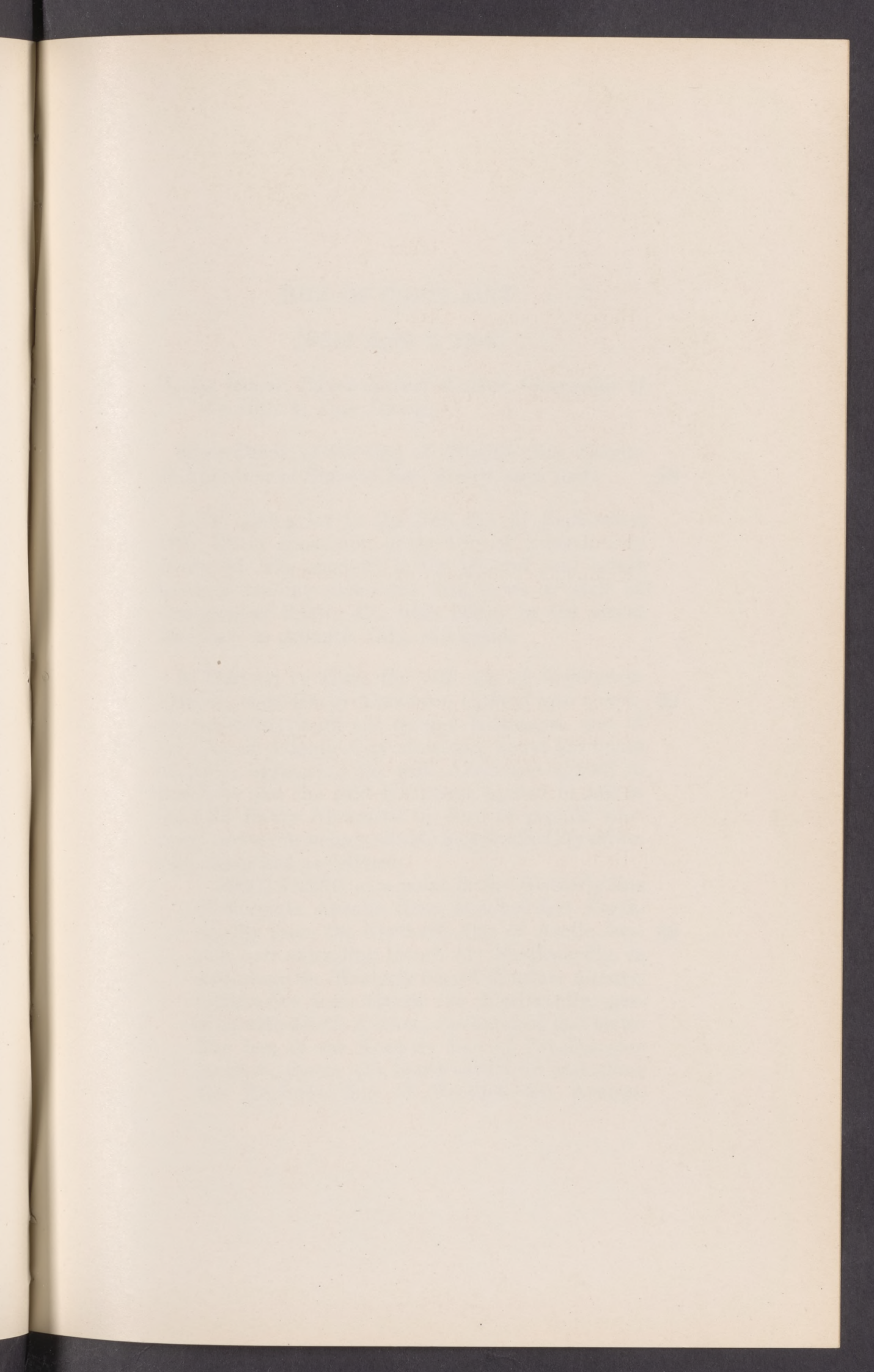
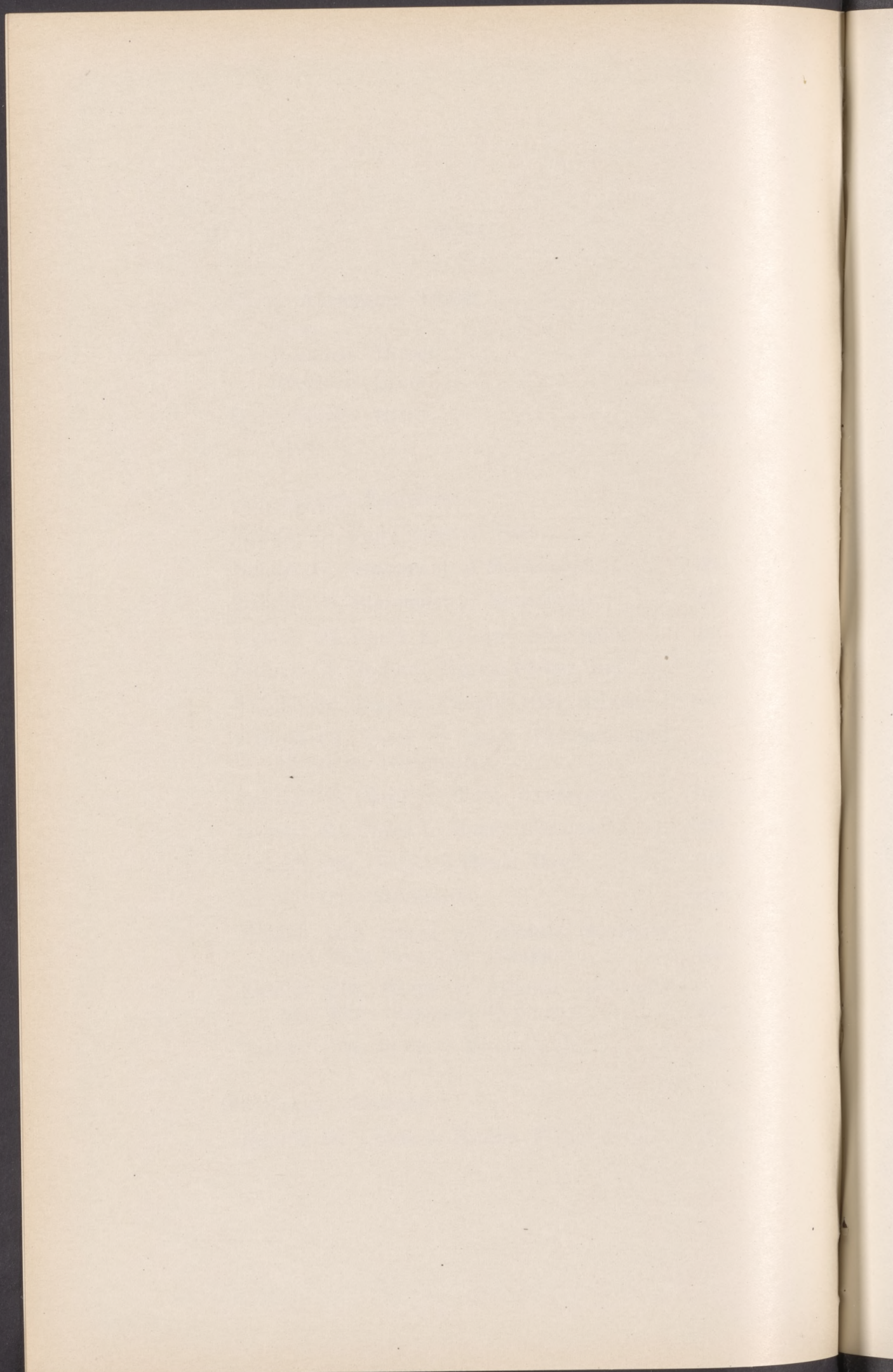


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BILL OF COMPLAINT.

(Filed April 2, 1924.)

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

Myer Davis, of the City of Atlantic City, County
of Atlantic and State of New Jersey, says that: 10

1. On and prior to the 14th day of September,
1923, Harry Abramson, of the City of Atlantic City
aforesaid, was engaged in the general real estate
business trading under the firm name or style of
Commercial Realty Co. with offices in the Segal
Building, in Atlantic City, aforesaid.

2. That on or about the 14th day of September,
1923, the said Harry Abramson entered into a writ- 20
ten agreement with one George Kleinhans, also of
the City of Atlantic City aforesaid, under the terms
of which agreement the said Abramson agreed to
purchase and the said Kleinhans agreed to sell to
the said Harry Abramson by deed of general war-
ranty certain premises, situate in Atlantic City aforesaid,
described as follows:

BEGINNING at a point in the Westerly line
of Virginia Avenue, three hundred feet North-
wardly from the Northerly line of Arctic Ave- 30
nue, and extending thence (1) Northwardly, in
and along the Westerly line of Virginia Avenue,
twenty-five feet; thence (2) Westwardly, par-
allel with Arctic Avenue, one hundred and sixty-
five feet to the Easterly line of Presbyterian
Avenue; thence (3) Southwardly, in and along
the Easterly line of Presbyterian Avenue,

twenty-five feet, and thence (4) Eastwardly, parallel with Arctic Avenue, one hundred and sixty-five feet to the Westerly line of Virginia Avenue, and place of beginning, being known and designated as No. 122 North Virginia Avenue.

3. That in and by the terms of the agreement aforesaid, the said Abramson agreed to pay to the
10 said Kleinhans as and for the consideration of the conveyance of the premises aforesaid the sum of eleven thousand dollars (\$11,000), five hundred dollars (\$500) in cash on the signing of the agreement, five thousand dollars (\$5,000) by the said Abramson assuming a building and loan mortgage, three thousand dollars (\$3,000) by said Abramson assuming a second mortgage, and two thousand five hundred dollars (\$2,500) in cash on the day of settlement.

20

4. That complainant has in his possession true copy of the agreement aforesaid and will be able to produce the original thereof when and where required.

5. That by the terms of the written agreement aforesaid between the said Abramson and the said Kleinhans, the said Abramson became the equitable owner of the premises above described and being
30 the equitable owner thereof and having a right to compel the conveyance thereof to him, he, the said Abramson, intending to deceive and defraud complainant, represented to the complainant that as agent for the complainant, the said Abramson could purchase the property above described for complainant for the sum of twelve thousand dollars (\$12,000),

and that said price was the "rock bottom price" at which said property could be bought by the said Abramson as agent for complainant.

6. That complainant, not knowing that the said Abramson had entered into a written agreement for the purchase of said premises and that he was the equitable owner thereof, and being deceived by the false representation of Abramson as aforesaid, authorized the said Abramson to enter into negotiations for the purchase of said premises for the account of complainant at the price of twelve thousand dollars (\$12,000). 10

7. That the said Abramson, in pursuance of his pre-conceived scheme of deceiving complainant, and making complainant believe that he, the said Abramson, was not the equitable owner of said premises, and that in the purchase thereof, he, the said Abramson, was acting for the benefit of and as the agent of complainant, prepared and executed an agreement for the sale of said premises to Harry Davis, also of the City of Atlantic City, wherein and whereby the said Abramson agreed to convey said premises to the said Harry Davis for the sum of twelve thousand dollars (\$12,000), which said agreement was dated the 17th day of September, 1923, and under the terms of which, the said Davis agreed to pay the said Abramson the contract moneys in the following manner: 20

One thousand dollars (\$1,000) in cash, which amount said agreement recited as having been paid. 30

Five thousand dollars (\$5,000) by the assumption of a first building and loan mortgage.

Three thousand dollars (\$3,000) by the assumption of a second mortgage; and

Three thousand dollars (\$3,000) in cash on the day of settlement.

8. That it was further provided in said agreement between said Abramson and Davis that settlement should be made on or before the 17th day of December, 1923, at the offices of The Atlantic Guaranty & Title Insurance Company, whereas the agreement between Abramson and Kleinhans provided that settlement should be made at the offices of said company on or before the 13th day of December, 1923.

10 9. That the agreement of the 17th day of September, aforesaid, recites the payment by the said Harry Davis to the said Abramson of the consideration of one thousand dollars (\$1,000), and in said agreement, the said Abramson acknowledged his payment of said one thousand dollars (\$1,000) by the said Harry Davis, but the complainant avers the fact to be that said recital of payment is untrue and that the one thousand dollars (\$1,000) which was received by Harry Abramson was not the check of
20 Harry Davis, but was the check of complainant and was obtained by the said Abramson in the following manner, to wit: On the 17th day of September, 1923, Harry Davis, for the consideration of one thousand dollars (\$1,000), assigned to complainant the written agreement of the 17th day of September, 1923, between the said Harry Davis and Harry Abramson, and received from complainant a check of one thousand dollars (\$1,000), which he, the said Davis, immediately turned over to the said Harry
30 Abramson, and the said Harry Abramson deposited the said check to the credit of the Commercial Realty Co., which said check, while signed by complainant, was actually filled in by the defendant, Harry Abramson, and was made payable to the order of Harry Davis by the said Harry Abramson without knowledge on the part of complainant so that complainant charges that the said Harry Abramson used the

said Harry Davis as a "Straw man" in order to deceive complainant and make complainant believe that he, the said Abramson, was not the equitable owner of the said premises under his agreement between said Kleinhans and himself, but that he was the agent of Harry Davis whom the said Abramson represented to be the equitable owner of said premises.

10. The complainant, relying on the false representations of the said Abramson, did, on the 16th day of November, 1923, make settlement for the purchase of the property hereinabove described and paid therefor in cash ten thousand nine hundred sixty-one dollars and ninety-six cents (\$10,961.96) in addition to the one thousand dollars (\$1,000) paid by him at the time of the signing of the agreement aforesaid. 10

11. That complainant is foreign born and does not speak the English language fluently and cannot read English, nor could he nor did he understand the force and effect of the written agreement between himself and Harry Davis, or between himself and Harry Abramson, nor did he understand that he was, in fact, purchasing the property described herein directly from the said Abramson, but that, on the other hand, he had relied on the false statements of the said Abramson and believed that the said Abramson was acting as his agent for the purchase of said premises from the owner thereof at the sum of twelve thousand dollars (\$12,000) and had complainant known that the said Abramson was the equitable owner of said premises and was selling to complainant said premises at an increased price of one thousand dollars (\$1,000), he would not have entered into the agreement aforesaid. 20 30

12. That by reason of the false representations of the said Abramson to the complainant, the said Abramson received for his own use the profit from complainant to which said Abramson was not and is not entitled and received, as well, commissions on the sale, which, together with the profits of the said Abramson, are equitably the property of complainant and should be accounted for by defendant.

10 13. That the defendant is as to the moneys received by him as aforesaid the trustee of this complainant.

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

1. That the said Harry Abramson, who is the defendant in this suit, may answer this bill of complaint without oath and each averment therein made.

20 2. That he set forth and discover what profits were made by him in the transaction particularly set forth in the bill of complaint.

3. That he may be decreed the trustee for the complainant as to all of such profits so made and that he account therefor and pay the same to complainant.

4. That the complainant may have such further relief as may be equitable and just.

30 5. That a writ of subpoena may issue commanding the said defendant to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

BOLTE, SOOY & GILL,
*Solicitors for and of Counsel
with Complainant.*

ANSWER.

(Filed May 8, 1924.)

IN CHANCERY OF NEW JERSEY.

Between

MYER DAVIS,
Complainant,

and

HARRY ABRAMSON,
Defendant.

On Bill, Etc.
Answer.

10

Defendant, Harry Abramson, of the City of Atlantic City, County of Atlantic and State of New Jersey, answering complainant's bill of complaint, says that:

20

1. He admits paragraphs 1, 2 and 3 of said bill.

2. He has not sufficient information to constitute a belief concerning the truth of the statements contained in paragraph 4 and leaves complainant to his proof of the same.

30

3. He denies paragraphs 5 to 7, inclusive, except that he admits the execution of an agreement between himself and Harry Davis, whereby he agreed to convey the premises in question to the said Harry Davis for \$12,000 on or before December 17th, 1923.

4. He admits paragraph 8.

5. He denies paragraphs 9, 10, 11, 12 and 13, except that he admits having made a profit of \$1,000 upon said sale.

SEPARATE DEFENSE.

1. Defendant was fully aware of all of the details
10 of said sale, made settlement accordingly on November 16th, 1923, and is, therefore, not entitled to relief in this court.

2. Said defendant is guilty of laches.

3. The authorization from the complainant to defendant, or the agreement of agency set forth in paragraph 6 of the complaint is without consideration and void.

20

Defendant, therefore, prays that he may be discharged with his proper costs.

HARCOURT & STEELMAN,
Solicitors for Defendant.

CONCLUSIONS.

(Filed Nov. 5, 1925.)

IN CHANCERY OF NEW JERSEY.

Between MYER DAVIS, <i>Complainant,</i> and HARRY ABRAMSON, <i>Defendant.</i>	}	On Bill, &c. On Final Hearing. Conclusions.	10
--	---	---	----

These conclusions not to be published in the official or unofficial reports. 20

MESSRS. BOLTE, SOOY & GILL, for the complainant.
 MESSRS. HARCOURT & STEELMAN, for the defendant.

INGERSOLL, V. C.:

The complainant files his bill asking for an accounting from the defendant, alleging that Abramson was acting as his agent in the purchase of a tract of real estate, and that he, the complainant, is entitled to receive from the defendant, the difference between the amount paid by defendant for the property and the amount which he, the complainant, paid therefor. 30

This is entirely a question of fact. I find that the complainant has not carried the burden of proof necessary to sustain the allegations of the bill. That he has not proven that Abramson was his agent at the time of the purchase by Abramson from Kleinhans, and that Abramson was not acting for himself in said purchase, and that the sale to Davis was from Abramson. Though the deed was made directly from Kleinhans to Abramson, this is not under the evidence sufficient to prove that Abramson was acting as agent.

The bill will be dismissed.

FINAL DECREE.

(Filed Nov. 13, 1925.)

IN CHANCERY OF NEW JERSEY.

20

Between

MYER DAVIS,
Complainant,

and

HARRY ABRAMSON,
Defendant.

On Bill, Etc.
Final Decree.

30

This cause coming on to be heard before our Court of Chancery, held in the Chancery Chambers in the City of Atlantic City, in the presence of Bolte, Sooy and Gill, of counsel with complainant, and Harcourt

and Steelman, of counsel with the defendant, and the pleadings and proofs having been heard together with the arguments of the respective counsel, and the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court that the complainant is not entitled to the relief sought and prayed for by it in his bill of complaint,

It is on this 10th day of November, 1925, ordered, adjudged and decreed that the complainant's bill be and the same hereby is dismissed with costs. 10

And it is further ordered and decreed that the complainant pay to the defendant the costs of this suit to be taxed, and that execution issue therefor according to the practice of this Court.

E. R. WALKER,
C.

Respectfully advised,
R. H. INGERSOLL,
V. C.

20

30

[ENDORSED]

Service of the within Notice of Appeal duly acknowledged this 8th day of February, A. D. 1926.

Harcourt & Steelman,
Solicitors of Defendant.

PETITION OF APPEAL.

10

(Filed Feb. 10, 1926.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

MYER DAVIS,
Complainant-Appellant,

and

HARRY ABRAMSON,
Defendant-Respondent.

}
Petition of Appeal.

20

To the Honorable, the Court of Errors and Appeals,
the last resort in all causes:

30

The petition of Myer Davis, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jer-

sey, bearing date the 10th day of November, 1925, wherein the said Myer Davis was complainant and the said Harry Abramson was defendant in this respect, to wit: That the said decree adjudges that the complainant is not entitled to the relief sought and prayed for him in his bill of complaint, and that the complainant's bill be dismissed with costs, and your petitioner humbly appeals from said final decree of the Chancellor which decrees that the
10 complainant's bill be dismissed with costs as aforesaid, upon the ground that the same is erroneous, in that the said decree should have been in favor of the complainant and against the defendant in accordance with the prayer of the bill of complaint.

Your petitioner, therefore, prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside, and for nothing holden.

And that your petitioner may have such relief in
20 the premises as to this Honorable Court shall seem meet.

BOLTE & SOOY,
Solicitors for Appellant.
W. F. SOOY,
Of Counsel with Appellant.

[ENDORSED]

30 Service of the within Petition of Appeal duly acknowledged this 8th day of February, A. D. 1926.

Harcourt & Steelman,
Solicitors of Defendant-Respondent.

ANSWER TO PETITION OF APPELLANT.

(Filed Feb. 13, 1926.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between
MYER DAVIS,
Complainant-
Appellant,
and
HARRY ABRAMSON,
Defendant-
Respondent.

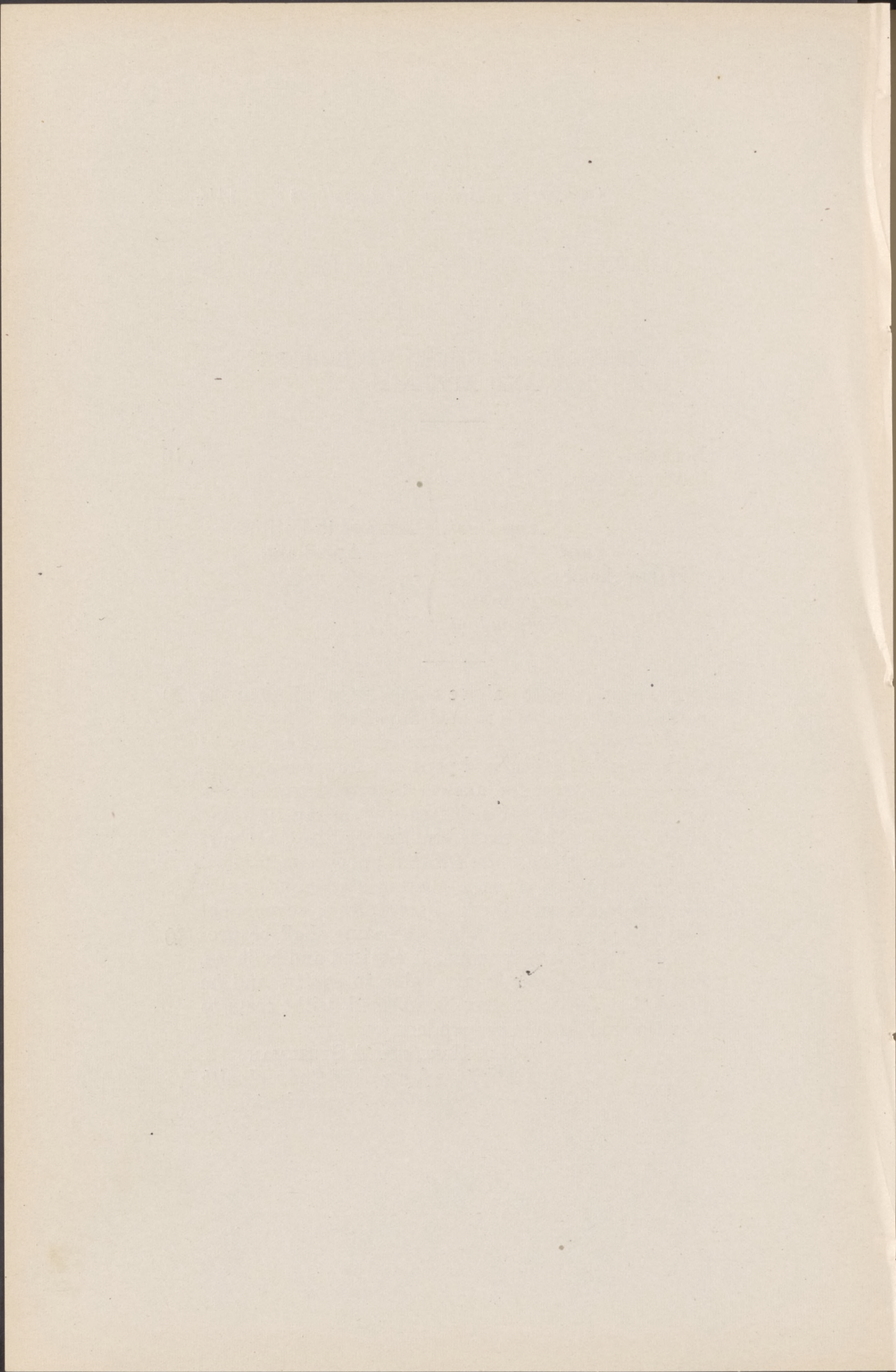
} Answer to Petition of
Appellant.

10

The answer of the above named respondent to the 20
petition of the above named appellant.

This respondent, not acknowledging all or any of
the matters which in said petition of appeal are con-
tained to be true, for answer thereto, nevertheless,
says and admits that a decree was on the 10th day
of November, 1925, made and entered in the Court
of Chancery, in the cause for that purpose mentioned
in the said petition, as is therein stated; but as to
the substance and form thereof, this respondent
prays to refer thereto when the same shall be pro- 30
duced. And this respondent is advised and believes,
that the said decree is agreeable to equity, and he
prays that the same may be affirmed, witht costs to
be adjudged to this respondent.

HARCOURT & STEELMAN,
Solicitors for and of Counsel with
Defendant-Respondent.



TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between

MYER DAVIS,
Complainant,

and

HARRY ABRAMSON,
Defendant.

On Bill, Etc.
Final Hearing.

10

Atlantic City, N. J., October 14, 1924.

20

TESTIMONY

Before HON. R. H. INGERSOLL, Vice-Chancellor.

APPEARANCES:

For the complainant, MESSRS. BOLTE, SOOY & GILL.

For the defendant, MESSRS. HARCOURT & STEELMAN.

30

GEORGE KLEINHANS, sworn for complainant.

Direct examination.

By Mr. Sooy:

Q. Mr. Kleinhans, where do you live?

A. At the present time, 3906 Winchester Avenue.

10 Q. You are employed by the fire department of Atlantic City?

A. Yes, sir.

Q. In September of 1923 were you the owner of property on Virginia Avenue known as number 122 North Virginia Avenue?

A. I was.

Q. What did that property consist of?

A. Do you mean——

Q. What kind of buildings were on it?

20 A. Frame buildings on Virginia Avenue, one-story brick and two-story frame.

Q. In the rear?

A. In the rear there was two-story frames; they were double houses in the rear.

Q. Being the owner of that property did you enter into an agreement with Harry Abramson with reference thereto?

A. I did.

30 Q. Have you the agreement with you?

A. I have.

Q. Will you let me see it? (Agreement produced.)

Witness is shown agreement dated the fourteenth day of September, 1923, between George Kleinhans of the first part, Harry Abramson of the second part, and is asked whether or not that is the agreement

he entered into with Mr. Abramson with reference to property in question?

A. This is the agreement.

Mr. Sooy: I offer that agreement in evidence.

(Agreement admitted and marked Exhibit C1.)

Q. After you had entered into that agreement did you make a settlement and dispose of the property 10 described in the agreement?

A. I did.

Q. Where did you make the settlement?

A. In the Land Title—downstairs.

Q. To whom did you draw your deed?

A. To Harry Abramson.

Q. Did you, in addition, to drawing a deed to Harry Abramson, draw one to Myer Davis?

A. I believe that was drawn afterwards.

Q. Who asked you to draw the deed to Myer 20 Davis?

A. The deed was drawn and I signed the deed.

Q. Where was the deed drawn, do you know?

A. That I don't know.

Q. Where did you sign the deed?

A. In the Land Title—

Q. That is the deed from yourself to Myer Davis was signed in the Atlantic Title Company?

A. Yes.

Q. What became of the deed that you had drawn 30 to Abramson direct?

A. I don't know.

Q. Did you deliver two deeds?

A. Well, there was one deed there for Harry Abramson and later on there was another deed for Myer Davis.

Q. Did you know Myer Davis in the transaction at all?

A. I did not.

Q. Did Myer Davis ever enter into any agreement to purchase it from you?

A. Not with me, no.

Q. Did you know that he was the purchaser of the property at the time of settlement?

A. I did not.

10 Q. And you thought you were conveying to Abramson?

A. To Harry Abramson.

Q. Who asked you to sign the deed that you signed conveying the property to Davis?

A. Harry Abramson.

Q. Mr. Davis didn't ask you to sign, did he?

A. No.

20 Q. Mr. Abramson asked you to execute that deed in the office of the Title Company at the time of settlement?

A. Yes.

Q. I notice that in the agreement between Abramson and yourself you agree to sell the property for eleven thousand dollars?

A. Correct.

Q. Was that consideration paid to you?

A. That is correct.

Q. Did you take back any mortgage at all in the settlement between yourself and Abramson?

30 A. No.

Q. The agreement provides that you should take back a two thousand five hundred dollar second mortgage, what happened to that second mortgage?

A. It was paid off.

The Court: The agreement you have here doesn't say so, the agreement you have offered in evidence.

Mr. Sooy: I have tried to make a copy, so I guess maybe it is a good thing.

(Question withdrawn.)

Q. The agreement offered in evidence, marked C1, provides for a mortgage of three thousand dollars, assumption of a mortgage of three thousand dollars, was there a three thousand dollar mortgage on the property? 10

A. My mother and father held that.

Q. Your mother and father?

A. Yes.

Q. Was that paid off?

A. Yes.

Q. At the time of settlement?

A. At the time of settlement. 20

Q. And the building and loan mortgage, do you know what happened to that?

A. Paid off.

Q. Do you know what was paid for the three thousand dollar mortgage?

A. Why twenty-seven hundred dollars.

Q. Twenty-seven hundred?

A. I think that was.

Q. Who was that paid by, do you know?

A. I couldn't say. 30

Q. But your transactions with reference to the agreement of sale and the sale and the settlement were with Abramson, were they?

A. With Abramson.

Q. Did Abramson ever advise you that he had sold the property to Davis?

A. No.

Cross-examination.

By Mr. Steelman:

Q. With whom were your transactions, Mr. Kleinhans?

A. With Harry Abramson. Oh, do you mean the—

Q. Just a minute; wait until I finish the question.

10 Q. With whom were your transactions at the time you entered into the agreement to sell the property to Harry Abramson, were they with Mr. Abramson?

A. No, they were with Fisher of Harris-Fisher Company.

Q. You didn't see Mr. Abramson at that time?

A. No, I did not.

Q. When was the first time you saw Mr. Abramson?

20 A. At settlement; the day of settlement, I believe.

Q. That was the date when the property was transferred from you to Mr. Myer Davis, is that correct?

A. Mr. Abramson.

Q. I understood you to say that there were two deeds drawn, one that was drawn to Mr. Abramson and another one which was drawn to Mr. Myer Davis?

A. I signed two deeds.

30 Q. You signed two deeds?

A. Yes.

Q. As a matter of fact, the first deed wasn't used at all, was it?

A. I don't believe it was.

Q. And the title went direct from you to Mr. Myer Davis?

A. I don't know how that would work; I signed

a deed first for Mr. Abramson and there was another deed signed for Mr.—

Q. When were these deeds signed, on the day of settlement?

A. The one for Harry Abramson was signed the day of settlement, yes.

Q. When was the other one signed?

A. I just don't know; a few days after that.

Q. Did you go to the Title Company more than once? 10

A. Yes.

Q. How many times did you go there?

A. Twice.

Q. Twice?

A. Twice.

Q. When did you get your money, on the day that you went there the first time, or the second time?

A. The day I went the first time, when the thing was settled.

Q. When was the three thousand dollar mortgage paid off? 20

A. Why that was, my mother and father had lost a mortgage and there had to be another, I just don't know what you call it, but I had to go over and get them one, another mortgage, or sign some kind of paper released and that was paid off a week later.

Q. Where did you get your money for that?

A. Out of the Title Company.

Q. How did the discussion arise as to the payment of the three thousand dollar mortgage, how did that come about? You recall the circumstances about the paying off of the three thousand dollar mortgage, how it came up? 30

A. Yes; they came back to me and asked me how much I would take off of that second mortgage if it was paid off.

Q. When did this happen, at the settlement?

A. No, before the settlement.

Q. Did you see Mr. Myer Davis there?

A. I don't recall it. I don't recall seeing him there.

Q. Do you know Mr. Myer Davis?

A. I do not.

Q. You don't recall his being there before the settlement?

A. Beg pardon?

10 Q. You don't recall his being there before the settlement?

A. No; I never was introduced to the gentleman, wouldn't know him.

By Mr. Sooy:

Q. This is Mr. Davis, Mr. Kleinhans, did you ever see him before?

A. No, I can't say as I did.

20 Q. Now then you say that at the first settlement you had not executed any deed to Davis and you had executed one to Abramson?

A. Abramson.

Q. After the first settlement you signed another deed to Davis, who asked you to do that?

A. Mr. Abramson.

Q. Where did he ask you to do it, do you remember?

A. No, I do not.

30 Q. Where did you sign the deed to Davis?

A. Title Company.

Q. And that was three days after the first—

A. I wouldn't say it was three days or two days, but sometime after.

Q. Some time after the first settlement you did that? Had you been paid your mortgage then?

A. Everything was paid off then, but the second mortgage.

Q. But the second mortgage?

A. Yes.

Q. Now, then, who was it that asked you how much you would take for the second mortgage?

A. Fisher.

Q. Fisher?

A. Yes.

Q. Was that before the first day of settlement? 10

A. Yes.

Q. And you had told Fisher prior to the first day of settlement how much you would take for the first mortgage, had you?

A. Yes.

Q. But on the first day of settlement they didn't pay the second mortgage off?

A. That was on account of some hitch in my mother's papers.

Q. She had lost the mortgage and that required 20 a release?

A. Yes.

By Mr. Steelman:

Q. That was Mr. Fisher and not Mr. Abramson who asked you how much you would take for the second mortgage?

A. Mr. Fisher, yes.

E. STEELMAN ROYAL, sworn for complainant.

Direct examination.

By Mr. Sooy:

Q. Mr. Royal, you are a resident of Atlantic City, are you?

10 A. Ventnor City; about the same thing.

Q. Employed by whom?

A. Seaboard Fire.

Q. What position?

A. Assistant secretary.

Q. As assistant secretary of the Seaboard Fire Insurance Company, do you have charge of the insurance business generally?

A. Yes.

20 Q. In September of 1923, do you remember Mr. Abramson bringing insurance policies to you on property situate at 122 North Virginia Avenue for either cancellation or some other action on those policies?

A. Well, there was policies came in but I don't recall just the transaction at the present time.

Q. Did policies on that particular property about that time come in?

A. Yes.

30 Q. And did Mr. Abramson come in with reference to those policies?

A. That I don't recall.

Q. Do you remember any conversation with Mr. Abramson with reference to his position with reference to the action that he was requiring on those policies, whether or not he was agent or whether or not he was owner or what?

A. I don't recall. You see Mr. Kleinhans, he was in there and Mr. Abrams was in, Harry Davis, and I don't recall just what the transaction was. I know I was figuring up with Mr. Kleinhans about the building and loan mortgage, about assigning the policies, how much it would take to cancel the building and loan mortgage and Tom Davis, but I don't recall my individual conversation with any of them outside of figuring up what amount it took.

Q. Now, then, was there or did there afterwards 10
—was there afterwards disclosed a discrepancy in the amount of returned premium that was due on the policies that Mr. Abramson brought in on this property at 122 North Virginia Avenue?

A. Why, if I recall correctly, there was an overcharge or some difference made there that I afterwards collected from Harry Abramson, if I recall right.

Q. Collected from or for Harry Abramson?

A. Collected from Harry for the Myer Davis ac- 20
count, if I recall it.

Q. Do you remember how much that amounted to?

A. About thirty dollars, if I recall.

Q. Did Mr. Abramson tell you whether or not he was representing the purchaser or himself? In other words, whether he was agent or whether he was dealing for himself with reference to his insurance?

A. The first I recall of it, he was to be made the 30
owner of it, he was to be the owner.

Q. And then what?

A. Then afterwards I don't know, whether the policies were cancelled or whether they were assigned to Myer Davis.

Q. Did he say anything about his connection with

the transaction, that is, as to whether or not he was representing someone in the deal or not?

A. That I don't recall.

No cross-examination.

MYER DAVIS, sworn for complainant.

10

Direct examination.

By Mr. Scoy:

Q. You are the complainant in this suit, aren't you, Mr. Davis?

A. Yes, sir.

Q. And you live in Atlantic City?

A. Yes, sir.

20 Q. And you lived here how long?

A. Twenty-four years.

Q. Whereabouts do you live?

A. I was living three year Michigan Avenue, three year I was living in Baltic Avenue and one year Baltic Avenue.

Q. Where do you live now?

A. Live now 208 North Pennsylvania Avenue.

30 Q. In September of 1923, did Harry Abramson come to you with reference to property situate 122 North Virginia Avenue?

A. Yes, sir.

Q. What did Harry Davis say to you with reference to that property—Harry Abramson, I mean?

A. He told me, he says "piece of property for sale for the firemen and he wants to have twelve thousand dollars, Mr. Davis, that will be a good buy

for you, buy it." He says he wanted to make a few dollar commission; he was coming with my son, Harry Davis, and I was satisfied to pay the twelve thousand dollars with this condition to buy from the fireman for twelve thousand dollars.

Q. He said that he would buy from the fireman for you this property for twelve thousand dollars?

A. No, he says "I am going to buy direct the property, I want to make a few dollar commission."

Q. I show you an agreement dated the seventeenth day of September, 1923, and ask you whether or not that was the date on which Abramson came to you with reference to this property? 10

A. Yes.

(Witness temporarily withdrawn.)

MISS ELIZABETH B. MITCHELL, sworn for com- 20
plainant.

Direct examination.

By Mr. Sooy:

Q. Miss Mitchell, what position have you with the Atlantic Title and Guaranty Company?

A. Assistant secretary.

Q. Were you assistant secretary in September, 30 1923?

A. I was.

Q. As assistant secretary of that company in 1923, did you make settlement for property known as 122 North Virginia Avenue?

A. Yes, sir.

Q. On what day was that settlement made?

A. November sixteenth, 1923.

Q. Who signed the applications or application for that settlement?

A. Harris Fisher Company.

Q. Was the application—what was the date of the application?

A. Seems to be an old one, September fourteenth, 1923.

10 Q. September fourteenth, 1923, Harris Fisher made application for settlement?

A. Yes, sir.

Q. Was there any subsequent application made for settlement therein outside of the Harris Fisher application?

A. No, sir.

Q. The application of September fourteenth was the name of the purchaser of the property mentioned?

A. Harry Abramson.

20 Q. Did you finally make the settlement, effect the settlement between the parties?

A. Yes, sir.

Q. To whom was the property conveyed at the date of final settlement?

A. To Myer Davis.

Q. By deed from whom?

A. George Kleinhans.

Q. Did Harry Abramson on that day take title?

A. No, sir.

30 Q. Did he on any day prior to the day of settlement take title?

A. No, sir.

Q. Who drew the deed from Kleinhans to Myer Davis?

A. I don't know.

Q. At whose procurement was the deed signed, do you know?

A. I don't know; we wouldn't have that.

Q. Where was it signed, do you know?

A. I do not.

Q. After the settlement was made to whom was—
after the settlement was made, the deed was sent
for record, was it not?

A. Yes.

Q. Did the deed come back from record?

A. Yes, sir.

Q. In whose possession did it come, yours? 10

A. Yes, sir.

Q. Where was the deed sent?

A. To Myer Davis.

Q. How was it sent to Myer Davis?

A. By a letter dated, enclosed in a letter of April
12, 1924, want me to read that?

Q. You have no objection to reading that letter,
have you, Mr.—I will call on you for the original
letter; she is reading from a copy.

20

Mr. Steelman: No, I will say at this time Mr.
Sooy has requested us to produce that letter, title
policy and the deed, but we have made a diligent
search and we are not able to locate those papers.

The Court: As I understand it, the letter is to
Myer Davis, the father.

A. "Mr. Myer Davis, care Commercial Realty
Company, Segal building, Atlantic City, New Jer- 30
sey,

Dear Sir:

We enclose herewith deed George Kleinhans to
yourself, dated November 16, 1923, recorded book
721, page 324, conveying premises Virginia Ave-
nue, also deed to George Kleinhans recorded book
653, page 454, and title policy number 4936 insuring

title to said premises, also cancelled mortgage recorded book 312, page 58, cancelled November 22, 1923. Yours very truly, Atlantic Title and Guaranty Insurance, E. B. Mitchell, secretary.”

Q. After that time, do you know whether or not Mr. Davis ever inquired as to where the deed had gone?

A. I don't know.

10 Q. Mr. Kleinhans has testified that there were two days fixed for settlement, what was the first date if you recall?

A. Our settlement, settlement shows just November sixteenth, 1923, as of that date, I don't know what date it was really made; deed was recorded November twenty-first.

Q. You don't have any present recollection whether there were two dates fixed for the settlement or not, do you?

A. No, I don't make the appointments.

20 Q. Your record shows settlement was made on the sixteenth?

A. Yes.

Q. Have you with you the statement of the settlement?

A. Yes, sir.

30 Q. So I won't have to use your copies, maybe I can use this; I show you what purports to be a statement of settlement with Harry Abramson, et. ux. to Myer Davis as of November 16, 1923, under application number 5186, and ask you whether or not that is a correct copy of the statement of settlement as appears on your records?

A. Yes.

(Paper offered and admitted, marked Exhibit C2.)

Q. I show you copy of statement of settlement, George Kleinhans and Harry Abramson, as of November 16, 1923, under application 5186, and ask you if that is a copy of the settlement as appears on your records?

A. Yes, sir.

(Paper offered and admitted, marked Exhibit C3.)

10

Q. So on the day of settlement there were two sets of figures made up, were they, Miss Mitchell?

A. Yes, sir.

Q. The one between Kleinhans and Abramson and the other between Abramson and Kleinhans—I mean and Davis?

A. And Davis.

Q. And there was no deed used between Kleinhans and Abramson?

A. No, sir.

20

Q. But the deed went direct from Kleinhans to Davis?

A. Yes, sir.

Q. Now, then, do your records show to whom the checks were paid for the consideration mentioned in the agreement?

A. Yes, sir.

Q. To whom were they paid?

A. For both settlements?

Q. For the settlement between Davis and Abramson. 30

A. I have all the checks here.

Q. And what?

A. There is the very first check given out to George Kleinhans.

Q. The first check given out was check of November 16, 1923, for \$4305.46, to George Kleinhans.

(Check offered, admitted and marked Exhibit C4.)

Q. Second check?

A. Commission check to Harris Fisher, \$330.

(Check offered, admitted and marked Exhibit C5.)

- 10 A. Check \$4161.50 to pay off building and loan mortgage.

The check marked C5 for commission was commission on what, from whom?

A. That was Mr. Kleinhans.

Q. Kleinhans to Fisher?

A. Abramson.

Q. No.

A. Harris Fisher Company got the check.

- 20 Q. The next check is a check for \$4161.50, Peoples Building and Loan Association and that was to pay for the building and loan mortgage due it?

A. Yes, sir.

(Check offered and admitted in evidence, marked Exhibit C6.)

A. Here is another check for fifteen hundred dollar mortgage to Elizabeth Kleinhans.

- 30 Q. Check dated 11/16/23 for fifteen hundred dollars to Jacob and Elizabeth Kleinhans was for what purpose, did you say?

A. Paying off a mortgage, second mortgage on the property.

Q. A Second mortgage amounting to how much?

A. Originally three thousand, reduced to fifteen hundred, installment mortgage.

Q. Do I understand that the check of eleventh month, sixteenth, 1923, for fifteen hundred dollars drawn to Jacob and Elizabeth Kleinhans was in payment of a mortgage of three thousand dollars which had been reduced by payment to fifteen hundred dollars?

A. Yes, sir; paid off building and loan mortgage and second mortgage from George Kleinhans to Jacob and Elizabeth.

(Check offered and admitted, marked Exhibit C7.)

Q. Now the next check?

A. To Harry Abramson.

Q. Check to Harry Abramson in the sum of \$474. dated 11/16 and endorsed by Harry Abramson, and I ask you what that was for?

A. That is the difference in the sale from Kleinhans to Abramson and from Abramson to Davis, would make up part of it.

Q. The \$475 represents, the check for \$474, just referred to represents a portion of the difference between the price realized by Abramson and that for which he was paying Kleinhans?

A. Yes.

(Check offered and admitted in evidence, marked Exhibit C8.)

Q. I show you check dated 11/16/23 for one hundred dollars drawn to the order of Abramson, by him endorsed, and ask you if that is another one?

A. That makes up another portion.

(Check offered and admitted, marked Exhibit C9.)

Q. What was the difference in price as shown by your records between that paid by Abramson to Kleinhans and the price paid by Davis to Abramson?

A. Thirteen hundred dollars.

Q. Have you any vouchers to show that Abramson got the balance of the thirteen hundred dollars?

A. On the second settlement Mr. Abramson received one thousand dollars from Mr. Davis.

Q. What is that?

A. In the last settlement Mr. Abramson received a thousand dollars on account and that makes up five hundred.

Q. Did you know at the time of settlement that Harry Davis had any interest in this property?

A. No, sir.

Q. Was there anything said by either Mr. Abramson or Mr. Harry Davis with reference to any interest that Harry Davis had in the property?

A. I don't recall.

Q. Was Harry Davis present at the settlement?

A. I don't recall.

Q. At any rate he did not participate in the settlement by the receipt of any cash or anything else?

A. No, sir.

Q. Now, then, did you find—who instructed you as to how to draw the checks received by Abramson on account of the purchase price of these properties?

A. I suppose Mr. Abramson.

Q. Did you know or was it called to your attention at any time that Harry Abramson had assigned the agreement between himself and Mr. Kleinhans for the sale of this property?

A. No, sir.

Q. Did it afterwards transpire that there was a difference in the insurance adjustment?

A. Well, I remember something about that. I think Mr. Davis came in and called attention to a settlement in order to try and recover something about fire insurance.

Q. Don't your records show that the fire insurance adjustment was wrong and that there was afterwards a readjustment?

A. It might be; I don't know.

10

(Question repeated.)

A. There is a letter dated December 31, 1923, about fire insurance.

Q. Which calls your attention to the fact that there was a difference in the adjustment and there was coming back to Abramson how much?

A. Difference is \$50.50.

Q. Did you receive that check from Kleinhans?

20

A. I suppose so.

Q. Do you know whether Mr. Abramson got that check in settlement of that difference?

A. I don't know.

Q. Your records wouldn't show that? \$50.50 that was, wasn't it?

A. Yes, sir.

Cross-examination.

By Mr. Steelman:

30

Q. Miss Mitchell, what was the difference between—what were the figures that made up the difference between what Abramson paid to Kleinhans and what Myer Davis paid to Abramson?

A. Making up the thirteen hundred dollar difference you mean?

Q. Yes.

A. You mean you want to know what makes up the thirteen hundred dollars?

Q. I understand you to say it was thirteen hundred dollars?

A. Difference, yes, sir.

Q. Can you tell us how that is made up?

10 A. \$574 in two checks to Mr. Abramson and then \$500 on account, when Mr. Abramson bought the property from Kleinhans he made a deposit of five hundred dollars; when he sold to Davis he received \$1,000; there is five hundred, that makes \$1074. Now, then, there is an allowance in the settlement from Abramson to Davis of two hundred dollars; I don't know what that is for, allowed to purchaser \$200, that makes \$1274.

Q. That is the allowance to Myer Davis, isn't it?

20 A. Yes, credit to Davis of two hundred.

The Court: Just one moment. You say this is a copy of yours. Show me any two hundred on that? There is a difference of \$2.08 in the amounts anyhow, but that is not the point.

A. Our statement from Abramson to Davis shows Davis should have a credit of two hundred dollars, which is right here; it is not on that statement.

30 That would make a settlement all except the thirteen dollars, drawing deed five dollars, revenue stamps eight, which would represent part of thirteen hundred dollars; \$1074; two hundred twenty-six dollars. Didn't Davis get this two hundred?

Q. That would be an allowance the other way then I should think, Miss Mitchell.

A. Abramson gave that to Davis, two hundred dollars?

Q. Yes.

By Mr. Sooy:

Q. Does that \$200. have anything to do with the amount for which the second mortgage was bought, or wouldn't you know?

A. I have all the checks here; I could show. 10

Q. The second mortgage shows only a payment of fifteen hundred dollars. Does your first settlement between Kleinhans and Abramson show that the amount paid for that second mortgage was fifteen hundred dollars?

A. Yes, fifteen hundred.

Q. And not three thousand?

A. Yes, sir.

Q. So that in the second settlement, that is the settlement between Myer Davis and Abramson, 20 Myer Davis was charged with the full three thousand dollar second mortgage, wasn't he, which he paid off?

A. Yes, sir.

Q. In other words, Abramson had settled that mortgage by paying fifteen hundred dollars—

Mr. Steelman: If the Court please, I object.

Mr. Sooy: I will withdraw that, because that is 30 very leading, I admit.

Q. Your records show that Myer Davis in payment of that second mortgage paid how much money?

A. Fifteen hundred.

Q. Myer Davis I mean, not Abramson?

A. That statement is three thousand, I don't think I have here——

Q. And that Mr. Abramson paid in settlement of that mortgage fifteen hundred dollars?

A. Yes, sir.

By the Court:

10 Q. The record shows, doesn't it, Miss Mitchell, the purchase money mortgage of Abramson, is none at all showing there to him, and this balance due the seller of \$6341, that shows an amount due the seller of \$6341.21, which was made up in your settlement by a payment to Kleinhans, Kleinhans and Kleinhans of \$5805.46—the building and loan of \$4161.50 was paid by you separately?

A. Yes, sir.

20 Q. Abramson was allowed \$574, was paid to Abramson \$574, was that five hundred dollars on account and seventy-four dollars some adjustments?

A. That is all I have.

30 Q. I am just taking the checks off, if you take 574, that brings the balance of \$6135.46, the amount due the seller after deducting that \$574, leaves the amount due the seller of \$6135.46, which is only a few dollars. You say the payment of the second mortgage wasn't made directly to the mortgagee, only fifteen hundred on this second too, this three thousand dollar mortgage, \$2700 was paid, and Kleinhans got the difference?

A. We paid fifteen hundred dollars for the mortgage; we wouldn't know anything about it.

Q. You paid fifteen hundred, but the other fifteen hundred went to the seller.

Q. Then this mass of figures, I want to get back to this three hundred dollars again, instead of Mr.

Abramson getting an additional three hundred dollars, or was it two hundred dollars, Miss Mitchell, three hundred dollars, that was a credit that was allowed Mr. Myer Davis, was it not?

A. Yes, sir.

Q. So, so far as your records show, what Mr.—

Mr. Sooy: Mr. Steelman, I said three hundred and you said two hundred.

10

A. It is two hundred.

Q. That two hundred dollars then was a credit to Mr. Myer Davis, was it not?

A. Yes, sir.

Q. So that Mr. Harry Abramson, according to your records, did not get thirteen hundred and some odd dollars?

A. No, sir.

Q. The amount that he actually received through your office was \$574?

20

A. Yes, sir.

Q. And the additional five hundred?

A. That was paid outside.

Q. Do you recall any discussion in your office at the time of settlement, Miss Mitchell, as to why the deed was being made from Mr. Kleinhans to Mr. Myer Davis instead of Mr. Harry Abramson?

A. I do not, no, sir.

Q. You have no recollection of that at all?

A. No, sir.

30

Q. Do you recall whether or not there was more than one date when you made this settlement?

A. No, sir.

Q. There was only the one date, which was November sixteenth, 1923, is that correct?

A. I think so.

Q. Your records show whether or not you ever received from Mr. George Kleinhans in re-payment the amount which he had been overpaid on the insurance adjustment?

A. No, sir; I suppose he paid that though.

10 GEORGE KLEINHANS, recalled.

Direct examination.

By Mr. Sooy:

Q. Mr. Kleinhans, after the day of settlement, was your attention called to the fact that there was a mistake in the adjustment of insurance?

A. Why, there was some time in December, December or January, I won't say which.

20 Q. As a consequence of that mistake, did you repay \$50.50?

A. I did not.

Q. Was your attention called to it?

A. Yes.

Q. Why didn't you repay it?

A. Well, I thought it was up to the title company; I didn't know.

Q. So that that wasn't repaid?

30 A. No, that fifty dollars was never repaid; I never did.

Q. I notice in the settlement between yourself and Abramson, as shown on Exhibit C3, that there was an allowance in the consideration to Abramson of three hundred dollars.

A. That was on paying the second mortgage off.

Q. In other words you sold—

Mr. Steelman: If your Honor please, I don't want "in other words"——

Q. You say that was an allowance for what?

A. Second mortgage, paying the second mortgage off.

Q. What did Abramson pay as a consideration for the cancellation of that mortgage?

A. Why, twenty-seven hundred dollars.

Q. Out of that twenty-seven hundred dollars your mother and father got how much? 10

A. Fifteen hundred.

Q. You got the balance?

A. I got the balance.

Q. And there was due your father and mother fifteen hundred dollars?

A. Fifteen hundred dollars.

Q. So that you made an allowance to Mr. Abramson of three hundred dollars?

A. Yes. 20

Mr. Steelman: Was there a check for that three hundred dollars?

The Court: No, check was for \$1500 to the father and mother and the balance was in the check made direct to Mr. Kleinhans.

Cross-examination.

30

By Mr. Steelman:

Q. You received all of that?

A. I received the balance, yes.

Mr. Steelman: That three hundred dollars was paid to him by the title company.

The Court: Wasn't paid to anybody; they paid fifteen hundred dollars to the holder of the mortgage, Kleinhans and Kleinhans on that date, evidenced by the check, and the balance of \$1200 was included in the check to Mr. Kleinhans.

Mr. Sooy: We don't dispute \$2700 was paid for that mortgage.

10

MYER DAVIS, recalled.

Direct examination.

By Mr. Sooy:

Q. Now, then, you say that in September you had a conversation with Mr. Abramson with reference
20 to the purchase of this property?

A. Yes, sir.

Q. What did Abramson say to you?

A. Abramson came over to me and he says to me: "Fireman got three houses, one Virginia and two in Presbyterian, twin, and he wants to have \$12,000, and only want to make a few dollars commission, and you can get the property." I give Mr. Abramson one thousand dollar check.

Q. You say that you gave Mr. Abramson check for
30 one thousand dollars?

A. Yes, sir.

Q. What did you give it to him for, for what purpose?

A. To buy the property for me from Mr. Fireman direct, you will make out of it commission from the fireman.

Q. In other words, at the time you had your conversation with Mr. Abramson you gave him a check for one thousand dollars?

A. Yes, sir.

Q. For the purpose of buying from Mr. Kleinhans this property?

A. Yes, sir.

Q. I show you check dated September 17, 1923, signed "M. Davis" in the sum of one thousand dollars and ask you whether or not that is your signature? 10

A. Well,—

Q. Whether that is your signature?

A. Yes, sir, Mr. Abramson—

Q. Wait a minute. At the time you signed the check I have just shown you, was the check filled in?

A. Check when—he filled out first.

Q. At the time you signed it, was the check filled in, or was it filled in after you signed it? 20

A. After when he make it out, I think, then I sign the check.

Q. Now, at the time you signed the check, did you know what was in the check?

A. No.

Q. Why not?

A. I know I give thousand dollars to Mr. Abramson to buy me the property.

Q. Why do you say that you did not know what was written in the check? 30

A. No.

Q. Why do you say that? Can't you read?

A. No.

Q. Then, when you signed this check, did you know that it was made payable to the order of Harry Davis?

A. No, I gave it to Mr. Abramson. That is his own writing.

(Check offered and admitted in evidence, marked Exhibit C10.)

Q. In whose handwriting is the body of this check?

A. Mr. Abramson.

Q. Mr. Abramson, you say?

A. The name, that is my name.

Q. Outside of your name, who wrote that check?

A. Mr. Abramson.

10 Q. Then it is in his handwriting, is it?

A. Yes.

Q. Did you know, at the time you gave Mr. Abramson that check, that he had made it out to the order of Harry Davis?

A. No.

Q. Did you know at that time that Harry Davis had anything to do with the Kleinhans property?

A. They were both partners.

Q. They were partners?

20 A. Yes.

Mr. Steelman: I object to that, if the court please.

A. They were both partners.

The Court: What is the objection?

Mr. Steelman: If the court please, it is a conclusion in the first place.

30

The Court: Oh, yes, but I will permit a general statement if it becomes necessary.

Mr. Sooy: I will connect that up.

Q. How did Harry Abramson trade, in what name was he doing business at the time?

A. In his name.

Q. Did you know of a firm by the name of the Commercial Realty Company?

A. No.

Q. You say that Harry Davis and Harry Abramson were in partnership?

A. Yes.

Q. What business were they in?

A. Buying properties and selling them.

Q. Where was Harry Davis at the time you gave the check to Harry Abramson?

A. Outside in the street.

Q. Outside in the street?

A. Yes, when he was making out the check.

A. At the time you signed the check and gave it to Harry Abramson, did they ask you to sign what purports to be an assignment of agreement dated September seventeenth which I now show you?

A. I can't read.

Q. But did you sign this?

20

A. Yes, I signed this; yes, sir.

Q. And at the time you signed that paper, did you read what is above it?

A. No.

Q. Why not?

A. I can't.

Q. Did the name, Harry Davis, appear on that paper at the time you signed your name Myer Davis?

A. No.

Q. Did you know at the time you signed as a witness that the paper which I now show you was an assignment from Harry Davis to you of an agreement dated the seventeenth day of September, 1923, between Harry Kleinhans and Harry Davis?

A. No, I did not.

Q. I mean Harry Abramson and Harry Davis?

A. I did not.

30

Q. At the time you signed this as a witness, did you know or at the time you gave your check for one thousand dollars, did you know that Harry Davis was agreeing to sell to you the Kleinhans property?

A. No.

Q. Who did you think owned the property then?

A. The fireman.

Mr. Sooy: I offer that in evidence, whatever it is;
10 I don't know. I want everything in.

(Paper admitted and marked Exhibit C11.)

Q. Now, then, Mr. Davis, when you went to the settlement you paid to the title company how much money for consideration of the property?

A. Twelve thousand dollars.

Q. And you gave them, or did you give them at that time check dated November sixteenth, 1923, for
20 \$8161.96?

A. Yes.

Q. Who filled that out for you?

A. I can't tell you exactly who fill out; I know I signed my name, but I can't exactly find out who filled out.

Q. Did the check for \$8161.96 represent the amount that you owed for the property?

A. Yes.

30 (Check admitted and marked Exhibit C12.)

Q. I also show you check dated November 16, 1923, for \$2800. and ask you for what that check was given?

A. For the second mortgage.

Q. For the second mortgage of three thousand dollars?

A. Yes.

(Check admitted and marked Exhibit C13.)

Q. So that you got an allowance of two hundred dollars, on that second mortgage?

A. Yes.

Q. Do you know whether Mr. Harry Abramson got an allowance of three hundred dollars?

A. No.

10

Q. Who told you that you could pay off this mortgage by paying twenty-eight hundred dollars for it?

A. When I bought this property from the fireman Mr. Kleinhans told me—I forget the name—Mr. Abramson came and told me that there is a property to buy with a fireman that is four thousand dollars down and eight thousand dollars stand on a little mortgage, come to settlement there was a building and loan and a second mortgage, and I find out I wouldn't have had nothing from this property and I paid everybody. 20

Q. You paid off everybody?

A. Everybody and give me another second mortgage, two hundred dollars.

Q. Who gave you the two hundred dollars reduction on the second mortgage?

A. Mr.——

Q. Abramson?

A. Yes.

Q. Did he tell you that he had received an allowance of three hundred dollars? 30

A. No, he didn't tell me nothing.

Q. Did you know that he had received an allowance of three hundred dollars?

A. No. How I know? I knew now, didn't know then.

Q. Did you at the time of settlement have any negotiations whatsoever with Harry Davis with reference to taking the property from Harry Davis?

A. No, I didn't know nothing.

Q. Did you ever get the deed and title policy papers for this property?

A. No.

Q. Did you ever inquire of Harry Abramson where the deed was?

10 A. I find out this week Abramson got my deed.

Q. Did he ever send it to you?

A. No.

Q. Did he ever send you the title policy?

A. The title?

Q. Yes, title policy—you don't know what that is, I guess—then, did you know at the time you signed the agreement on the seventeenth day of September and at the time you gave to Harry Abramson the check for a thousand dollars that Harry Abramson
20 had already agreed to buy this property from Kleinhans for himself?

A. No, I did not.

Q. Did Harry Abramson tell you that he, Harry Abramson, had agreed with the fireman to buy it for himself?

A. I don't know.

Q. And at the time you gave Harry Abramson the check for one thousand dollars whose property—I mean what connection did you think Harry Abramson had with the deal?
30

A. With the deed?

Q. With the deal, what was he going to do with the deal?

A. Taking commission from the fireman.

Q. He told you then he was going to take commission?

A. He told me before I give him the thousand dollars because going to make a few dollar commission from the fireman, that is all.

Cross-examination.

By Mr. Steelman:

Q. Mr. Davis, who actually came to you and put this proposition up to you? 10

A. This gentleman.

Q. Who?

A. Mr. Kleinhan—

The Court: Who?

A. I forget his name.

Q. This gentleman here?

A. Yes.

Q. Harry Abramson? 20

A. Yes, Harry Abramson.

Q. Who was with him?

A. My son, Harry Davis.

Q. Where did they talk to you, in your grocery store?

A. In my store, yes.

Q. Where did you sign this agreement?

A. This agreement in my store.

Q. In your store?

A. Yes, sir. 30

Q. Harry Davis was there?

A. Yes.

Q. And Harry Abramson?

A. Yes.

Q. And Harry Davis wasn't on the outside in the street?

A. When he make out the check was Harry Davis in the street, when he make out the check ain't by himself, he was out, my son was out and Harry Abramson make out the check for thousand dollars, and I signed my name.

Q. To whom did you give that one thousand dollar check?

A. To Abramson.

10 Q. Don't you know that in the bill of complaint that you have filed in this case that you say this: "On the seventeenth day of September, 1923, Harry Davis, for the consideration of one thousand dollars, assigned to complainant a written agreement of the seventeenth day of September, 1923, between the said Harry Davis and Harry Abramson and received from the complainant a check for one thousand dollars which he, the said Davis, immediately turned over to the said Harry Abramson?"

A. I don't know nothing.

20 Q. Didn't you know that that was in the bill of complaint in this case?

A. No.

Q. Then, if that is in the bill of complaint, that is not a correct statement, is it?

Mr. Sooy: I object to that, if the court please.

The Court: Sustain the objection.

30 A. What is the idea——

The Court: No question.

Q. So now, Mr. Davis, you say that Harry Abramson was the man to whom you gave that check?

A. Yes, sir; his handwriting too.

Q. Who signed the assignment from Harry Davis to you?

A. Harry Davis to me, didn't sign nothing.

Q. Whose signature is that?

A. I don't know. I don't see no signature when I signed this.

Q. You didn't see any on there?

A. None.

Q. And you don't know what this says up above it?

10

A. No, I can't read and write at all.

Q. And you have been in Atlantic City for how long?

A. Twenty-four years.

Q. Who else was there beside Harry Davis and Harry Abramson?

A. Nobody.

Q. Just you three?

A. Yes.

Q. Now, when did you first find out, Mr. Davis, that Harry Abramson himself had an agreement to buy this property from Kleinhans?

20

A. I just find out just now; I find out by the title company when I came over to Mr. Abramson and I bring him over the settlement sheet and I tell him he want any money, he says what for?

Q. Not so fast.

A. And I am not telling you so fast, I am telling you where I was, I was come over to Mr. Abramson's office——

30

Q. Just a moment. You may not be talking fast, but I can't understand you. When did you first find out that Harry Abramson had an agreement with Mr. Kleinhans to buy this property for himself?

A. I find out after I had settlement with the title company.

Q. How long afterwards?

A. I can't tell you, you know.

Q. About how long?

A. About a month or six weeks.

Q. A month or six weeks?

A. Yes.

Q. Then what did you do?

A. What did I done? I was coming up to find out in the title company if it is true, if he take away from me thirteen hundred dollars, and I find it out, and I was coming to ask Mr. that they should give me my insurance policies and see what I had settled in the title company for the money they take it away from me and hold it five or six month after then they send away this paper to the insurance company, they didn't give me direct, they didn't give me direct the papers back.

Q. The title company doesn't, you mean?

A. Yes, take it away from me, and I was going to him six weeks, and I tell him, "you owe me money," and I find out the interest, you know, for one month interest, rows of all kind, I leave the office and was going over to the lawyer.

Q. Who was this you were having this conversation with?

A. What?

Q. With whom did you have this conversation, with the title company?

A. Yes, I got the sheet of paper from the title company, take away thirteen hundred dollars from me.

Q. Did you go to Mr. Abramson?

A. And I can't talk to him no more.

Q. I didn't ask you that, did you go to Mr. Abramson?

A. No.

Q. Did you go to him and demand the money that you thought that he had?

A. Yes, he knew; why I should go to him demand it?

The Court: Did you?

A. No.

Q. You never went to him at all?

A. No.

Q. Did you have any conversation with him at all after that? 10

A. No.

Q. Then, if you felt, Mr. Davis, that he had over a thousand dollars of your money wrongly, why didn't you go to him?

A. I can't go to him any more.

Q. Pardon me.

A. I can't go any more to him.

Q. Can't go any more?

A. I can't go any more to him because I can't speak to him. I was going six weeks, was enough asking for my papers and for my insurance papers and for the rest of the money, he didn't want to answer me. 20

Q. Now, Mr. Davis, I understood you to say that you can neither read nor write?

A. I can't read nor write. Never can. I ain't got no education at all in American language.

Q. Why did you sign this paper then?

A. What paper? I signed my name, they tell me to sign it and I signed it. 30

Q. Why did you sign it, just because they told you to?

A. What?

Q. Why did you sign it, just because they told you to?

A. They told me to sign the paper and I sign it.

Q. You didn't know what was in the paper?

A. No.

Q. Had no idea what was in that paper?

A. No.

Q. And you signed a check for one thousand dollars, didn't you?

A. Yes.

Q. Was the check filled in, the figures and the name of the person to whom it was to be paid, was that filled in before or afterwards?

10 A. I don't know, I can't read.

The Court: He is talking about the check now, was the check filled in, the amount and the name before you signed it or afterwards?

A. Before I signed it, after, he told me to sign it, I signed my name.

The Court: I want to call counsel's attention, so
20 that there will be no confusion, Mr. Myer Davis has never signed the paper in the sense of signing it; his name is there as a witness.

Mr. Steelman: I understand that.

Q. Mr. Davis, where was the date and the name of the payee, the one thousand dollars, \$1000. written in there, where was that put in, in your store?

A. In my store on my counter by Mr. Abramson
30 and I signed my name afterwards.

Q. You signed it after it was put in?

A. Yes, soon as it was filled up, he told me to sign it and I signed it, suppose to sign a check when I give it to him.

Q. Do you know, Mr. Davis, when you got this check back from the Marine Trust Company?

A. Yes.

Q. When?

A. I can't tell you that.

Q. About when?

A. I can't remember when I got it, I didn't exactly take out the dates of the checks.

Q. Was it before or after the settlement?

A. After the settlement.

Q. After the settlement?

A. After the settlement.

Q. How often do you get your bank statements? 10

A. Once in a while, a month, once in a while, too.

Q. Then from September seventeenth until the time you got the check was about two months, is that right?

A. I don't know; I can't tell you exactly.

Mr. Sooy: He said he got it after the settlement.

Q. By the way, did you examine these checks 20 when you got it back from the bank?

A. No, I didn't examine them.

Q. You never looked at them at all?

A. No. Maybe I know them, sometimes maybe somebody tell me I didn't pay them, I have proof I pay, that is all.

Q. When was the first time you did look at this check after you got it back?

A. I suppose when I need them.

Q. When was that? 30

A. I can't say when was it.

By Mr. Sooy:

Q. When you say someone took your papers away, who was it took them away?

A. The gentleman.

Q. Harry Abramson?

A. Yes.

Q. You said the title company?

A. No, it was Abramson take away from me.

By Mr. Steelman:

Q. What papers did he take away?

A. Settlement.

10 Q. Settlement sheet?

A. Yes and my policy, insurance policy, and hold them six weeks, he don't want to give to me, and I was telling to him, he says to me "I ain't got it, when I get good and ready I will give it to you."

Q. When was that?

A. When I used to come to his office.

Q. Mr. Davis, I don't know whether I understand you correctly or not, but a little while ago I understood you to say that you never had any conversation with Mr. Abramson after that settlement?

20

A. After the settlement?

Q. Did you or did you not have any conversation with Mr. Abramson after the settlement?

A. I was coming to his—after the settlement I was coming asking for the rest of my money, he says to me, "give me the settlement sheet paper"—give it to him, then he asked me for the insurance policy, I give it to him, when I try come back to ask for it he don't want to give it to me.

30 Q. When did you finally get your insurance policies?

A. I get them from the fire insurance company.

Q. You got them from the first insurance company?

A. After that I give him, I have no list I brought over to him there, yes, but my money he took away

from me the policy and last about six weeks, then he sent the insurance policy back to me.

Q. That is all.

By Mr. Sooy:

Q. I show you a check drawn by the Commercial Realty Company, Harry Abramson, president, to Myer Davis, dated January twenty-third, 1924, for \$6.59, which is marked 'in full to date, account in- 10 insurance, &c.' and ask whether or not you got that check?

A. Yes, I got it.

Q. Who sent it to you?

A. Mr. Abramson.

Q. You didn't deposit it, did you?

A. No.

Q. Is the insurance referred to in this check the insurance on this property that you were settling for in September? 20

A. Yes.

Q. Is this supposed to cover the mistake that was made in the amount?

A. That is supposed to cover the mistake.

(Check offered in evidence.)

Mr. Steelman: If your Honor please, I can't see that has any bearing on this matter. Mr. Kleinhans has stated he never repaid to any of the parties 30 concerned in this case the amount he was overpaid.

The Court: But here is a check from the, as I understand it, coming from Harry Abramson as an officer to Davis, account of settlement of insurance; I will permit it.

(Check admitted and marked Exhibit C14.)

HARRY ABRAMSON, sworn for complainant.

Direct examination.

By Mr. Sooy:

Q. Who was the Commercial Realty Company?

10 A. At what time?

Q. In September, 1923?

A. Myself personally.

Q. That is all.

COMPLAINANT RESTS.

DEFENDANT'S TESTIMONY.

20

ROBERT E. FAGAN, sworn for defendant.

Direct examination.

By Mr. Steelman:

Q. Mr. Fagan, at the time, on or about September the fourteenth, for whom were you or by whom were you employed?

30 A. Harris Fisher Company.

Q. Are you familiar with the details of this transaction?

A. Some of them.

Q. Did you have charge of the deal wherein Mr. Abramson bought from Mr. Kleinhans?

A. I drew the agreement between Mr. Kleinhans and Mr. Abramson.

Q. That is the agreement that has been offered in evidence?

A. Yes, I drew that agreement, that is I dictated the agreement.

Q. And this agreement acknowledges the receipt of five hundred dollars in cash upon the execution of the agreement, is that the check by which you received that cash?

A. I don't remember whether this is the check that came in there. 10

Q. I will offer the check of September 14, 1923, Commercial Realty Company, Harry Abramson, payable to Harris Fisher Company.

A. I suppose it is.

(Check admitted and marked Exhibit D1.)

Q. Were you present at the settlement?

A. Yes.

Q. Who were you representing in this settlement? 20

A. As agents we represented both parties.

Q. In whom was the—there has been some testimony as to a deed that was made out from Mr. Kleinhans to Mr. Harry Abramson, was that deed used?

A. No. We brought that deed in to settlement and found that Mr. Abramson had a judgment against him and then it was agreed that the title should be taken—

30

Mr. Sooy: I object to all this.

Q. Why wasn't it used?

Mr. Sooy: I object to what may have happened as between Mr. Abramson and Mr. Fagan out of the presence of Mr. Davis with reference to some transaction they had.

The Court: How can that be admissible?

Mr. Steelman: If the Court pleases, I am trying to show why the deed wasn't placed in Mr.—

The Court: Unless Mr. Davis was a party to it, how can that be binding upon him?

Mr. Steelman: If the Court please, they are
10 charging us with fraudulent conduct. Now part of the fraudulent conduct is the fact that title wasn't taken in Mr. Harry Abramson. We have got that to explain, certainly.

The Court: That is no part of it at all. The charge of fraud is that he hadn't any connection with him at all, so far as the title is concerned, isn't it?

20 Mr. Steelman: If the Court please, it seems to me we should be entitled to show that there was an agreement. We have first of all showed that there was an agreement between Mr. Kleinhans and Harry Abramson. Now at a later time, when they had the settlement, they themselves have testified that there was a deed there made out from Mr. Kleinhans to Harry Abramson. Now that deed for some reason wasn't used, they stated. A deed was
30 made from Mr. Kleinhans directly to Mr. Myer Davis. Now it is a part of the same transaction and we certainly ought to be able to show why the deed between Harry Abramson and Kleinhans and Mr. Abramson wasn't used.

The Court: I can't see how you can bind Mr. Davis at all by that. Sustain the objection.

Q. The title then was taken from Mr. Kleinhans direct to Myer Davis, is that correct?

A. Yes.

Q. Was Mr. Davis there, Mr. Myer Davis present at that time?

A. I am not clear on that, but I think he was.

Q. Do you recognize Mr. Myer Davis, the gentleman who just left the stand?

A. I have seen him around town; I just don't remember whether he was at settlement or not. 10

Q. You can't say whether he was there at that time or not?

A. No.

The Court:- You said that you represented both parties, do you mean that you represented Mr. Myer Davis?

A. No, represented Abramson and Kleinhans.

Q. Were you there when the figures were made up? 20

A. Yes, sir.

Q. Have you any recollection of the circumstances concerning the payment of that second mortgage?

A. I was not clear on it. I remember that there was a second mortgage paid off and there was an allowance made; that is all I remember.

Q. Do you know who got that allowance?

A. I don't remember, no. 30

Q. Who got the commission on the sale from Kleinhans to Abramson?

A. Harris Fisher, Incorporated.

No cross-examination.

HARRY ABRAMSON, recalled for defendant.

Direct examination.

By Mr. Steelman:

Q. What is your business, Mr. Abramson?

A. At the present time I am in the fruit business.

10 Q. What business were you in on or about September 14, 1923?

A. In the real estate business.

Q. Are you the Harry Abramson who purchased from Mr. Kleinhans by an agreement dated September fourteenth, the property in question?

A. I am, sir.

20 Q. Will you tell the court briefly what happened after you purchased that property or after you signed this agreement for the purchase of the property?

A. Why at that time Mr. Harry Davis, a son of the complainant here, thought he had a customer in view——

Mr. Sooy: I object to what Mr. Harry Davis thought.

The Court: Yes, what was done; proceed.

30 A. And he asked me whether or not we wanted to sell the property.

Mr. Sooy: I object to any conversation.

The Court: Sustain the objection.

Q. Mr. Abramson, just tell exactly what you did with reference to this agreement of sale, never mind

what Mr. Harry Davis thought or what he said to you. Did you have a conversation with Mr. Harry Davis?

A. Yes.

Q. As the result of the conversation with Mr. Davis, what did you do?

A. I gave him the agreement assigned.

Mr. Sooy: I object to what he did.

10

The Court: I will permit that to that extent that he assigned that agreement to Harry Davis.

A. And he in turn took it over to his father.

Q. Did you go with him?

A. I did not.

The Court: Let it be stricken out what Harry Davis did, if he didn't go with him. He can't tell what Harry Davis did.

20

Q. Do I understand that you gave the agreement to Mr. Harry Davis?

A. Yes.

Q. Turned the agreement over to him?

A. Yes, and he went to his father.

The Court: Let that be stricken out.

Q. Don't answer that question because you don't know, or not supposed to, anyway. Now did you see Mr. Harry Davis later on? 30

A. Yes, sir.

Q. Did he give you a check?

Mr. Sooy: I object to this being leading.

The Court: Very leading.

Q. There has been offered in evidence an agreement Exhibit C11, what purports to be an agreement between Harry Abramson trading as the Commercial Realty Company and Harry Davis, is that your signature?

A. Yes, sir.

10 Q. And was such an agreement actually entered into between you and Mr. Harry Davis?

A. Yes, sir.

Q. On the back of the agreement is drawn what purports to be an assignment of that agreement?

A. Yes, sir.

Q. Do you know whose signature that is?

A. Harry Davis'.

Q. Did you ever have any dealings with Mr. Myer Davis in connection with this transaction?

A. Only at the time of settlement.

20 Q. Did you have any dealings with him at the place of business on Pennsylvania Avenue in connection with this deal?

A. No, I have never—

Q. Did you ever go over there to see him in connection with it?

A. I never did.

30 Q. Did you ever tell Mr. Myer Davis that Mr. George Kleinhans, the fireman, had a property to sell for eleven thousand dollars and that you wanted to sell it to him for twelve thousand dollars and that you wanted to do it to make a commission on it?

Mr. Sooy: I object to that because never any such testimony, first place, and second place is because absolutely leading.

The Court: I will permit if if it is the testimony that has been given. In the recital is it not—

Mr. Sooy: He says "Did you ever tell Mr. Myer Davis that you were going to sell to him a property for twelve thousand dollars for which you were paying Kleinhans eleven?"

The Court: Sustain the objection, if that is the question.

Q. Did you ever tell Mr. Myer Davis that Mr. Kleinhans had a property for sale for twelve thousand dollars and that you wanted to sell it to him, Myer Davis, and that all you wanted to make on it was the commission? 10

A. I never did.

Q. Were you present at the time that the settlement took place in the title company?

A. Yes, sir.

Q. Was Mr. Myer Davis there?

A. Yes, sir.

Q. Did you ever tell him that you would act as agent in order to purchase this property for him for twelve thousand dollars from the fireman, Mr. Kleinhans? 20

A. I never did.

Q. What did you make on this property?

A. Why about nine hundred and some odd dollars, maybe nine hundred and fifty or nine hundred and sixty, something like that, approximately nine hundred and fifty dollars.

30

Cross-examination.

By Mr. Sooy:

Q. You never spoke to Mr. Myer Davis with reference to this transaction up until the day of settlement, is that right?

A. That is right.

Q. Never saw him or talked to him about it in any way whatsoever?

A. I don't say I never saw him because——

Q. I mean saw him and talked to him?

A. Never spoke to him about this transaction, no, sir.

Q. And never did want any, with reference to the transaction with Mr. Myer Davis, never did anything?
10

A. No, I never did anything.

Q. In so far as Mr. Myer Davis was concerned, your connection with him with reference to this property was absolutely nothing up until the day of settlement?

A. That is right.

Q. You knew, however, according to your statement, that Harry Davis had assigned to Myer Davis his rights under an alleged agreement between yourself and Harry Davis?
20

A. Yes, I knew that.

Q. How did you know it?

A. Why because I received the cash from Mr. Davis.

Q. And Mr. Davis gave you the cash, did he?

A. Yes.

Q. Harry Davis?

A. Yes.

Q. What did you do with the cash?

30 A. Deposited it.

Q. What form was the cash in?

A. It was a check.

Q. A check?

A. Yes.

Q. And you had never seen that check until the time that Harry Davis gave it to you, had you?

A. I didn't understand that.

Q. You had never seen the check until the time Harry Davis gave it to you?

A. That is right.

Q. So that the first thing that you knew about a check for a thousand dollars that you received from Harry Davis was when he presented it to you?

A. That is right.

Q. And he presented it to you and whose check was it?

A. Mr. Myer Davis' check.

10

Q. Signed by him?

A. That is right.

Q. For one thousand dollars?

A. That is right.

Q. Dated the seventeenth of September?

A. I think it was.

Q. In other words, about three days after your agreement with Mr. Kleinhans?

A. I don't remember the exact date of our agreement.

20

Q. You had never seen that check up until the time Harry Davis presented it to you?

A. That is right.

Q. You are sure of it?

A. Yes, sir.

Q. You didn't know, up until the time Harry Davis presented that check to you, that Myer Davis had given such check?

A. How could I?

30

The Court: That is not the question. Did you know?

A. No, I didn't know.

Q. What did Harry Davis give to you at the time you assigned the agreement to him, between yourself, I mean the time you agreed to sell to Harry Davis, what did he give to you?

A. Why he gave me the thousand dollar check.

Q. This thousand dollar check of Myer Davis he gave to you at the time you gave him the agreement to sell?

A. Yes, sir.

By the Court:

Q. Davis had no agreement prior to that time?

10 A. No, sir.

Q. Harry Davis I mean?

A. No, sir.

By Mr. Sooy:

Q. Now, let's see if you are right about that; Harry Davis gave you a check for one thousand dollars signed by Myer Davis and at that time you gave Harry Davis an agreement that you would sell the
20 Kleinhans property to Harry Davis, is that right?

A. That is right.

Q. Up until that time Harry Davis had never had any agreement with you that you would sell him the Kleinhans property?

A. No, sir.

Q. Did Harry Davis, who gave you the check for the thousand dollars, know that you had an agreement with Kleinhans for the purchase of the property?

30 A. I don't know whether he did or not.

Q. How did Harry Davis know that you were interested in the Kleinhans property?

A. Because he evidently was trying to sell it for me.

Q. How did he know that you had it so that he could sell it?

A. Well, he was in my office all the time and al-

ways properties listed for sale and in that way he evidently found out.

Q. Did you have this property listed for sale?

A. Yes, sir; for a little time; I hadn't had it very long.

Q. That is the only way that you knew that Harry Davis knew anything about this property?

A. Well, he evidently may have heard me say something about it and in that way he found out.

Q. But you don't remember telling him anything about it? 10

A. I don't remember now.

Q. In other words, when he came in to you and said "here is a check for a thousand dollars from my father, Myer Davis, for the purchase of the Kleihan's property, you didn't even know that Harry Davis knew that you had that property?

A. I didn't say that.

Q. What do you say now?

A. I say this that he knew that I had bought this property and at the time of the check, when he gave me the check I didn't know that he had spoken to anybody else about the property. 20

Q. He knew, did he, that you had the property at the time he went over to his father on the seventeenth of September?

A. Sure he knew.

Q. Then you want to change from the former testimony that you don't know whether he knew or not? 30

A. I misunderstand you; had I understood it originally I surely would have testified that way.

Q. How did he know that you had this property?

A. Because I bought it; he surely should know it.

Q. Why should he necessarily know it?

A. Because seemed very much interested with reference to his father.

Q. When?

A. His father wanted to buy some property at that time or was in a position or in the market to buy some.

Q. Is that the only reason you can give as to why Harry Davis knew that you had bought this property from Kleinhans?

A. How could I tell otherwise?

10 Q. Had no conversation with him that you remember?

A. The only thing that I know at this time that, further than this time that he knew that I had bought the property, that was all there was to it.

Q. You don't know how he got it?

A. I had made agreements and I individually told him; that is the only way he could ever find out.

Q. You had made agreements, who had you made them with?

20 A. Had made them with Tom Fisher, of the Harris Fisher Company.

Q. What kind of agreements?

A. Agreements of sale for the purchase of this property.

Q. That is between yourself and Mr. Kleinhans?

A. That is right.

Q. After you got the check from Davis, did you go right over to Harris Fisher and Company, and have them draw a contract for you?

A. Couldn't do that.

30 Q. What did you do?

A. I got the check from Mr. Davis about three days later.

Q. Three days later than the agreement that you had drawn between yourself and Davis?

A. Between Kleinhans and myself.

Q. He knew you got that?

A. Yes.

Q. Three days after that Mr. Davis came in with a check for a thousand dollars?

A. That is right.

Q. Then did you and he sit down at the typewriter and draw the agreement between yourself and Harry Davis?

A. Our stenographer, my stenographer, rather, done it.

Q. Your stenographer?

A. Yes.

10

Q. Right then and there at that time?

A. I didn't say right then and there at the time.

Q. How long after the receipt of the check?

A. I can't remember now, receipt of the check?

Q. The check of Myer Davis?

A. I don't remember.

Q. Well, you can remember whether you did it that same day or whether it was two days afterwards, can't you?

A. The only thing that I can remember is this, right after I purchased the property, Mr. Davis—

20

Q. No, answer the question.

A. That is the only way I can explain it, your Honor. I can't explain it any other way.

Q. At the time you drew the agreement between Harry Abramson and Harry Davis for the sale of the property from yourself to Harry Davis you say you had already in your possession the check for one thousand dollars from Myer Davis?

A. I may have had it, yes, sir.

30

Q. No. Didn't you say that you did have it?

A. I say I may have had it; I don't remember; I can't remember exactly.

Q. You don't remember now. Don't you remember that you testified that Mr. Harry Davis came from his father, Myer Davis, with a check and at

the time he gave you that check you had not written that agreement? Answer the question.

A. That is right.

Q. Then at the time you drew the agreement, who dictated it?

A. The assignment or the agreement?

Q. The agreement, who dictated that agreement?

A. I did.

10 Q. Did you also dictate the assignment on it at the same time?

A. No, I couldn't have done that.

Q. When did you dictate the assignment?

A. Must have been some time later, when we got the check.

20 The Court: Mr. Abramsen, you have just testified that you did not have the agreement drawn until after you received the check. Why did you make the agreement with Harry Davis when you got a check of Myer Davis for the consideration of it, first payment?

30 A. The reason why I did that, on account of the fact when we originally bought the property and when I came down to the title company to have the title examined, a few days later, Mrs. Mitchell, I think, called me up and told me that they would have to leave two thousand dollars to cover a judgment which I had, and when Mr. Davis brought the check to me I couldn't give him agreements direct because would have to put through my search, and I remember clearly now I made up these agreements between Mr. Davis and myself and I assigned my right to Mr. Davis and he in turn assigned off to his father, and that was the only reason why I did that and for no other reason.

Q. That is your explanation?

A. That is it, yes, sir.

Q. In other words, you could get rid of that judgment between than if the title to the agreement was in Myer Davis?

A. I wouldn't have to take title and if I wouldn't take title I wouldn't leave the profit I made up with the title company.

Q. But at the time you got the check for the thousand dollars, this agreement was not drawn nor the assignment had not been drawn, had it? 10

A. No, I think when we got the check for the thousand dollars, we drew the assignment, and went over to Mr. Davis and it was made there, and I don't remember.

Q. Did you go there?

A. No, I didn't.

Q. Don't know anything about what happened over there at all?

A. No, I didn't go there.

Q. Now, then, if all you say is true, you couldn't have seen the thousand dollar check until after Myer Davis had given it to Harry Davis and Harry Davis had brought it over to you, could you? 20

A. That is right, brought it to me.

Q. Now I show you check dated September 17, 1923, signed by Myer Davis in the sum of a thousand dollars and ask you in whose handwriting is the body of that check?

A. That is in my handwriting.

Q. Will you explain to the court how that happens to be in your handwriting when you never saw the check until Harry Davis brought it into your office after Myer Davis had signed it? 30

A. Mr. Davis is a son, Harry Davis is a son of Myer Davis and I should imagine——

Q. No——

A. —he would have a little faith in his son, wouldn't he?

Q. Not what you imagine.

A. The check was brought to me in blank and I asked Harry Davis, "Harry, how much does your father want to give?" Harry says, he says, "Make it out for a thousand dollars, they didn't know how much they were going to give deposit," and I made the check out right there and then at my office.

10

By the Court:

Q. Tell me just a moment, why did you make it in the name of Harry Davis?

A. Because I had assigned the agreement to Harry Davis.

Q. You just told us you hadn't assigned them at all.

A. I had made an agreement between Harry and myself.

20

Q. When did you make that agreement?

A. When they brought the check to me.

By Mr. Sooy:

Q. That is your explanation?

A. So far as I can remember, yes.

Q. So Harry Davis, without your knowing that he was going to do it at all, went over to his father, Mr. Davis, Sr. and told him about this property, entered into an agreement with him, came back to your office with a blank check and you filled it in for a thousand dollars and Harry and his father even then didn't know how much cash down they were going to pay, did they, so far as you know?

30

A. No, evidently they had arranged between themselves how much they were going to give; I didn't

know how much they were going to give at that time.

Q. Harry Davis, you just said, didn't know how much his father was willing to give, so you and Harry agreed on a thousand dollars?

A. No, sir; I said Harry—Mr. Davis, the old man, didn't know, evidently, how much he was going to give and evidently left it up to Harry.

Q. You didn't go around to that store at all, did you?

10

A. I positively did not.

Q. You didn't fill in that check when Mr. Myer Davis handed it to you, did you?

A. No, sir; I did not.

Q. You heard Mr. Myer Davis testify that he handed you the check over to his store and then he filled it out for him, handed it to you?

A. Yes, sir; that is his testimony.

Q. You knew Mr. Myer Davis couldn't read and write English, didn't you?

20

A. I didn't know.

Q. Did not?

A. No, sir.

Q. That is all. You got three hundred dollar allowance from Kleinhans at the settlement on account of the payment of the three thousand dollar second mortgage, didn't you?

A. Mr. Davis got that.

Q. Did you get a three hundred dollar allowance from Kleinhans on account of the payment of that mortgage?

30

A. I think I did and turned it over to Mr. Davis.

Q. I didn't ask for the last. I ask you did you get a three hundred dollar allowance?

A. I didn't actually receive it; it was credited to me.

Q. You were credited with it?

A. That is it.

Q. You say you turned it over to Mr. Davis?

A. I think it was turned over to Mr. Davis.

Q. What makes you think so?

A. Because I never got it.

Q. Don't you know, as a matter of fact, there was two hundred dollars of the three hundred dollars turned over to Mr. Davis?

10 A. I don't know whether it was two hundred, I thought it was three hundred.

Q. Don't you know that you got three hundred and you allowed Mr. Davis two hundred?

A. I don't know that.

Q. Look at the papers and see whether or not it don't show that you—I ask you whether Exhibit C3 don't show that you were allowed three hundred dollars on the settlement on account of the second mortgage, show you an item of \$10,700, which is the three hundred dollars less the purchase price you agreed
20 to give Kleinhans, and ask you whether or not the three hundred dollars as represented by the ten thousand seven hundred and the eleven thousand dollars, didn't constitute the three hundred dollar allowance on the second mortgage?

A. It does according to these statements but——

Q. It did according to this statement you say?

A. That is right.

Q. Were you allowed three hundred dollars by Kleinhans on account of the second mortgage?
30

A. According to the statement shows that.

Q. Were you?

A. Well, if it shows, if the statement shows it, I evidently was.

Q. Were you?

A. I can't remember exactly, must have been if the statement shows this.

Q. Now, then, I ask you to show me what allowance you gave to Mr. Davis on his settlement on account of the three hundred dollars?

The Court I think I will sustain the objection to that. This was said to be a copy of, and admitted by consent, of a settlement sheet; it was afterwards shown not to be a copy, and the two hundred dollars in question is on the original but not on this copy and it would be unfair to ask this witness. 10

Mr. Sooy: I saw that.

Mr. Steelman: Is the original here.

The Court: No; no one seemed to want it in.

Mr. Steelman: If you admit it is on the other sheet, what is the use putting the original in?

Mr. Sooy: I will have to have that to show that 20 other hundred dollars.

Q. Mr. Abramson, you say you must have gotten a three hundred dollar allowance?

A. Yes.

Q. Do you know what allowance you made Mr. Davis on account of the purchase on that three thousand dollar second mortgage?

A. I don't remember because Mr. Tom Fisher was there at the time of settlement and he handled the 30 entire commission.

Q. Never mind; I ask the answer be stricken.

The Court: He says 'I don't remember.'

Q. Do you know whether or not it was as great as three hundred dollars?

A. I think it was something like that.

The Court: I think we can save a great deal of time here on this. If I find it is necessary to give relief to the complainant it will have to go to a special master for an accounting. I say that now because by an examination of the figures, they don't tie up and I would have to find out why the settlement sheet don't tie up. Any other purpose you may proceed.

- 10 Mr. Sooy: Another purpose was the credibility of the witness but I don't think I need go much further.

The Court: Any other purpose, but, so far as the absolute figures, so far as the accounting is concerned, I would have to let it go to a master because it apparently doesn't check, as I said before.

20

HARRY DAVIS, sworn for defendant.

Direct examination.

By Mr. Steelman:

Q. Mr. Davis, you are the son of the complainant, aren't you?

A. Yes, sir.

- 30 Q. When you went to see him with reference to purchasing this property, did Mr. Abramson go with you or did you go alone?

A. Absolutely alone.

Q. Whom did you see at your father's place of business?

A. Him, my stepmother, another woman was there and a girl.

Q. Did you discuss the purchase of the property with him at that time?

A. Absolutely; in front of the four of them.

Q. Did you tell him what the purchase price was?

A. Yes, sir.

Q. How much did you tell him it would be?

A. Twelve thousand dollars.

Q. Did you have any discussion with him as to taking a check to pay on account?

A. Absolutely not.

10

Q. Did you get a check from him at that time?

A. No, he didn't give me a check at that time.

Q. When did you get the check?

A. I got the check about two or three days later; I came back three times to him.

Q. You went back to him three times?

A. Three times there about that property as I was—

Q. First, do you remember what day it was that you went to see him?

20

A. First was on Saturday afternoon, I came there.

Q. Then when did you go again?

A. I sat there and I drank some and ate some cake, I commenced to tell him about the property, then he says, "You know Saturday is a little busy, come back Sunday," came back Sunday, sat around there about two or three hours, walked around, right around the corner from him and I showed him, again Monday I came around and I says "Do you want to buy the property for twelve thousand dollars? I think it is cheap, if you don't," I says, "I know who does want to buy it, that is Mrs. Segal," and I says to him "If it is worth for Mrs. Segal twelve thousand dollars, it is worth for you, and take my advice and buy it." That is how he come to give me a blank check.

30

Q. What did you do with the blank check?

A. I brought it to Mr. Abramson; he filled it out.

Q. Who told him how much to fill it out for?

A. He did; my father and myself, told him to give him a thousand dollars.

Q. Who was there when—do I understand your father said to fill it in for a thousand dollars?

A. Absolutely.

10 Q. Did you tell your father who was the owner of the property?

A. I didn't tell him nothing who was the owner of the property; I just asked him did he want to buy it for twelve thousand dollars.

Q. On any of the occasions when you went to see your father, was Harry Abramson with you?

A. Absolutely myself, nobody was with me.

Cross-examination.

20 By Mr. Sooy:

Q. Were you ever in partnership with Mr. Abramson?

A. Never was in partnership in my life.

Q. Did you ever trade with Mr. Abramson under the name of the Commercial Realty Company?

A. No, sir; have not.

Q. Did you ever work for Mr. Abramson as an agent of the Commercial Realty Company?

30 A. Never worked for an agent; I worked for myself.

Q. You are sure that the first time you saw your father with reference to this property was Saturday, are you?

A. I am pretty near sure it was on Saturday.

Q. The next time was Sunday?

A. Next time was on Sunday. I walked around with him, show him two or three hours.

Q. The next day is Monday?

A. I imagine it is.

Q. Now you have testified——

A. After Sunday must come Monday, so far as I know.

Q. Admitting that, then it was Saturday, Sunday and Monday you talked to him?

A. I imagine it was them three days; I can't remember very well last year now. 10

Q. And the last day you talked to him you got the check for a thousand dollars?

A. Last day I got the check for thousand dollars.

Q. Had you told Abramson that you were talking to your father about the property?

A. I ain't told nobody nothing.

Q. You kept that a secret, so that the first time Abramson knew anything about your talking to your father was when you came over to Abramson and gave him a blank check signed by your father? 20

A. Yes.

Q. That is the first time?

A. Yes.

Q. That check was obtained by you, you say, on the last day you talked to your father?

A. Last day.

Q. And was on Monday?

A. I don't remember exactly the day, whether Monday, Tuesday, but I know somewheres around there. 30

Q. But you testified in your direct examination——

A. Well, I——

——that you went there Saturday, Sunday and Monday?

A. I personally think it was them three days.

Q. You want to change your testimony, do you, now?

A. I don't want to change nothing; I just tell the truth what I know, if it was Monday, it is Monday, if it is Sunday, it is Sunday.

Q. Then let's get back to this—can you give me any dates?

A. I can't give you exact date; I am telling you just what I know; I am telling the truth, and nothing but the truth.

Q. Now, then, how did you find out Harry Abramson had this property?

A. How I find out?

Q. Yes.

A. Just hearing the office that he bought a piece of property, from who and when I don't know.

Q. You heard around the office that he bought a piece of property from whom and when you don't know?

A. No.

Q. How did you know what piece of property it was?

A. Eh?

Q. Eh?

A. After he had signed the agreement with the man I heard he bought a property for eleven thousand dollars off a man, who he was none of my business to go to ask him.

Q. You didn't know anything about who he was or anything?

A. No, absolutely not.

Q. But you heard he had bought a piece of property for eleven thousand dollars after he had signed the agreement?

A. Yes.

Q. Did you see the agreement?

A. No, recall I didn't.

Q. Well, did you know what piece of property he had bought off the certain man?

A. Mr. Abramson told me that couple of days after that.

Q. A couple of days after he had bought it he told you?

A. Yes.

Q. How long was it after Mr. Abramson told you that he had bought the property that you went to see your father about it? 10

A. I will tell you how long it was the way I understand —

Q. Answer the question.

A. Now answering the question, the way I understand —

(Question repeated.)

A. I can't just remember the day but I could bring it out. 20

Q. Don't want you to say Monday or Tuesday, how many days after Davis had told you?

A. I can't remember.

Q. Was it one?

A. I can't remember.

Q. Was it two?

A. I told you I can't remember.

Q. Could it have been as many as five?

A. I don't know.

Q. You don't know whether one or five? 30

A. I don't know.

Q. Are you sure whether or not as soon as he told you —

A. I don't remember.

Q. —you went right to your father?

A. I don't know.

Q. Then you can't remember anything about that, do you?

A. I don't remember when but if you will let me bring it out the way I want to I will show you I am right.

The Court: No, just answer the question.

10 Q. You are sure Harry Abramson had told you that he had agreed to buy this property from Mr. Kleinhans prior to the time that you went to your father?

A. No, I don't know.

Q. Now, then, will you tell me how you knew that Abramson had the property then?

A. After Abramson had his agreement then he told me about it.

Q. And it was after that, of course, that you saw your father?

20 A. After that, certainly.

Q. Then after you had seen your father these three times you got a blank check from your father?

A. I did.

Q. Did your father know how much the check was to be filled out for?

A. Positively he told me.

Q. Told you a thousand dollars?

A. Yes.

Q. Why didn't you tell Abramson that?

30 A. Eh?

Q. Why didn't you tell Abramson that?

A. Tell Abramson what?

Q. That it was to be a thousand dollars.

A. After I got there told him.

Q. Oh, you did?

A. Yes.

Q. Why didn't you fill out the check yourself?

A. Why didn't I fill it out?

Q. Yes.

A. Because I didn't know how the man wanted it filled out.

Q. You didn't? You knew who owned the property?

A. What?

Q. You knew Harry owned the property or owned the agreement?

A. That is all well o. k.

Q. But you didn't know how he wanted it filled out? 10

A. No.

Q. You knew your father wanted it filled out for a thousand dollars, didn't you?

A. Yes, I knew that.

Q. How is it you didn't fill out that much of it?

A. What?

Q. How is it you didn't fill out that much of the check? 20

A. He didn't want me to fill out nothing.

Q. Who didn't?

A. Because he knew how to write new check, he knew how to fill it out.

Q. "How is it you didn't fill out that much of the check" that is the amount of the one thousand dollars and the date?

A. I don't know; I didn't touch it at all.

Q. You can read and write, though, can't you?

A. I can. 30

Q. So at the time you got the thousand dollars did you have any agreement with Harry Abramson that you were going to take title to the property?

A. No, not then.

Q. You got that agreement afterwards, did you?

A. After I brought the check.

Q. The agreement was not made out direct to your father then, was it?

A. What?

Q. The agreement wasn't made out direct to your father?

A. No, it was made out to me.

Q. Did you know that Harry Abramson was paying eleven thousand dollars for the property?

A. Eh?

10 Q. Did you know that Harry Abramson was paying eleven thousand dollars for the property?

A. I don't know what he paid.

Q. When did you find out that he was only paying eleven thousand?

A. What?

Q. Ever find out that he was only paying eleven thousand?

A. It wasn't my business to find out.

Q. Never knew?

20 A. No.

Q. How did you know that he wanted twelve thousand dollars for it?

A. Because he told me.

Q. How did you know there was a building and loan mortgage on it?

A. Eh?

Q. How did you know there was a building and loan mortgage on it?

A. He told me about it.

30 Q. How did you know there was a three thousand dollar second mortgage on it?

A. He told me about it.

Q. All before you went to see your father?

A. All before.

Q. Must have taken quite a little time to tell you all that, mustn't it?

A. No, that can be talked in less than five minutes time.

Q. Did you hear Harry Davis say that he had never mentioned this property to you—Harry Abramson say that he had never mentioned this property to you at the time you came in with the thousand dollar check?

A. Did he say that I didn't hear about the property?

Q. Did you hear Harry Abramson say that he had never mentioned this property to you at the time you came in with the thousand dollar check? 10

A. No, I didn't hear it.

Q. He had mentioned it to you, had he?

A. Eh?

Q. He had mentioned it to you, had he?

A. He mentioned it right after he got it.

Q. He tell you all those details?

A. All the details.

20

By the Court:

Q. Who told you that Mr. Segal would buy this property?

A. Eh?

Q. Did you hear me?

A. No.

Q. Who told you that Mr. Segal would buy this property?

A. Oh, Mrs. Segal?

Q. Mrs. Segal told you Mr. Segal would buy it? 30

A. Not Mr. Segal, Mrs. Segal.

Q. Mrs. Segal would buy the property?

A. Would buy the property, yes.

Q. Did you tell Abramson that?

A. Sir?

Q. Did you tell Mr. Abramson that Mrs. Segal would buy the property?

A. Yes.

Q. If Mrs. Segal would buy the property, why did you go to your father?

A. I told you I thought that Mrs. Segal has plenty and it was a good investment for my father, that is the reason I went to him, and it is a good investment.

10 By Mr. Sooy: I ask the last be stricken out.

The Court: I will permit it to remain.

Q. Did you tell Mr. Abramson that Mrs. Segal would buy the property?

A. Yes, sir; I told him I was talking, she asked me a long time ago to get something cheap, something like that, she would buy it herself.

Q. What did you make out of this property?

20 A. What did I make out of this property? I got a few dollars from Mr. Abramson.

Q. What did you make out of this property?

A. What I made out of this property? I made out of this property about two hundred and fifty.

By Mr. Steelman:

Q. That came from Mr. Abramson, did it not?

A. Sir?

30 Q. What you made on the property came from Mr. Abramson?

A. From Mr. Abramson, absolutely.

By Mr. Sooy:

Q. Your father know you were making two hundred and fifty on it?

A. I told him I am getting a little commission.

Q. You told your father that you were getting a commission, did you?

A. Yes.

Q. Told him that Abramson was getting a commission?

A. No; I didn't know whether Abramson was supposed to get commission or not.

Q. But you told him that you were?

A. I told my father, he knew I got a little commission. 10

HARRY ABRAMSON, recalled.

By Mr. Steelman:

Q. Mr. Abramson, you testified, as I recall the testimony, that you had not discussed this matter with Mr. Davis before the other agreement was drawn; now had you discussed that with Mr. Harry Davis? 20

Mr. Sooy: He testified that he had not, if the Court please.

Mr. Steelman: I don't know whether the question was framed Mr. Harry Davis or Mr. Myer Davis.

A. I understood Mr. Myer Davis. 30

Mr. Sooy: It was framed for both.

Mr. Steelman: I think I have got a right to clear up that point.

The Court: I will permit it. There has been no objection made to it.

Mr. Sooy: I am not objecting.

A. When I got the agreements——

(Question repeated.)

10 A. I had in some way, yes, sir.

Q. Had you discussed it with Mr. Myer Davis?

A. No, I never did; I thought that was the question.

Q. That is all.

Cross-examination.

By Mr. Sooy:

20 Q. You remember testifying on your direct testimony that you had not discussed this with Harry Davis prior to the time when he came in with the thousand dollar check and that you didn't know how he got the information that you were the owner of the property excepting that he must have gotten it through general rumor around the office; you remember that? You can answer that question, Mr. Abramson.

A. I must have said something to him.

30

(Question repeated.)

A. Yes, that is right.

Q. Now you want to change that testimony and say that you had discussed it with Harry Davis prior to the time that you got the thousand dollar check?

A. Well, I may have said something to him about it.

Q. That is all.

DEFENDANT RESTS.

10

MYER DAVIS, recalled.

Direct examination.

By Mr. Sooy:

Q. Did Mr. Harry Davis take you to the property—I mean talk this situation over with you, the transfer of the property, on three different occasions prior to the time when he and Harry Abramson came there? 20

A. No. Only came once and they came once and Mr. Abramson make out the check for thousand dollars and they gone.

Q. That is the only transaction you had with this property?

A. That is the only time they was there.

Q. All right, that is all.

A. And Mr. Abramson make up on this counter of mine one thousand dollar check and I signed it. 30

Q. That is all.

COMPLAINANT RESTS.

TESTIMONY CLOSED.

EXHIBIT C1.

10/14/24L.

ARTICLES OF AGREEMENT, MADE THIS
fourteenth day of September, in the year of our Lord
one thousand nine hundred and twenty-three (1923),
BETWEEN GEORGE KLEINHANS, Widower, of
the City of Atlantic City, County of Atlantic and
10 State of New Jersey, party of the first part and
HARRY ABRAMSON, of the said City of Atlantic
City, County of Atlantic and State of New Jersey,
party of the second part;

WITNESSETH, that the said party of the first
part, for and in consideration of the sum herein-
after stipulated, to be paid and satisfied as herein-
after mentioned and also in consideration of the
covenants and agreements hereinafter mentioned,
20 made and entered into by the said party of the
second part, does agree to and with the said party
of the second part, that the said party of the first
part, will well and sufficiently convey or cause to
be conveyed to the said party of the second part, his,
her, its or their successors, heirs and assigns, by
Deed of general warranty, free from all incumbrance,
excepting as may be hereinafter mentioned on or
before the day and hour hereinafter mentioned for
settlement, all that or those lots, tracts, or parcels
of land and premises hereinafter particularly de-
30 scribed, situate, lying and being in the City of At-
lantic City, in the county of Atlantic, and State of
New Jersey, bounded and described as follows:—
BEGINNING at a point in the Westerly line of Vir-
ginia Avenue, Three hundred feet Northwardly from
the Northerly line of Arctic Avenue, and extending
thence (1) Northwardly, in and along the Westerly
line of Virginia Avenue, Twenty-five feet; thence

(2) Westwardly, parallel with Arctic Avenue, One hundred and sixty-five feet to the Easterly line of Presbyterian Avenue; thence (3) Southwardly, in and along the Easterly line of Presbyterian Avenue, Twenty-five feet and thence (4) Eastwardly, parallel with Arctic Avenue, One hundred and sixty-five feet to the Westerly line of Virginia Avenue, and the place of beginning, being known and designated as No. 122 North Virginia Avenue.

AND the said party of the second part, for himself, 10
 herself, itself or themselves, his, her, its or their
 successors, heirs, executors and administrators, does
 covenant, promise and agree to and with the said
 party of the first part, his, her, its or their succes-
 sors, heirs and assigns, that 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
 sum of ELEVEN THOUSAND DOLLARS (\$11,-
 000.) as and for the purchase money of the foregoing
 described land and premises, in the following man- 20
 ner, that is to say:

- \$ 500.00 Five hundred Dollars in Cash on the sign-
 ing of this Agreement, the receipt whereof
 is hereby acknowledged;
- 5,000.00 Five thousand Dollars by the assumption of
 a Building and Loan mortgage in said
 amount, which mortgage has been running
 from March, Nineteen hundred Twenty-one
 (1921);
- 3,000.00 Three thousand Dollars by the assumption 30
 of a second mortgage in said amount, which
 mortgage will expire in five years from the
 year Nineteen hundred Twenty-one (1921),
 May 13th and the balance of
- 2,500.00 Two thousand Five hundred Dollars in Cash
 on the day of Settlement as hereinafter men-
 tioned.

It is hereby agreed that the present rental of the house facing Virginia Avenue is One hundred Dollars (\$100.) per month and the rental on the two houses facing Presbyterian Avenue is Twenty-five Dollars (\$25.) each per month. Above described property is purchased subject to present tenancy. Time is to be considered the essence of this Agreement.

10 Adjustments of taxes, water rents, sewer rents, insurance premiums, interest, rents and all other carrying charges to be made as of date of settlement unless herein otherwise stipulated; the tax year to be considered to run from January First to December Thirty-first of the current year.

Settlement to be made at the office of The Atlantic Guaranty and Title Insurance Company, New York and Atlantic Avenues, Atlantic City, N. J., on or before December 13, 1923.

20 AND IT IS FURTHER AGREED, by the parties to these presents, that the said party of the second part, his, her, its or their successors, heirs and assigns, may enter into and upon the said land and premises on the day of settlement, if not herein otherwise stipulated, and from thence take the rents, issues and profits to his, her, its and their use forever.

30 AND for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective successors, heirs, executors and administrators, and they hereby agreed to pay, upon failure to perform the same, the sum of which they hereby fix and settle as liquidated damages thereof.

IN WITNESS WHEREOF, the said parties have

hereunto interchangeably set their hands and seals the day and year first above mentioned.

George Kleinhans (SEAL)

Harry Abramson (SEAL)

SIGNED, SEALED AND DELIVERED }

IN THE PRESENCE OF }

Date May 13th, inserted on line 15— pg 2 before signing.

Robert E. Fagan

STATE OF

COUNTY, }

ss.

10

BE IT REMEMBERED, That on this day of in the year of our Lord one thousand nine hundred and twenty before me

personally appeared who, I am satisfied, the vendor mentioned in the above deed or conveyance, and I having first made known to the contents thereof, acknowledged that signed, sealed and 20 delivered the same as voluntary act and deed. All of which is hereby certified.

STATE OF

COUNTY, }

ss.

BE IT KNOWN, That on this day of one thousand nine hundred and twenty before me, the subscriber, a

personally appeared who, being by me duly sworn according to law, did on his oath say that he is the Secretary of the 30 the grantor mentioned in the foregoing indenture; that he knows the seal of said Corporation; that the seal affixed to the said Indenture is the common seal of the said Corporation; that is the President of said Corporation and did by its order sign, seal

and deliver the said Indenture as its voluntary act and deed, in the presence of said deponent, pursuant to a resolution of the Board of Directors of said Corporation; and that the said deponent did, at the execution thereof, subscribe his name as a witness thereto.

Sworn and subscribed before me }
the day and year aforesaid. }

10

AGREEMENT
FOR SALE OF LAND
GEORGE KLEINHANS
to
HARRY ABRAMSON.

Dated.....Sept. 14, 1923.
Received.....192....., and
Recorded in the.....
Office ofCounty
at
in Book.....of.....
Folio

20

Harris-Fisher-Conger Co.
Financial Realtors
1201 Atlantic Avenue
Atlantic City, N. J.

EXHIBIT C2.
10/14/24L.

30

ATLANTIC GUARANTY AND TITLE
INSURANCE COMPANY
Atlantic City, New Jersey
STATEMENT OF SETTLEMENT

Between Harry Abramson, et ux and
Meyer Davis,

as of Nov. 16, 1923 19

Complainant's Exhibits

97

Under application No. 5186 affecting premises situate 122 No. Virginia		
Consideration	12,000.00	
Water at \$20.00—Paid to 8/1/24	14.10	
10.15 6/1/24	5.51	
Sewer at \$ —Paid to		
14.20 2/1/24	2.91	
Insurance 5000.00 prem. \$152.07 to 5/13/23		
—3 yrs	126.29	
Taxes \$198.32 to 8/1	24.23	10
	<hr/>	
	\$12,173.04	
Paid on a/c	1000.00	
Mortgage \$5,000.00 now	4161.50	
Interest from P. M. Mortgage	3000.00	
Rent—to 12/1 \$100.00	46.67	
Rent to 12/12 \$25.00	21.66	
Balance due Seller	3943.21	
	<hr/>	
	\$12173.04	20
	<hr/>	
Balance due Seller as above	3943.21	
rec. deed	3.00	
rec. Mtg	2.00	
dr. Mtg	5.00	
stamps on Mtg	1.50	
cancelling Mtg	.75	
Policy	45.00	
	<hr/>	
	\$4000.46	30
Bldg and Loan Mtg	4161.50	
	<hr/>	
	\$8161.96	

The Above Statement Is Hereby Approved And
Settlement Thereunder Authorized

EXHIBIT C3.

10/14/24L.

ATLANTIC GUARANTY AND TITLE
INSURANCE COMPANY

Atlantic City, New Jersey

STATEMENT OF SETTLEMENT

	Between	George Kleinhans,	and
10		Harry Abramson,	
	as of	November 16th, 1923	
	Under application No. 5186 affecting premises situate 122 N. Virginia Ave.,		
	Consideration		\$10700.00
	Water at \$20.00—Paid to 8/1/23		14.10
	Sewer at \$10.15—Paid to 6/1/23		5.51
	Sewer—\$14.20 pd. to 2/1/24		2.91
	Insurance \$5,000. Prem. \$152.07 to 5/13/26		126.29
	—3 yrs.		24.23
20	Taxes \$198.32 to 12/31		
			<hr/>
			\$10,873.04
	Paid on a/c	500.00	
	Mortgage (B. & L. \$5,000.00 (now)	4161.50	
	Rent to 12/1/ on \$100.00	46.67	
	Rent to 12/12 on 25.00	21.66	
	Balance due Seller,	6143.21	
		<hr/>	
		\$10,873.04	
30	Balance due as shown above		\$6143.21
	Recording Deed,		3.00
	Settlement Fee,		10.00
			<hr/>
			\$6156.21

The Above Statement Is Hereby Approved And
Settlement Thereunder Authorized

EXHIBIT C4.

No. 16416 ATLANTIC GUARANTY AND TITLE
INSURANCE COMPANY

Atlantic City, N. J. 11/16 1923

46

Pay to the order of George Kleinhans.....\$4305—

xx

Four thousand and three hundred five 46

—DOLLARS

10

100

In payment of 5186.

To The

ATLANTIC SAFE DEPOSIT

and TRUST COMPANY

ATLANTIC CITY, N. J.

W. E. Shackelford

Acting Treasurer

E. B. Mitchell

Assistant Secretary.

20

Endorsed:

George Kleinhans

EXHIBIT C5.

No. 16421 ATLANTIC GUARANTY AND TITLE
INSURANCE COMPANY

Atlantic City, N. J. 11/16 1923.

30

00

Pay to the order of Harris-Fisher, Inc.....\$330.—

xx

00

Three hundred thirty.....Dollars

100

In payment of 5186.

To The

ATLANTIC SAFE DEPOSIT
and TRUST COMPANY

Atlantic City, N. J.

W. E. Shackelford
Acting Treasurer
E. B. Mitchell,
Assistant Secretary

10 Endorsed:
Deposit to Credit of
Harris-Fisher, Inc.

EXHIBIT C6.

No. 16422 ATLANTIC GUARANTY AND TITLE
INSURANCE COMPANY

20 Atlantic City, N. J. 11/6 1923
50

Pay to the order of Peoples Bldg, and Loan. . \$4161—
xx

50

Four thousand one hundred sixty-one . . . 100 Dollars
In Payment of 5186.

To The

ATLANTIC SAFE DEPOSIT
and TRUST COMPANY

30 ATLANTIC CITY, N. J.

W. E. Shackelford
Acting Treasurer
E. B. Mitchell
Assistant Secretary

Endorsed:

For deposit

Peoples Bldg. and Loan Assn.

EXHIBIT C7.

No. 16423 ATLANTIC GUARANTY AND TITLE
INSURANCE COMPANY

Atlantic City, N. J. 11/16/ 1923

Pay to the order of Jacob Kleinhans and

Elizabeth Kleinhans 00
\$1500—
xx 10

Fifteen hundred.....Dollars
xx
100

in payment of 5186.

To The

ATLANTIC SAFE DEPOSIT
and TRUST COMPANY

Atlantic City, N. J.

W. E. Shackelford
Acting Treasurer 20
E. B. Mitchell
Assistant Secretary.

Endorsed:

Jacob Kleinhans

Elizabeth Kleinhans.

EXHIBIT C8.

No. 16420 ATLANTIC GUARANTY AND TITLE 30
INSURANCE COMPANY

Atlantic City, N. J. 11/16 1923

Pay to the order of Harry Abramson.....\$474—
00

xx
00

102

Complainant's Exhibits

Four hundred seventy-four.....Dollars
100

in payment of 5186.

To The

ATLANTIC SAFE DEPOSIT
and TRUST COMPANY
Atlantic City, N. J.

W. E. Shackelford
Acting Treasurer
E. B. Mitchell
Assistant Secretary

10

Endorsed:
Harry Abramson

EXHIBIT C9.

No. 16419. ATLANTIC GUARANTY AND TITLE
INSURANCE COMPANY.

Atlantic City, N. J. 11/16/ 1923
00

Pay to the order of Harry Abramson.....\$100—
xx

One hundredDollars
100

in payment of 5186.

To The

ATLANTIC SAFE DEPOSIT
AND TRUST COMPANY
Atlantic City, N. J.

W. E. Shackelford
Acting Treasurer
E. B. Mitchell
Assistant Secretary

30

Endorsed:
Harry Abramson

EXHIBIT C10.

10/24/24L

	MEYER DAVIS	55-145	
	Groceries and Provisions		
	208 No. Pennsylvania Ave.		
No. 963	ATLANTIC CITY, N. J. Sept. 17—1923		10
	MARINE TRUST COMPANY		
	Pay to the order of		
			00
	Harry Davis	\$1000—	
			100
	One Thousand	Dollars	
	M. Davis		
	(Endorsed)		
	Harry Davis		
	FOR DEPOSIT TO		20
	CREDIT OF		
	COMMERCIAL REALTY CO.		
	(Stamped)		
	PAY TO THE ORDER OF		
	ANY BANK, BANKER OR TRUST CO.		
	All Prior Endorsements Guaranteed		
	SEP 20 1923		
	CHELSEA NATIONAL BANK		
55-144	Atlantic City, N. J.	55-144	
	P. N. BESSOR, Cashier.		30
	(Perforated)		
	PAID * 9 20 23		

EXHIBIT C11.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between	MYER DAVIS,	}	On Appeal. STIPULATION.
	Complainant-Appellant,		
10 and	HARRY ABRAMSON,		
	Defendant-Respondent.		

It is stipulated and agreed that Exhibit C 11 has been lost, and that the Exhibit contained a written agreement between Harry Abramson and Harry Davis for the sale of the property in question by Harry Abramson to Harry Davis for a consideration of \$12,000, and that the agreement bore date the
20 17th day of September, 1923;

It is further stipulated that on the back of said agreement there was an assignment of the agreement signed by Harry Davis assigning the agreement to Myer Davis, and on the said assignment, and to the left thereof, as a witness appears the signature of Myer Davis.

Dated: March 27, 1926.

BOLTE & SOOY

Solicitors of Complainant-Appellant.

30

HARCOURT & STEELMAN

Solicitors of Defendant-Respondent.

[ENDORSED]

NEW JERSEY COURT OF ERRORS
AND APPEALS

Between

MYER DAVIS,
Complainant-Appellant,

and

HARRY ABRAMSON,
Defendant-Respondent.

On Appeal

STIPULATION.

Bolte & Sooy,
21-24 Real Estate & Law Building, 10
Atlantic City, N. J.
Filed 6/26

EXHIBIT C12.

No. 5186 Counter Check 55-145
Atlantic City, N. J. Nov. 16—1923
MARINE TRUST COMPANY 20
Pay to the order of
96
Atlantic Guaranty and Title Insurance Co..\$8161.—
100
96
Eighty-one Hundred and Sixty-one.....—Dollars
100

M. Davis

(Stamped)

FOR DEPOSIT

To the Credit of

30

Atlantic Guaranty and Title Insurance Co.

Pay to the Order of

ANY BANK OR TRUST CO.

Prior Endorsements Guaranteed

NOV 17 1923

106

Complainant's Exhibits

The Atlantic Safe Deposit & Trust Co.
Atlantic City, N. J.
Jos. B. Smith, Treasurer

55-140

(Perforated)
PAID 11 17 23

10

EXHIBIT C13.

Counter Check 55-145
No. 5186 Atlantic City, N. J. Nov. 16—1923
MARINE TRUST COMPANY
Pay to the order of

Atlantic Guaranty and Title Insurance Co. \$2800.—
100

20 Twenty-eight Hundred No
100 —Dollars

M. Davis

FOR DEPOSIT

To the Credit of

Atlantic Guaranty and Title Insurance Co.
(Stamped)

Pay to the Order of

ANY BANK OR TRUST CO.

Prior Endorsements Guaranteed

NOV 17 1923

30

The Atlantic Safe Deposit & Trust Co.
Atlantic City, N. J.
Jos B. Smith, Treasurer

55-140

(Perforated)
PAID 11 17 23

EXHIBIT C14.

10/14/24L.

COMMERCIAL REALTY CO.

Insurance — Real Estate — Mortgages

2 S. North Carolina Ave. Segal Building

No. 2914 Atlantic City, N. J. Jan. 23—1924

Pay to the order of Myer Davis.....\$6 59/100

Six59/100 Dollars 10

This check in settlement of the following account

In full to date a/c settlement of Insurance, etc.

Endorsement of this check by the payee will acknowledge the correctness and receipt in full of the account hereon shown and will release accordingly.

If incorrect please return
COMMERCIAL REALTY CO.

Harry Abramson

President 20

To the CHELSEA NATIONAL BANK, }
55-144 Atlantic City, N. J. }

EXHIBIT D1.

10/14/24L

COMMERCIAL REALTY CO.

Insurance — Real Estate — Mortgages

2 S. North Carolina Ave. Segal Building

No. 2530 Atlantic City, N. J., Sept. 14 1923

Pay to the order of Harris, Fisher & Co.
\$500 00/100

The sum of \$500 and 00 cts. /100 Dollars

This check in settlement of the following account

Dep. on 122 N. Virginia Ave. and rear properties

30

at \$11,000. subject to \$8,000.00 in mtgs. Settle. to be made in 90 days.

Endorsement of this check by the payee will acknowledge the correctness and receipt in full of the account hereon shown and will release accordingly.

If incorrect please return
COMMERCIAL REALTY CO.

Harry Abramson

10

President

To the CHELSEA NATIONAL BANK, }
55-144 Atlantic City, N. J. }

Deposit to credit of
HARRIS-FISHER, Inc.

(Stamped)

Pay Any Bank, Banker or Trust Co.

OR ORDER

All Prior Endorsements Guaranteed

SEP 15 1923

20

ATLANTIC COUNTY TRUST CO

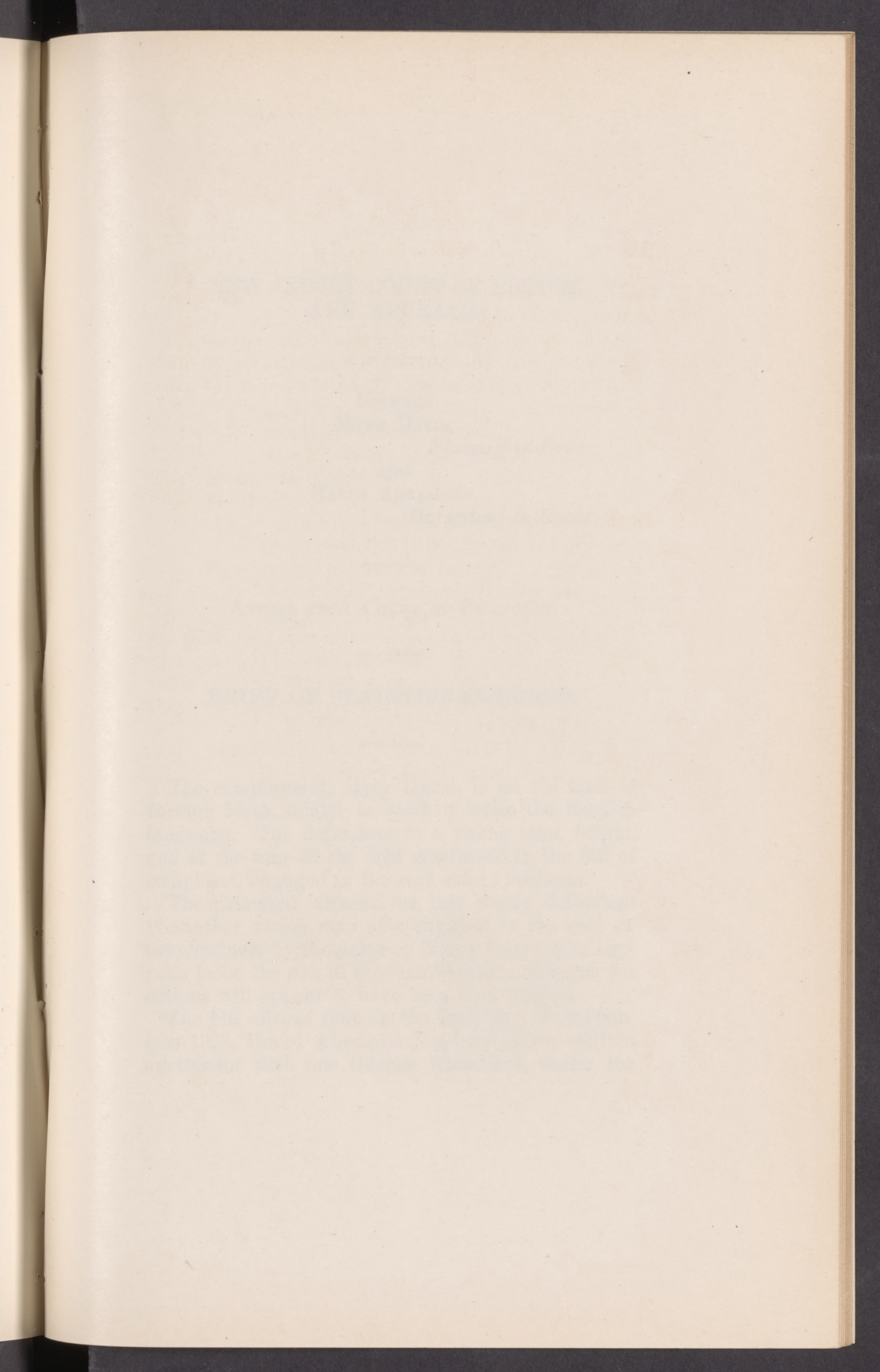
55-517 Atlantic City, N. J. 55-517

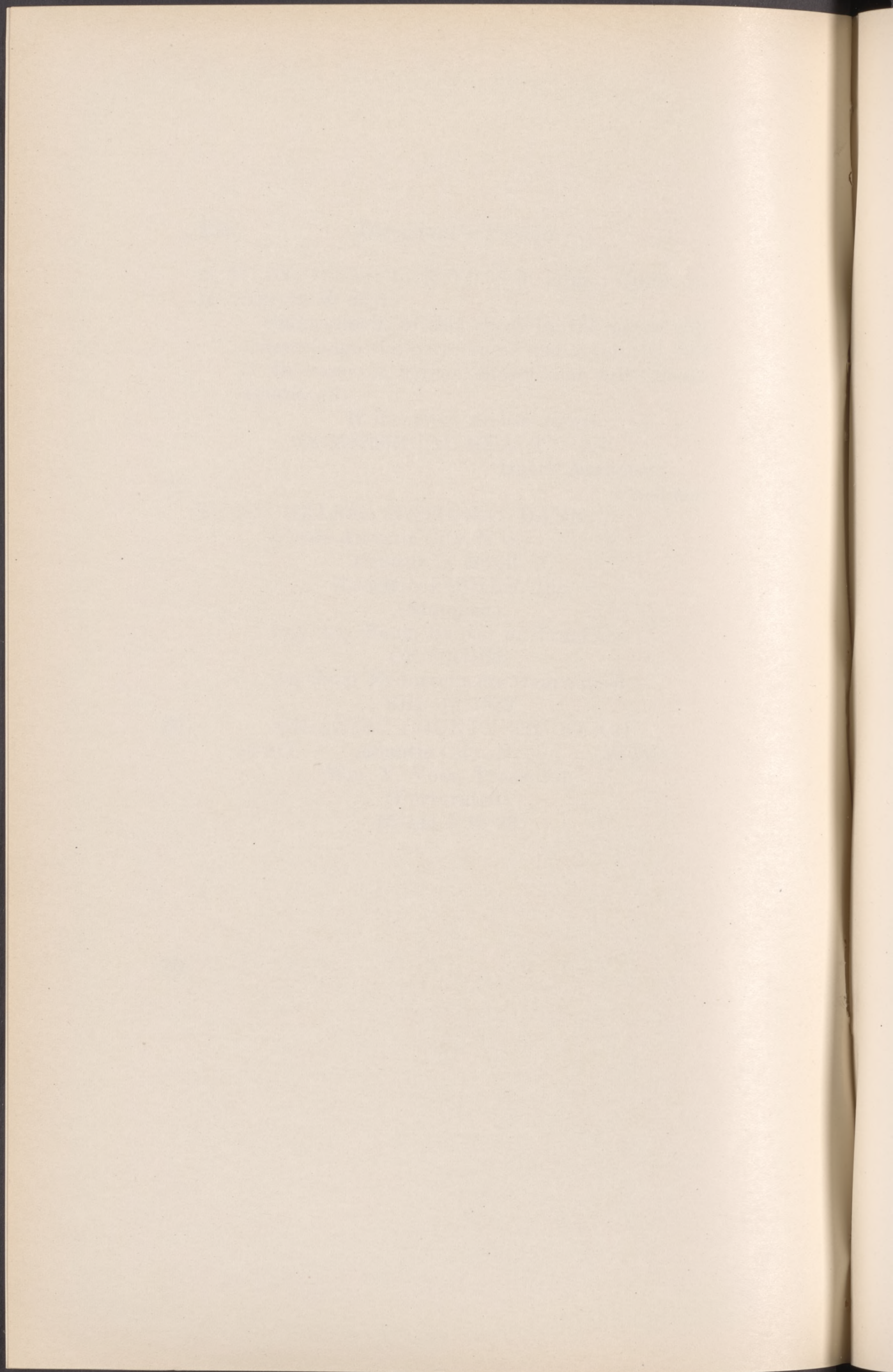
Wm. V. Voss, Treasurer

(Perforated)

55-144 9 15 23

30





NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between
MYER DAVIS,
Plaintiff-in-Error,
and
HARRY ABRAMSON,
Defendant-in-Error.

APPEAL FROM COURT OF CHANCERY.

BRIEF OF PLAINTIFF-IN-ERROR.

The complainant, Myer Davis, is an old man of foreign birth, unable to read or write the English language. The defendant is a young man, bright, and at the time of the deal mentioned in the bill of complaint, engaged in the real estate business.

The principal witness for this young defendant is another young man also engaged in the real estate business by the name of Harry Davis, who happens to be the son of the complainant, although his actions will appear to have been very unfilial.

The bill alleges that on the 14th day of September, 1923, Harry Abramson entered into a written agreement with one George Kleinhans, under the

terms of which agreement said Abramson agreed to purchase, and Kleinhans agreed to sell certain improved real estate in Atlantic City, known and designated as No. 122 North Virginia Avenue; that under the terms of the agreement Abramson was to pay Kleinhans, as the consideration \$11,000, the settlement to be on the 17th day of December, 1923; that after Abramson had become the equitable owner of the property by reason of the Kleinhans agreement of the 14th day of September, he, Abramson, accompanied by Harry Davis, went to the little grocery store of the complainant and represented to the complainant that Abramson could purchase the property at No. 122 North Virginia Avenue from Kleinhans who Abramson represented to the complainant was the owner of the property; that he, Abramson further represented that he could make the purchase at the "rock bottom price" of \$12,000; that the old man, believing that Kleinhans was the owner, and that Abramson was acting as his agent, authorized Abramson to purchase the property for him at \$12,000.

The net result of the deception of Abramson was that the old man paid \$1,000 more for the property than he would have paid, and that Abramson, by reason of his false representations, netted \$1,000 over and above what he had agreed to pay Kleinhans.

Settlement was had on the 17th day of December, and the old man, still believed that Abramson had acted as his agent and had procured the purchase from Kleinhans at the "rock bottom price." The complainant afterward discovered the deception, and filed his bill in the Court of Chancery.

The Court filed a very brief decision, which is found on page 9 of the case.

The complainant feels that equity has not been done, and hence his appeal.

The question as to whether or not the final decree may be reversed depends entirely upon the reading of the testimony, the complainant contending that such a reading will convince the Court that the testimony of Harry Abramson and Harry Davis is unbelievable.

The only witness for the complainant was the complainant himself insofar as the issue as to whether or not Abramson misrepresented his position when the old man agreed to pay \$12,000 for a property which Abramson had bought three days before for \$11,000.

The testimony of the plaintiff begins on page 42, and while it will be noticed that the complainant is uneducated, it will also be observed that his story rings true and that his answers to questions are positive and direct.

The complainant says:

“Q. What did Abramson say to you?

A. Abramson came over to me and he says to me, ‘Fireman got three houses, one Virginia and two in Presbyterian, twin, and he wants to have \$12,000, and only want to make a few dollars commission, and you can get the property.’ I give Mr. Abramson one thousand dollar check.”

The check above referred to is Exhibit C10, page 103.

It will be observed on pages 43 and 44, that the check bears the signature of the complainant and that the remainder of the check is in Abramson’s own handwriting.

It will be further observed that the check is made to the order of Harry Davis, the son of the complainant. It will be further observed on page 45, that at the time the check for \$1,000 was made, the complainant signed another paper, the nature of which he was not acquainted with, and which turned out to be an agreement on the part of Harry Abramson to sell the premises in question to Harry Davis, and that on the back of the agreement, there is an assignment from Harry Davis to Myer Davis, which assignment Harry Davis and Harry Abramson had complainant sign as a witness.

The agreement from Abramson to Davis, and the assignment thereof, is "Exhibit C11" and is the subject of stipulation on page 104.

The situation as it stood before the Court under the testimony of the complainant was that Harry Abramson and Harry Davis went to the store of the complainant with the agreement "Exhibit C11" already prepared and that what happened was that the old man purchased the Harry Davis agreement, and that he gave the check which was immediately filled in by Harry Abramson, drawn to the order of Harry Davis, and endorsed by Harry Davis, to Harry Abramson, and by him deposited to his account in the name of Commercial Realty Co.

The old man says, at the top of page 46, that he did not know that Harry Davis was agreeing to sell him the Kleinhans property, but that he supposed the "Fireman" owned it (the fireman was Mr. Kleinhans) and that he supposed, page 48, line 32, that Abramson was taking a commission from the fireman.

The complainant's case finds its support not only from the testimony of the complainant himself, but from the nature of the transaction, and the failure

of the defendants to explain why it was that Abramson drew the agreement "Exhibit C11" in favor of Harry Davis and why it was that Abramson filled out the one thousand dollar check in the name of Harry Davis, and immediately deposited it to his own account in the name of Commercial Realty Co. If the transaction had been as Harry Abramson says it was, that is to say: a straight sale from Abramson to the complainant, why was it necessary for Abramson to have drawn the "Exhibit C11" agreement, and the assignment on the back thereof, and why was it necessary for him to have the check for \$1,000 made out in the name of Harry Davis?

It would appear as though Harry Abramson did not dare show the old man the agreement from Kleinhans to himself, and it would also appear that Harry Abramson used the son of the complainant in order to further carry out his preconceived idea of concealing from the old man that Abramson was making \$1,000.

The defendant realized the situation at the close of the plaintiff's case and endeavored to meet it. It will require the reading of the entire testimony of Harry Abramson and Harry Davis in order that all of the inconsistencies may appear and in order that the Court may pass on the question of veracity which arises in this case.

Dealing with the inconsistencies, we find that the story of the old man is that his son and Harry Abramson came to his place of business with Exhibit C already prepared, and that there, in complainant's grocery store, the deal was consummated by the delivery of the \$1,000 check.

Both Harry Abramson and Harry Davis deny that Harry Abramson ever saw the old man with reference to the transaction until the day of settlement.

Harry Abramson, on page 63, at the top, says that as a result of a conversation with Harry Davis, he gave him "the agreement assigned," meaning C11, and that Harry Davis "took it over to his father," page 63, line 13, and lines 20 to 30; that he, Abramson, did not see the old man in connection with the agreement "Exhibit C11," page 64, line 23.

It must be remembered that Abramson had testified that Harry Davis had told him that his father would buy the property, and that he, Abramson, gave Harry Davis the agreement of sale with the assignment on the back of it from Harry Davis to complainant, C11.

On the bottom of page 67, the following question was asked:

"Q. What did Harry Davis give to you at the time you assigned the agreement to him, between yourself, I mean the time you agreed to sell to Harry Davis, what did he give to you?"

And the answer is found on page 68, at the top, and is as follows:

"A. Why he gave me the thousand dollar check.

Q. This thousand dollar check of Myer Davis' he gave to you at the time you gave him the agreement to sell?

A. Yes, sir."

It is evident that Abramson is not telling the truth because he has already said that he gave Harry Davis Exhibit C11 before Harry Davis went to see the old man.

The Court saw the inconsistencies in this testimony and on page 68, lines 9 to 12, asked the following questions and received the following answers:

“Q. Davis had no agreement prior to that time?

A. No, sir.

Q. Harry Davis I mean?

A. No, sir.”

The following questions on cross-examination were then put:

“Q. Now, lets see if you are right about that; Harry Davis gave you a check for one thousand dollars signed by Myer Davis and at that time you gave Harry Davis an agreement that you would sell the Kleinhans property to Harry Davis, is that right?

A. That is right.

Q. Up until that time Harry Davis had never had any agreement with you that you would sell him the Kleinhans property?

A. No, sir.”

Abramson found himself in difficulties about this stage of the testimony and immediately got in further difficulties.

Abramson has already testified as hereinbefore set forth that he had given Harry Davis Exhibit C11 to take around to his father, and he has already refuted that by saying that he got the \$1,000 check before he knew that Harry Davis was trying to sell the property to the old man, and in that situation, Abramson was asked, page 68:

“Q. Did Harry Davis, who gave you the check for the thousand dollars, know that you had an agreement with Kleinhans for the purchase of the property?

A. I don't know whether he did or not."

And then the following questions and answers were put:

“Q. How did Harry Davis know that you were interested in the Kleinhans property?

A. Because he evidently was trying to sell it for me.

Q. How did he know that you had it so that he could sell it?

A. Well, he was in my office all the time and always properties listed for sale and in that way he evidently found out.

Q. Did you have this property listed for sale?

A. Yes, sir; for a little time; I hadn't had it very long.

Q. That is the only way that you knew that Harry Davis knew anything about this property?

A. Well, he evidently may have heard me say something about it and in that way he found out.

Q. Did you have this property listed for sale?

A. Yes, sir; for a little time; I hadn't had it very long.

Q. That is the only way that you knew that Harry Davis knew anything about this property?

A. Well, he evidently may have heard me say something about it and in that way he found out.

Q. But you don't remember telling him anything about it?

A. I don't remember now.

Q. In other words, when he came to you and said, 'Here is a check for a thousand dollars from my father, Myer Davis, for the purchase

of the Kleinhans property, you didn't even know that Harry Davis knew that you had that property?

A. I didn't say that.

Q. What do you say now?

A. I say this that he knew that I had bought this property and at the time of the check, when he gave me the check I didn't know that he had spoken to anybody else about the property.

Q. He knew, did he, that you had the property at the time he went over to his father on the seventeenth of September?

A. Sure he knew.

Q. Then you want to change from the former testimony that you don't know whether he knew or not?

A. I misunderstand you; had I understood it originally I surely would have testified that way.

Q. How did he know that you had this property?

A. Because I bought it; he surely should know it.

Q. Why should he necessarily know it?

A. Because seemed very much interested with reference to his father."

It is submitted that Harry Abramson was not telling the truth when he testified that he did not know how Harry Davis knew that he had the Kleinhans agreement, and it is submitted that the first statement of Abramson was correct, that is to say: that he had prepared Exhibit C11 before he, Harry Abramson, in company with Harry Davis, went to the old man's store.

Pages 70 and 71 simply enlarge on the proposition, but Abramson, makes it worse, on page 71, in trying to correct the predicament he found himself in, and says that when he got the check, he dictated C11 to his stenographer and then, on down the page, he says that at the time he dictated the agreement C11, he must have had the check, and then, on down, he says:

“A. I say I may have had it; I don’t remember; I can’t remember exactly.”

On page 72, the Court takes the matter up and asks the following question:

“The Court: Mr. Abramson, you have just testified that you did not have the agreement drawn until after you received the check. Why did you make the agreement with Harry Davis when you got a check of Myer Davis for the consideration of it, first payment?”

Then Abramson tries another tack, and says that the reason he made the agreement in the name of Harry Davis was because of a judgment.

Abramson is now done with his explanation of Exhibit C11, and his attention is directed to the check for \$1,000 given by Myer Davis, and he is asked on page 73, how it happens that the check is in his handwriting as to date, amount and name of the payee, and everything else, excepting the signature of Myer Davis. On page 74, he answers that question by saying:

“A. The check was brought to me in blank and I asked Harry Davis, ‘Harry, how much does your father want to give?’ Harry says, he says, ‘Make it for a thousand dollars, they didn’t know how much they were going to give

deposit,' and I made the check out right there and then at my office."

The Court again realizing the predicament in which Harry Abramson now found himself, put the following question:

"Q. Tell me just a moment, why did you make it in the name of Harry Davis?

A. Because I had assigned the agreement to Harry Davis?

Q. You just told us you hadn't assigned them at all.

A. I had made an agreement between Harry and myself."

He is now back to the original statement that he had handed Harry Davis C11 before Harry Davis went to see the old man.

It is submitted from the above that the old man's story rings true. He relates the appearance of Harry Abramson and Harry Davis in his store, the signing of the check and the signing of Exhibit C11 at one and the same time.

Harry Davis is the supporting witness for Harry Abramson, and on pages 78 and 79 says that he went to the store of the old man and procured the check in question, and says on page 79, line 14, that he got the check after he had been to the old man's store about three times.

It will be noted that Harry Abramson became the owner of the Kleinhans agreement on September 14th, and that C11, and the check for \$1,000, were signed on the 17th of September. This is interesting by reason of the fact that Harry Davis testifies that he made three trips to the old man's store on three different days so that if Harry Davis is tell-

ing the truth, he must have started to importune the old man on the very day Abramson bought the property.

Harry Davis says, on page 81, that during all the time he was negotiating with the old man, he had told no one that he was endeavoring to sell the property.

“Q. Had you told Abramson that you were talking to your father about the property?

A. I ain't told nobody nothing.

Q. You kept that a secret, so that the first time Abramson knew anything about your talking to your father as when you came over to Abramson and gave him a blank check signed by your father?

A. Yes.

Q. That is the first time?

A. Yes.

Q. That check was obtained by you, you say, on the last day you talked to your father?

A. Last day.”

Now, if the above testimony is true, what becomes of Abramson's testimony to the fact that he had drawn Exhibit C11 and handed it to Harry Davis before Harry Davis went to see his father.

Harry Davis, now finding himself in trouble, is asked as to how he found out Harry Abramson had this particular property for sale and he says, on page 82, line 15:

“A. Just hearing the office that he bought a piece of property from whom and when I don't know.”

He is then asked, page 82, line 21:

“Q. How did you know what piece of property it was?

A. Eh?

Q. Eh?

A. After he had signed the agreement with the man I heard he bought a property for eleven thousand dollars off a man, who he was none of my business to go to ask him.

Q. You didn't know anything about who he was or anything?

A. No, absolutely not.

Q. But you heard he had bought a piece of property for \$11,000, after he had signed the agreement?

A. Yes.

Q. Did you see the agreement?

A. No, recall I didn't.”

On page 83, still continuing:

“Q. Well, did you know what piece of property he had bought off the certain man?

A. Mr. Abramson told me that couple of days after that.”

Harry Davis has already testified that he had been to see the old man on three different days before he got the \$1,000 check. He is now testifying that Harry Abramson told him what the property was a couple of days after he, Abramson, had entered into the Kleinhans agreement. This is impossible because the Kleinhans agreement was dated the 14th day of September, and the check the 17th of September.

On the balance of page 83, it will be seen that Harry Davis realized his predicament, and finally says on page 84, at the top, that he "don't remember" anything about it.

The \$1,000 check was filled out by Abramson, and the complainant contends that it was filled out by Abramson in complainant's store; that it was filled out in Harry Abramson's handwriting more than bears out complainant's story, and, in this line, Harry Davis is asked, at the bottom of page 84:

"Q. Why didn't you fill out the check yourself?

A. Why didn't I fill it out?

Q. Yes.

A. Because I didn't know how the man wanted it filled out.

Q. You didn't? You knew who owned the property?

A. What?

Q. You knew Harry owned the property or owned the agreement?

A. That is all well O. K.

Q. But you didn't know how he wanted it filled out?

A. No."

If the story is true that Harry Abramson had given Harry Davis Exhibit C11, there was no one else to whom the check should be filled out excepting Harry Davis, and it is submitted that if the story had been true, Harry Davis would have filled in the check himself and to his own order. There was no need of his finding out how Harry Abramson wanted the check filled out. Then on page 85, line 31, the following question was put to Harry Davis:

“Q. So at the time you got the \$1,000 did you have any agreement with Harry Abramson that you were going to take title to the property?”

A. No, not then.

Q. You got that agreement afterwards, did you?”

A. After I brought the check.”

It seems very strange that Exhibit C11 was signed by Myer Davis as a witness if it was signed by him at any other place than in the old man's store. There is no testimony at all that Myer Davis ever had any transaction with respect to the property in question outside of his own store, and yet Harry Davis testified that at the time the check was given the agreement C11 had not been signed.

It will be remembered that Harry Davis has already testified as to his meager knowledge of Abramson's ownership of the property when he went to see the old man, the testimony of Harry Davis being as hereinabove set forth that all he knew was the office gossip that Abramson had bought the property. It is interesting to read Davis' testimony on pages 86 and 87 as to how much he did know about this matter and it will appear that he knew what Abramson wanted for it, the nature of the mortgages against it, and all of the details with reference to it, and this is particularly interesting in view of the fact that Harry Abramson had already testified that he had never mentioned the property to Harry Davis.

Mr. Steelman, representing Harry Abramson, realized the situation, and recalled Harry Abramson to straighten out the matter. The testimony of

Abramson, recalled, appears on pages 89 and 90, and leaves the situation in as bad shape as it was before he was recalled.

It is respectfully submitted that in view of the testimony of Harry Abramson and Harry Davis, as above set forth, that they are not entitled to the belief of any Court, and that a decree in this case in favor of the defendant, Harry Abramson, is absolutely inequitable and encourages instead of discourages deliberate and wilful mis-statements of fact.

Respectfully submitted,

BOLTE & SOOY,
*Solicitors for and of Counsel
with Plaintiff-in-Error.*

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between
MYER DAVIS,
Complainant-Appellant,
and
HARRY ABRAMSON,
Defendant-Respondent.

ON APPEAL FROM COURT OF CHANCERY.

BRIEF OF DEFENDANT-RESPONDENT.

In order for the appellant to secure a reversal of the decree below he must make this Court believe a most unusual set of circumstances that the Court of Chancery could not believe when the facts came to it from the lips of the witnesses themselves.

These facts are:

1. That the appellant, who while of foreign birth had lived in Atlantic City for twenty-four years, could not write or read the English language.
2. That while he had sufficient business acumen to operate a store and to buy and sell real estate, he

was duped out of \$1000.00 that he felt he should have made in the deal by a man who was a comparative stranger to him, although he had at no time complained that the property was not worth the full amount paid by him.

3. That defendant who was practically a stranger to him was his agent.

4. That his own son, his own flesh and blood, would work against him in order to assist a stranger in making a profit of \$1000.00 illegally.

5. That defendant would build a structure of falsehood to justify a small profit that he had a perfect right to make, selling as principal and in his own right.

Much depends upon whether or not the complainant's uncorroborated story that he dealt with Abramson direct, is to be believed, or whether we are to believe Abramson's story that the entire transaction took place through Harry Davis, the complainant's son, which story is corroborated by the testimony of Harry Davis himself.

What are the probabilities?

In the first place the complainant and defendant were practically strangers to each other, which is apparent from the fact that complainant several times could not recall his name (Case, p. 47, l. 14, p. 49, l. 17). Under such circumstances Harry Davis is the person whom we would naturally expect to put the deal through, yet according to complainant, he remained outside while Harry Abramson came inside and drove the bargain.

In the second place, according to complainant, all of this took place at one sitting, as it were. He

never even went out of his store to look at what he was buying (Case, p. 42, l. 28). Mr. Harry Davis, his son, on the contrary says that it took him three days to get his father up to the point where he would consent to buy (Case, p. 79, l. 15). And he, Harry Davis, took the complainant out to see the property (Case, p. 79, l. 28), and it was then that he got the check which Abramson afterwards filled in.

Again it is a most unusual situation for a man, particularly a man of complainant's type, to take a loss of \$1000.00 without saying anything about it to the people whom he believes has caused the loss. Not one word of protest appears to have been made to his son, and although complainant could go to defendant and talk about minor matters such as insurance, adjustments and delivery of papers, he could not talk to him about the \$1000.00 he felt that he had been cheated out of (Case, p. 53, l. 19).

The complainant's bill was filed on the theory that Harry Davis had received the check from his father and had turned it over to defendant (Complainant's Bill, Case, p. 4, l. 29), yet he strenuously denies in his testimony that this did happen, insisting that he handed the check to Abramson direct.

The complainant relies solely upon the character of the testimony and upon him rests the burden of establishing by a preponderance of evidence the agency of the defendant, and the fraudulent conduct by which he asserts that he was misled. It is submitted that complainant has signally failed to carry this burden and that the Court below correctly diagnosed the testimony and properly adjudicated the matter by dismissing complainant's bill.

Respectfully submitted,

HARCOURT & STEELMAN,

*Solicitors for and of Counsel
with Defendant-Respondent.*

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REPLICATION.

IN CHANCERY OF NEW JERSEY.

Between	}	On Bill, etc. Replication.	10
MYER DAVIS,			
<i>Complainant,</i>			
and			
HARRY ABRAMSON,	}		
<i>Defendant.</i>			

The complainant joins issue on the answer of the defendant.

BOLTE, SOOY & GILL,
Solicitors for and of Counsel 20
with Complainant.

REPLICATION

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New Jersey Court of Errors and Appeals

Between
HARRY ABRAMSON,
Complainant-Respondent,
and
THOMAS M. DAVIS,
Defendant-Appellant.

and
Between
HARRY ABRAMSON,
Complainant-Appellant,
and
THOMAS M. DAVIS,
Defendant-Respondent.

ON APPEAL AND CROSS-APPEAL FROM CHANCERY.

BRIEF FOR HARRY ABRAMSON.

STATEMENT.

The bill is one charging a trust relation between complainant and defendant, a breach of the same, and a prayer for an accounting.

There is a charge of fraud which was sustained by the Vice-Chancellor, and the decree requires the

defendant to account for the profit made by him out of the transaction or transactions set forth in the bill. There was a profit of double the amount which defendant received but the decree limits complainant's recovery to the amount which defendant says he actually received.

Abramson, complainant, appeals from the decree, maintaining that it should have required Davis to account for the entire profit.

Davis, defendant, appeals and contends that there was no justification for finding a trust relation, fraud, or that he be decreed to pay anything.

One Lewis Silbert prior to March 31, 1923, was the owner of 2209-2211 Fairmount Avenue, Atlantic City, New Jersey, and adjoining property in the rear known as 2204-2208-2210-2212-2214 and 2216 Ingersoll Terrace.

By an agreement dated March 31, 1923, Silbert and wife agreed to convey the properties named to W. Frank Sooy for the sum of \$40,000; \$5,000 to be paid as earnest money. See Ex. C12, page 209. The agreement describes the properties as follows:

"Fairmount Avenue near Missouri consisting of two brick apartment houses, known as 'The Fairmount' & 'The Alva,' one apartment house consisting of eight apartments of six rooms & bath each and the other apartment house consisting of six apartments of five rooms & bath each also seven rear houses, five brick & two frame."

In this agreement, Sooy was erroneously named as vendor and Silbert was erroneously named as vendee. By agreement dated April 3, 1923 (Ex. C2, page 185), Sooy agreed to convey to Abramson, complainant, for the sum of \$40,000:

"All that certain premises known as the Alvin

Apartments and the Fairmount Apartments, situated on Fairmount Avenue between Missouri Avenue and Mississippi Avenue. The First Apartment house containing eight apartments; and the Second Apartment house containing six apartments."

On the preceding day, to wit, April 2nd, Sooy agreed to sell to Harry Davis for the sum of \$10,000 premises described as consisting of seven houses, five two-story brick houses and two two-story frame houses, located at Fairmount and Missouri Avenues, Atlantic City (Ex. C10, page 200).

The properties described in said agreements comprise all the property which Silbert agreed to convey to Sooy and it will be seen that there was a profit on the face of the papers for Sooy in the amount of \$10,000.

Abramson's contention is that the initial payment of \$5,000 for the purchase from Silbert was made by him at the solicitation of Davis and upon the representation that the properties were owned or controlled by Sooy and that the purchase was to be made from him. Check for \$5,000 which represented complainant's money was drawn and delivered to Davis and the representation was made by Davis to complainant touching the transaction before the agreement between Silbert and Sooy was executed and before Sooy drew his check for \$5,000. It is the contention of the complainant that all negotiations and transactions were based upon delivery of his check and his authority to Davis to buy the properties for him, complainant. Davis, instead of having the agreement made from Silbert to Abramson, had it made to Sooy for the ultimate pur-

pose of defrauding complainant and realizing a profit on the transaction. The Vice-Chancellor concurred in this view.

ARGUMENT.

I.

THE VICE-CHANCELLOR COMMITTED NO ERROR IN SUPPORTING COMPLAINANT'S CLAIM TOUCHING THE ALLEGATION OF FRAUD, &C.

In order to properly determine whether the Vice-Chancellor was right in his finding of facts, it will be necessary for this Court to read and analyze all the pertinent evidence. That this brief may not be overburdened, we shall confine ourselves to pointing out what we regard as the most salient and conspicuous features. There is a sharp conflict between complainant and defendant. In the light of certain admitted and uncontroverted evidence it is obvious that the defendant is not worthy of belief, and it seems that the Vice-Chancellor must have entertained this view.

On March 31, 1923, W. I. Segal drew his check on the Boardwalk National Bank to the order of Harry Abramson, complainant, for \$5,000. This was endorsed for deposit to the credit of Commercial Realty Company (page 190). At that time complainant and defendant traded as Commercial Realty Company.

On April 3, 1923, Commercial Realty Company drew its check to the order of William Frank Sooy

for \$5,000. This was signed by Davis as president and represented the \$5,000 which came from Segal's account. According to the testimony of complainant and Segal, check was delivered to Davis on the morning of its date (Segal, page 104). At that time complainant was in Baltimore. The negotiations between complainant and defendant had taken place over the telephone and by wire between Davis in Atlantic City and complainant in Baltimore. The agreement between Silbert and Sooy was prepared on a typewriter in Mr. Sooy's home by a typist, Mr. Sooy and Mr. Davis assisting in stating the terms. This was after Davis knew that Abramson had agreed to buy and pay \$40,000. After the agreement between Silbert and Sooy was drawn, which was about eleven o'clock at night (page 95), a communication was had with Silbert and the execution of the agreement followed. It bears date as stated March 31st, which we contend was not the correct date. It must have been executed not earlier than the day following its preparation. In fact, Mr. Silbert lived in Harrisburg and he testifies that it was executed on April 1st (page 43). Davis testified that the Segal check was not drawn until April 3rd (page 96), notwithstanding its date and its stamp "March 31" (page 97).

Mr. Abramson is confident that he was in Baltimore on March 31st, and in this he is supported by his wife and William I. Segal and Nathan Segal. Abramson claimed that on that date he had a conversation with Davis in which he authorized Davis to buy; that Davis had told him of what the property consisted and the sale price. That there was such a conversation seems supported by the telephone slip in evidence which shows a call at 9:59

A. M. from Davis to Abramson (page 92 and Ex. C13, page 211).

Davis denied the call and conversation which of itself would show him to be a fraud unworthy of belief.

The agreement between Silbert and Sooy provides for a commission of 2% to be paid Goldstein as agent and by a separate agreement of the same date and apparently signed by Silbert, owner, he agrees to pay Sooy \$600 commission for selling the properties, to be paid at the time of final settlement, June 1, 1923. Ex. C15, page 213. Sooy received this commission.

Abramson testified (page 21) that Davis told him that Sooy was the trustee for an estate that owned the property, and he believed this. It will be noted that one day before Sooy entered into the agreement to sell Abramson, he had agreed to sell the rear properties to a brother of Davis for \$10,000, which, as stated, represented the profit. This being done the agreement with Abramson was made for the remaining property and his money used by Davis to make the first payment. Abramson supposed and assumed that the agreement included all the property about which Davis had spoken to him and which he supposed Sooy was controlling and selling as trustee. It was not until after his transaction with Sooy was concluded that he learned through Silbert, the owner, that he had received only a part of what Silbert had sold to Sooy. With this information he filed the bill.

Of course, Abramson had a right to assume that he was purchasing all the property which Sooy represented. He acted upon this assumption. Davis never informed him to the contrary. It is patent that Davis schemed to separate the rear properties

from the front properties before having Sooy sign the agreement with Abramson and thus defeated Abramson from realizing any profit from the rear property.

If on March 31st, during which time he (Davis) was negotiating with Abramson, he had not thought of selling Abramson any less than all Sooy owed it was his duty to so inform Abramson, which he did not do. He first assured himself that he had Abramson's \$5,000 to be used in making the initial payment to Silbert, his next step was to get the agreement between Silbert and Sooy and then to have Sooy agree to sell a portion to his brother Harry, and leave only a portion for Abramson. The evidence demonstrates that all the transactions were negotiated and handled by him.

Silbert (page 46) says:

"He (Sooy) came in, signed the mortgage for five thousand dollars, with the bond, he left the papers and went out, the old gentleman, met Mr. Davis, I told Mr. Davis at that time, I said, 'I guess you bought the properties,' and he started to laugh.

Q. Started to laugh?

A. Yes."

Davis did not deny this testimony. If he was not the real purchaser or interested in the purchase he would have denied Silbert's suggestion. It is quite significant that the telephone call to Silbert on March 31st concerning the sale was about two o'clock in the afternoon (page 47). This was after Davis talked over the telephone with Abramson and hours before Davis opened the subject of purchase with Sooy.

Mrs. Goldstein (page 49) testified that all nego-

tiations were with Davis. She also testified (pages 52-53) that Davis, before talking with her and her husband touching the property talked with Silbert over the telephone and represented himself to be her husband. Davis' character is revealed by the testimony of Mrs. Goldstein.

If it is once found that Davis negotiated with Abramson as he testified and received the check on the day it bears date as Segal testified, then it becomes a demonstration that while Davis was under both a legal and moral obligation to buy the property and all of it for Abramson for the sum of \$40,000 (this, by the way, being full consideration for all the property and the consideration named by Davis to Abramson) that he, Davis, conceived the idea of defrauding Abramson by later having Sooy buy when he knew it was safe for Sooy to do so. The Vice-Chancellor found Sooy to be innocent of any fraud and there is no desire to impugn that finding. It cannot be overlooked, however, that Davis did receive from Sooy one-half of the profit and also a part of the commission. Since the evidence shows that Davis knew before he telephoned Abramson that the purchase price of the entire property was \$40,000 it was his plain duty when he mentioned the consideration to Abramson to inform him that he was to receive only a portion of the property for that consideration, if that was what was in his mind. The evidence discloses a lack of frankness on the part of Davis and his denials manifest false testimony. The Vice-Chancellor must have so concluded and moreover he had the benefit of the appearance and conduct of Davis upon the witness stand. His findings of fact are entirely justified by the evidence and we contend that if found otherwise it will be wrong.

II.

DAVIS SHOULD BE MADE TO PAY NOT ONLY WHAT HE RECEIVED BUT WHAT COMPLAINANT LOST.

Conceding the contention of complainant, the equitable effect of his transaction with defendant was to create the relation of principal and agent, or trustee and *cestui que* trust.

It must be presumed that the consideration named in the agreement and deed between Sooy and Harry Davis was the fair market value of the property. Had Abramson received the title as we contend he had a right to, he would have earned the full profit of approximately \$10,000. He was deprived of this by the fraudulent conduct of Davis. The amount which Harry Davis paid to Sooy represents the direct loss resulting to Abramson. In an action at law this loss would represent the damages to which Abramson would be entitled. Certainly he should not have less in a court of conscience. Perhaps in an ordinary case in equity where the transaction is free from fraud then he would have no more than what his trustee received. Here fraud is charged and was, as we submit, proved, and properly found by the Vice-Chancellor. Justice would seem to require that he make good to complainant what he, the complainant, lost by reason of the fraud. If defendant was willing to chance his fraud being discovered in consideration of his receiving a part of the profits then there seems no reason in justice why he should not be penalized for his wrong when the penalty does not exceed the actual loss to the one whose confidence has been abused.

In principle, the following authorities support our contention.

Proprietors of Eastern New Jersey v. Force's Executors, 72 Equity at pages 127-128, and cases cited;

Gordon v. Kaplan, 4 N. J. Advance Reports, No. 6, page 175. 132 Atlantic Reporter, page 110;

26 *R. C. L. Trusts*, paragraph 187;

Conover v. West Jersey Mortgage Co., 87 N. J. Eq. p. 16.

The decree should have provided that the defendant account to the complainant for the loss which he sustained by reason of the breach of trust and confidence.

The decree should be affirmed on the appeal of Davis and reversed on the appeal of Abramson with directions that a decree be entered that defendant account to the complainant for loss sustained.

Respectfully submitted,

COLE & COLE,

*Solicitors of Complainant,
Harry Abramson.*

C. L. COLE,
Of Counsel.

