reversed, South twenty six degrees fifty nine minutes West One hundred thirty-one and fourteen hundredths (131.14) feet to a point in the fourth line of the whole tract; thence (4) along the fourth line in part of the whole tract, North forty-four degrees thirty minutes West ninety-three and forty seven hundredths (93.47) feet to the fifth corner of the whole tract; thence (5) North twenty eight degrees fifteen minutes East, eighty and fifteen hundredths (80.15) feet to an iron pin in the point of beginning.

Together with all the land above and under water lying between the extension of the third line in this deed into Lake Hopatcong, a distance of one hundred and eighty-five and eighty-nine hundredths (185.89) feet on a course of South twenty six degrees fifty-nine minutes west from the fourth corner of this tract, and the extension of the fifth line reversed, on a course of south twenty eight degrees, fifteen minutes west a distance of two hundred and sixteen (216) feet more or less into Lake Hopatcong.

Exhibit C-5.

Together with the right title and interest of the party of the first part in and to the roads and roadways, over the property hereinabove described and across the right of way of the Lake Hopatcong Railroad Company.

- 10 Together with all and singular the rights, liberties, privileges, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the revision and remainders rents, issues and profits thereof, and also all the estate, right, title, interest, use, property, claim, and demand of the said defendant of, in and to and out of the same * * * be sold to pay and satisfy in the first place unto the said John F. Gentzel complainant, five thousand four hundred and fifty dollars, the principal and interest
- 20 secured by his certain mortgage given by Kenvil Lumber & Store Company to William F. Headley bearing date the twenty fifth day of February, in the year one thousand nine hundred and twenty-nine, together with lawful interest thereon from the twenty-fifth day of February nineteen hundred and thirty-one until the same be paid and satisfied and also the costs of the said complainant, which said mortgage was recorded on March 6, 1929 in Book R. 11 pages
- 30 306 &c. Morris County mortgages and was assigned by said William F. Headley to said John F. Gentzel complainant by assignment of said mortgage bearing date April 2, 1929 duly acknowledged the same day before Virginia H. Hackett, Notary Public of New Jersey; and in the second place to pay and satisfy unto the defendant National Union Bank of Dover the sum of Eighty nine hundred and sixty dollars.

Exhibit CM-7.

Exhibit CM-7.

WILLIAM F. HEADLEY, Owner and Landlord, and CO-INVESTORS BUILDING & LOAN ASSOCIATION, Tenant, agree as follows:

The Landlord hereby devises, leases and farm-
 lets to the Tenant, for the period beginning June 10
 1, 1931 and ending October 1, 1931, the premises
 at Lake Hopatcong, New Jersey, known as the
 "Lake Shore Cottage" together with the plot
 fifty feet front and rear and extending out into
 Lake Hopatcong a distance of about one hundred
 eighty-five feet. Said plot being to the right
 of the property of Hockenjos & Hockenjos as
 one faces the lake, subject, however, to the right
 of the from time to time occupants of cottages
 on lots 7, 12, 13, 17, and 18 Map of Play House 20
 Park, to use said beach front for bathing pur-
 poses.

As and for the full rental for said premises,
 the Tenant hereby pays to the Landlord the sum
 of Two Hundred Fifty Dollars, receipt of which
 is hereby acknowledged; said Two Hundred Fifty
 Dollars being paid in advance in reliance on the
 Landlord's representation that he is the owner of
 said premises and there are no encumbrances
 thereon which might operate to terminate or de- 30
 feat the rights given to the Tenant hereby. It
 being agreed that in the event the rights given
 to the tenant are defeated or terminated by any
 third party, that on payment to the tenant the
 proportion of rent at the rate of Sixty-two
 Dollars and Fifty Cents per month for the un-

Exhibit CM-9.

expired term the Landlord shall be released
from any further liability under this lease.

WILLIAM F. HEADLEY,

Owner & Landlord

Co-Investors Building and Loan Association,

By NORBURY C. MURRAY,

Tenant.

10

Exhibit CM-9.

Rockaway, N. J. May 14, 1931.

Mr. W. F. Headley, Atty.

128 Market St.

Newark, N. J.

20

Dear Mr. Headley:—

I am handing you thru. Mr. Fred H. Buck my
Certified Check for \$3,500.00 the same being the
balance of the purchase price of the premises
known as the "Lake shore" lot formerly owned
by the Roxbury Lumber Co. as per your agree-
ment of April 9th 1931. Draw the deed for this
property to John H. Miller. Borough of Rock-
away Morris County New Jersey and deliver
the same to Fred H. Buck—it being impossible
for me to see you to day or to-morrow.

30

Very truly yours

JOHN H. MILLER.

40

Exhibits CM-6, CM-10.

Exhibit CM-6.

May 14, 1931

Mr. Miller

Mr. Buck was here with check for \$3500.00 but refused to leave the check unless he got deed first

W. F. HEADLEY.

10

Exhibit CM-10.

May 15, 1931.

William F. Headley, Esq.,
128 Market St.,
Newark, New Jersey.

Dear Sir:—

20

Pursuant to contract of April 9, 1931, I am tendering to you herewith the sum of \$3500 in cash, being the balance of the purchase price of \$4000 for which sum you agreed to convey to me property now owned by you situated at Lake Hopatcong, \$500 has heretofore been paid to you on account of the purchase price, and the \$3500 herewith tendered as stated above, represents the balance.

In consideration of this sum of \$3500, plus the \$500, I ask for the immediate delivery of a properly executed deed for the property as called for by the contract.

30

The property in question is Lake Shore property at Lake Hopatcong formerly owned by Roxbury Lumber Company and purchased by you at foreclosure sale, being bound on one side by Lake Hopatcong, on another by the Hockenjos property, on another by the Central Railroad prop-

40

Exhibit D-2.

erty and on another by the property of the South Orange Club.

Very truly yours

JOHN H. MILLER,

By FRED H. BUCK, Agt.

10

Exhibit D-2.

Rockaway, N. J. May 8th 1931

Mr. William F. Headley
128 Market St
Newark, N. J.

Dear Mr. Headley:

20 You will find the Agreement signed herewith as suggested—

If you care to submit an offer to me for the release of the Hopatcong property agreement to convey in writing—I will consider it and endeavor to compromise with the parties interested—and would suggest you act at once if you care to do it

Very truly yours

30

JOHN H. MILLER.

40

Exhibit D-3.

Exhibit D-3.

THESE ARTICLES OF AGREEMENT,
Made the twenty-third day of Apri, in the year
One Thousand Nine Hundred and thirty-one.
BETWEEN

WILLIAM F. HEADLEY

10

of the Borough of Madison in the County of
Morris and State of New Jersey, of the First
part;

AND

WILLIAM HOCKENJOS, Jr.

of the Township of Jefferson in the County of
Morris and State of New Jersey, of the Second
part;

WINESSETH, that the said Party of the First 20
Part, for and in consideration of the sum of

THREE THOUSAND DOLLARS

to be paid and satisfied as hereinafter men-
tioned; and also in consideration of the covenants
and agreement hereinafter mentioned, made and
entered into by the said Party of the Second
Part, doth agree to and with the said Party
of the Second Part, that the said
Party of the First Part, will well and sufficiently
convey to the said Party of the Second Part, 30
his heirs and assigns, by Deed of
free from all encumbrance

on or before the 20th day of May 1931 next ensu-
ing the date hereof, all that lot, tract, or parcel
of land and premises, hereinafter particularly
described, situate, lying and being in the Town-
ship of Jefferson in the County of Morris and
State of New Jersey.

BEING part of a tract conveyed by J. Lud-
low Kitchell, et als Trustees of the Hopatcong 40

Exhibit D-3.

Pioneer Association to the Kenvil Lumber & Store Company, by deed dated 28th day of March, 1910 recorded in Morris County Clerk's Office in Book F-20 of deeds, pages 523 and the part hereby intended to be conveyed:

- 10 BEGINS at a brass pipe set at the Beginning corner of a tract sold to William Hockenjos and William Hockenjos, Jr. and runs thence (1) along the fourth line of said Hockenjos' tract reversed South 26 degrees 59 minutes west 131.14/100 feet to a point in the fourth line of the whole tract; thence (2) along the fourth line of the whole tract North 44 degrees 30 minutes west 43.97/100 feet; thence (3) North 28 degrees 15 minutes East 100 feet more or less to the right of way of the Central Railroad; thence (4) Southeasterly
20 along the right of way of the Central Railroad about 42 feet to the place of Beginning.

- TOGETHER with all the right, title and interest of said Headley in lands above and under water lying between the extension of the third line in this deed into Lake Hopatcong, a distance of one hundred and eighty-five and eighty-nine (185.89) hundredths feet on a course of South 26 degrees 59 minutes west from the third corner of this tract and the extension of the first line
30 reversed, on a course of south 28 degrees, 15 minutes West a distance of 216 feet more or less into Lake Hopatcong.

TOGETHER with the right, title and interest of the party of the first part in and to the roads and roadways, over the property hereinabove described and across the right of way of the Lake Hopatcong Railroad Company.

- AND THE SAID WILLIAM HOCKENJOS, Jr. for himself, his heirs executors and administra-
40

Exhibit D-3.

tors, doth covenant, promise and agree to and with the said Party of the First Part, his heirs, executors, administrators and assigns, the the said Party of the Second Part, will pay and satisfy, or cause to be paid and satisfied, unto the said Party of the First Part, the said sum of

Three Thousand Dollars

10

as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say: The sum of One thousand dollars on signing this agreement, the Receipt whereof is hereby acknowledged:

\$1000.00

Balance of Two thousand dollars in cash on or before May 20th, 1931:

2,000.00

\$3000.00

20

AND IT IS FURTHER AGREED, by the parties to these presents, that the said Party of the Second Part, his heirs and assigns may enter into and upon the said land and premises on the 20th day of May next ensuing the date hereof, and from thence forward take the rents, issues and profits to his and their use.

AND IT IS FURTHER Agreed, by the parties hereto, that the said Deed shall be delivered and received, and payments made at office of W. F. Headley, 128 Market St., Newark, N. J. between the hours of ten in the forenoon and three o'clock in the afternoon on the said 20th day of May, Nineteen hundred and thirty one.

30

Place of passing title changed to 4 P. M. at office of S. C. Meyerson, Dover, N. J. O. K. W. F. Headley

AND for the performance of all and singular the covenants and agreements aforesaid, the said

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Exhibit D-3.

parties do bind themselves and their respective heirs, executors and administrators; and they hereby agree to pay, upon failure to perform the same, the sum of which they hereby fix and settle as liquidated damages therefor.

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

WILLIAM F. HEADLEY (L. S.)
WILLIAM HOCKENJOS JR. (L. S.)

SIGNED, SEALED and DELIVERED
in the presence of:

SAMUEL C. MEYERSON.

20

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

BE IT REMEMBERED, that on this 15th day of March in the year One Thousand Nine Hundred and thirty-one, before me A master in Chancery of N. J. personally appeared

William F. Headley

30 who, I am satisfied, is the Grantor in the within Agreement named; and I having first made known to him the contents thereof, he thereupon acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed:

SAMUEL C. MEYERSON,
M. C. of N. J.

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Exhibit Hockenjos-5.

(Back of paper)

AGREEMENT for the Sale of Real
EstateWilliam F. Headley
and
William Hockenjos, Jr.

10

Dated, April 23rd, 1931

Received in the Clerks Office of the
County of Morris, New Jersey, on the
16th day of May 1931 at 8:03 o'clock
A. M. and recorded in Book P-32 of
Deeds for said County on pages 461 &c.E. Bertram Mott
Clerk Paid \$2.25

20

Exhibit Hockenjos-5.William F. Headley Book Q. 32 of deeds for
and Etta M. Headley Morris County pages
his wife 317 etc.

to Dated May 18, 1931

William Hockenjos and Ack'd May 19, 1931

William Hockenjos Rec'd May 19, 1931
Jr. 8:19 A. M.

30

Cons \$1. & other.

Warranty deed conveys same premises de-
scribed in Contract (Exh. D. 3) between said
William F. Headley and William Hockenjos, Jr.,
bearing date April 23, 1931 and recorded May 16,
1931 in Book P. 32 of Deeds pages 461 etc.

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Exhibit Boucher-1

William F. Boucher, Sheriff of the County of Morris, New Jersey, on the 10th day of May 1931, at New York City, New York, and

William F. Boucher, Sheriff of the County of Morris, New Jersey, on the 10th day of May 1931, at New York City, New York, and

William F. Boucher, Sheriff of the County of Morris, New Jersey, on the 10th day of May 1931, at New York City, New York, and

Exhibit Boucher-2

William F. Boucher, Sheriff of the County of Morris, New Jersey, on the 10th day of May 1931, at New York City, New York, and

William F. Boucher, Sheriff of the County of Morris, New Jersey, on the 10th day of May 1931, at New York City, New York, and

