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Notice of Appeal of Defendant William Kennelly, Inc.

(Filed Feb. 17, 1932.)

In Chancery of New Jersey

Between

J. B. & S. Realty Corporation, a corporation of the State of New Jersey,

Complainant,

And

William Kennelly, Inc., a corporation of the State of New York, Nicholas F. Mahoney and Charles B. Ross,

Defendants.

69-229.
On Bill, &c.

To:

Heyman & Heyman, Esqs.,
Solicitors for the Complainant,
1 Exchange Place,
Jersey City, N. J.

Sirs:

William Kennelly, Inc., a corporation of the State of New York, one of the defendants in the above entitled cause, hereby appeals from the final decree made by the Chancellor on the advice of Vice-Chancellor Vivian M. Lewis, on the 12th day of January, 1932; from the whole and every part

New Jersey State Library

of said final decree, to the Court of Errors and Appeals in the last resort in all cases.

MATTHEW REILLY,
Solicitor for defendant,
William Kennelly, Inc.

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

MATTHEW REILLY,
Solicitor for defendant,
William Kennelly, Inc.

Dated February 11th, 1932.

Petition of Appeal and Reasons of Defendant William Kennelly, Inc.

(Filed Mar. 8, 1932.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

To the Honorable, the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of William Kennelly, Inc., appellant herein, respectfully shows:

That your petitioner and appellant finds itself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice-Chancellor Vivian M. Lewis, on the 21st day of December, 1931, in a certain cause wherein the J. B. & S. Realty Corporation is complainant, and William Kennelly, Inc., is defendant,

in this respect, to wit: that the said final decree orders, adjudges and decrees, that the contracts alleged to have been made by the defendant, William Kennelly, Inc., appellant herein, to Nicholas F. Mahoney for the sale of forty-two lots mentioned in paragraph 10 of complainant's Bill of Complaint are declared to be null and void and of no effect; that the alleged assignment between Nicholas F. Mahoney and Charles B. Ross, assigning to the said Charles B. Ross all of said contracts are declared to be null and void as against the J. B. & S. Realty Corporation; that the counterclaim interposed in this cause by the said Charles B. Ross be dismissed; that the said William Kennelly, Inc., is ordered to pay to the said J. B. & S. Realty Corporation, the complainant aforesaid, the sum of Fifteen Hundred thirty-five and 50/100 ($1535.50) dollars together with interest thereon at the rate of six percent per annum from June 9, 1928; that said J. B. & S. Realty Corporation recover of all the defendants, including your petitioner and appellant, the costs of suit to be taxed, including a counsel fee of Seven Hundred and Fifty ($750.00) dollars.

And your petitioner and appellant humbly appeals from the whole of the said decree of the Chancellor which orders, adjudges and decrees aforesaid, on the ground that the said is erroneous, for that:

1. The Court erroneously overruled the motion of counsel for William Kennelly, Inc., to strike out the following answer of the witness, Harry Cooper:

> "Q. Why? A. Because the lots were not sold the day of the sale."

2. The Court erroneously allowed the following question to be answered by the witness, William S. Stuhr, over the objection of counsel for the defendant, William Kennelly, Inc.

> "Q. What was it? A. I saw Mr. Mahoney and he said he had bought some lots at the sale. I asked him what he paid and he told me but I don't remember now. I asked him about the number of lots and what price he had paid. I walked through the crowd and knew some of them. I spoke to them and remained there until the sale was completed.

3. The Court declined to strike out the testimony of William S. Stuhr of his conversation with the witness, Nicholas F. Mahoney, as requested by counsel for the defendant, William Kennelly, Inc.

4. The trial Court, over the objection of counsel for the defendant, William Kennelly, Inc., permitted this cause of action and the action of Charles B. Ross and Mrs. Beatrice M. Thornley to be tried together and considered the evidence as adduced on behalf of the cross-complainants, Beatrice M. Thornley and Charles B. Ross, and by the complainant, J. B. & S. Realty Corporation in that action, as binding upon the defendant, William Kennelly, Inc.

5. The Court, after the defendant, William Kennelly, Inc., had rested its case, permitted the testimony of William S. Stuhr, Joseph White, Harry Jaffe and Frederick Troutman.

6. The Court erred in entering a decree in favor of the complainant and against the defendant, William Kennelly, Inc.

Petition of Appeal and Reasons of Defendant William Kennelly, Inc.

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 the premises as to this Honorable Court shall seem meet.

MATHEW REILLY,
Solicitor and counsel for the defendant, William Kennelly, Inc.

I conceive that there is good cause for an appeal.

MATHEW REILLY,
Solicitor and counsel for the defendant, William Kennelly, Inc.

MARK TOWNSEND, Jr.
Of counsel with the defendant,
William Kennelly, Inc.

Notice of Appeal of Defendant Charles B. Ross.

IN CHANCERY OF NEW JERSEY.

Between

J. B. & S. Realty Corporation, a corporation of the State of New Jersey,
Complainant-Respondent,

and

William Kennelly, Inc., a corporation of the State of New York, Nicholas F. Mahoney and Charles B. Ross,
Defendants-Appellants.

On Bill, &c.
69/229

The defendant, Charles B. Ross, hereby appeals from the final decree made in the above entitled cause on January 12, 1932, by the Chancellor on the advice of Vice-Chancellor Vivian M. Lewis, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes.

Dated March 15th, 1932.

Hollander & Leichter,
Solicitors for and of Counsel
with Defendant Charles B. Ross.

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

Edward Hollander,
Of Counsel with Defendant
Charles B. Ross.

Petition of Appeal and Reasons of Defendant Charles B. Ross.

(Filed July 1, 1932.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

To the Honorable, The Court of Errors and Appeals in the Last Resort in all causes:

The petition of Charles B. Ross, appellant herein, respectfully shows:

That your petitioner and appellant finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice-Chancellor Vivian M. Lewis, on the 21st day of December, 1931, in a certain cause wherein the J. B. & S. Realty Corporation is complainant, and William Kennelly, Inc., and others, are defendants, in this respect, to wit:

That the said final decree orders, adjudges and decrees, that the contracts alleged to have been made by the defendant William Kennelly, Inc., to Nicholas F. Mahoney, for the sale of forty-two lots mentioned in paragraph 10 of complainant's bill of complaint are declared to be null and void and of no effect; that the alleged assignment between Nicholas F. Mahoney and Charles B. Ross, assigning to the said Charles B. Ross all of said contract are declared to be null and void as against the J. B. & S. Realty Corporation; that the counterclaim interposed in this cause by the said Charles B. Ross be dismissed; that the said J. B. & S. Realty Corporation recover of all the defendants including your petitioner and appellant, the costs of suit to be taxed, including a counsel fee of seven hundred fifty ($750.00) dollars and your petitioner and appellant humbly appeals from the whole of the

said decree of the Chancellor which orders, adjudges and decrees aforesaid, on the ground that the said decree is erroneous for that:

1. Complainant failed to adduce any evidence in support of the theory of the case outlined in the bill, namely a conspiracy among defendants to cheat and defraud complainant.

2. Complainant failed to sustain the burden of proof required by the rules of equity for relief in cases of fraud and conspiracy.

3. Complainant, at the trial, abandoned the theory of the case outlined in the bill, namely fraud and conspiracy, and sought to prove lack of authority in its agent William Kennelly, Inc., to sell said forty-two lots, the contract for which complainant seeks to rescind. The trial court adopting this new theory of the case erroneously held that defendant Nicholas F. Mahoney and defendant Charles B. Ross were bound by secret limitations given by complainant to its agent, defendant William Kennelly, Inc., unknown to defendant Nicholas F. Mahoney and to defendant Charles B. Ross, who at the time had been led by complainant to believe said William Kennelly, Inc., had such authority to sell.

4. The trial court, gave relief to complainant on the theory it had secretly limited the authority of its agent William Kennelly, Inc., despite the fact that such secret limitation worked a fraud on the public bidding at such auction sale, and more particularly on defendant Nicholas F. Mahoney. Complainant did not come into court with "clean hands" to entitle it to the relief of a court of equity.

5. The trial court over the objection of counsel for the defendant William Kennelly, Inc., and of counsel for the defendant, Charles B. Ross that said oral testimony tended to vary the terms of the written contract between defendant, William Kennelly, Inc., and complainant (Exhibit C-1) and was not founded on a consideration, permitted complainant's witness, Harry Cooper to answer as follows:

"Q. What was said between the parties? A. That was to stand behind Mr. Kennelly, and if the price was satisfactory, I was to say, "Let it go" or approve of the sale of the particular lots he was offering at that time."

6. The trial court erred in interpreting the written contract between defendant William Kennelly, Inc. and complainant (Exhibit C-1) as authorizing complainant to withdraw any lots they chose from the auction sale if the bids were unsatisfactory to complainant contrary to the true legal interpretation thereof.

7. The trial court failed to find a waiver on the part of complainant of the 10% deposit on the sale of the forty-two lots to Nicholas F. Mahoney despite the evidence showing such waiver when one Samuel Sann, an officer of complainant to the knowledge of complainant bid in said forty-two lots, without making such deposit.

8. The decree orders defendant Charles B. Ross to pay costs and counsel fees despite the fact that he is an innocent, bona fide assignee of defendant Nicholas F. Mahoney without any knowledge or notice of any alleged fraud and/or conspiracy

and/or wrongdoing by either defendant William Kennelly, Inc., or defendant Nicholas F. Mahoney.

9. The decree refuses to grant specific performance to defendant Charles B. Ross who is a bona fide assignee for value of the contracts for said forty-two lots, contrary to the equity of the case and of the weight of the evidence.

10. The trial court, at the hearing, adopting the new theory of the case, referred to in reason 3 above, and despite the objection of counsel for defendant Charles B. Ross and despite the stipulation of counsel for all the parties, admitted in evidence and considered the proof adduced by complainant:

(1) In its action against defendant William Kennelly, Inc., for breach of the latter's secret instructions and for an accounting and adduced by said defendant in said action.

(2) In its action against defendant Nicholas F. Mahoney and adduced by said defendant in said action

As binding upon defendant Charles B. Ross in the trial of complainant's action against said defendant and in the counterclaim by said defendant against complainant.

11. The Court erred in entering a decree on the bill and on the counterclaim of defendant Charles B. Ross in favor of the complainant and against the defendants Nicholas F. Mahoney and Charles B. Ross.

Your petitioner therefore prays that the said decree of the said Chancellor may be, in the par-

ticulars aforesaid, reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

HOLLANDER & LEICHTER,
Solicitors and Counsel for the
Defendant Charles B. Ross.

We conceive that there is good cause for an appeal.

Solicitor and Counsel for the
Defendant Charles B. Ross.

Bill of Complaint.

(Filed July 11, 1928.)

IN CHANCERY OF NEW JERSEY.

To the Honorable EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey.

J. B. & S. Realty Corporation, a corporation of the State of New Jersey, having its principal place of business in the City of Jersey City, County of Hudson and State of New Jersey, says:

(1) At all times hereinafter stated the defendant, William Kennelly, Inc., was a corporation of the State of New York, and represented itself as a duly licensed auctioneer with power and authority to expose and sell at auction real property in the State of New Jersey.

(2) On January 24, 1928, complainant was the owner of a tract of land situate in the Township of Englewood, County of Bergen and State of New

Jersey, consisting of 74 lots or plots of ground, situate on Jones Road, Maple Street and Linden Avenue in said Township.

(3) On said date the complainant and the defendant entered into a written agreement wherein and whereby the complainant retained the defendant to offer and sell at public auction on the said premises on May 19, 1928, the lands and premises hereinafter particularly described. A true copy of said agreement is hereto annexed and made a part hereof.

(4) The said contract contains the following provision: "If the bids be unsatisfactory to us, we reserve the right to withdraw the property from the sale and in such an event, no commission is to be paid." By the word "us" in the foregoing quotation is meant the complainant herein.

(5) Said public auction sale was postponed until the 9 day of June, 1928, at which time the defendant, through its agents, officers and employees offered for sale the lands above referred to, in plots hereinafter described.

(6) During the course of the said public auction on the part of said William Kennelly, Inc., and as each lot was struck off the said William Kennelly, Inc. through its officers, agents and servants would inquire of the complainant whether or not the bids were satisfactory, and upon being informed that they were satisfactory, the purchaser or purchasers were requested to and did thereupon immediately sign contracts for the purchase of the said lots so struck down to them and paid to the said William Kennelly, Inc. through its officers, servants and agents the deposit of 10% required

thereunder, except in one particular case where the purchaser paid only a deposit of $10.00 on the purchase of three lots which had been struck down to said purchaser. When the said William Kennelly, Inc. was informed by the complainant that the bids were not satisfactory the said lots so struck off were immediately withdrawn from the sale.

(7) During the course of the said sale 42 lots were struck off by the said auctioneer at sums which were unsatisfactory to the complainant who immediately withdrew the same from the said sale and informed the said William Kennelly, Inc. that the said lots would not be sold, but would be withdrawn from said sale.

(8) At the conclusion of the said sale said William Kennelly, Inc. through its officers, agents and servants informed the complainant herein that there had been sold 32 lots for the aggregate price of $30,710.00, but that included in said 32 lots were three lots hereinbefore mentioned, for which the purchaser had paid a deposit of only $10.00 in violation of the contract and terms of sale.

(9) Thereafter on June 14, 1928 said William Kennelly, Inc. forwarded to the complainant a paper writing wherein and whereby it alleged that it had actually sold to *bona fide* purchasers the entire 74 lots owned by the complainant for a total aggregate of $71,660.00 and claimed a commission of 5% on said sum, plus a sum of $2500.00 for advertising, and annexed to said report the contracts alleged to have been made by the purchasers at the said sale, included in which are contracts for 42 lots alleged to have been purchased by one, Nicholas F. Mahoney.

(10) Complainant charges that said William Kennelly, Inc. did not sell to said Nicholas F. Mahoney nor to any other *bona fide* purchaser at the said sale on June 9, 1928, any of the 42 lots mentioned in the contracts annexed to the said report of the said William Kennelly, Inc., but that the said lots were struck down at such prices which were unsatisfactory to the complainant, and that the complainant immediately withdrew the same from the said sale.

(11) Complainant further charges that said Nicholas F. Mahoney did not bid for said 42 lots or any of them at the said sale, nor were they struck off to the said Nicholas F. Mahoney at the said sale for the highest bid made at the time; that said Nicholas F. Mahoney did not purchase the said lots at the said sale or at any time and that the contracts submitted by the said William Kennelly, Inc. are fictitious and fraudulent and are made for the purpose of bringing the total aggregate sales alleged to have been made by the said William Kennelly, Inc. to a sum exceeding $50,000.00 in order that the said William Kennelly, Inc. might collect from the complainant the additional advertising fee of $2500.00 plus 5% commission on the aggregate sum of the said sales.

(12) Complainant further charges that said William Kennelly, Inc. and said Nicholas F. Mahoney have entered into a conspiracy for the purpose of cheating and defrauding the complainant herein and for the purpose of showing the alleged contracts in excess of $50,000.00 in order to enable the said William Kennelly, Inc. to collect commissions and advertising fees as aforesaid.

(13) Complainant further alleges that it never intended to sell the said lots at the prices mentioned in the said contracts, and that the said prices mentioned in the said contracts annexed to William Kennelly, Inc. report are not the same as those which were the highest bid made at said public auction sale but differed entirely therefrom, and that other persons bid higher sums than are set forth in said contracts, and that the said complainant refused to approve the bids so made by the other persons for such higher sums.

(14) Complainant is informed that the said Nicholas F. Mahoney has sold or assigned all his right, title and interest in and to the contracts for the said 42 lots to one Charles B. Ross, and that such assignment took place on June 15, 1928, and that by reason of such assignment said Charles B. Ross now claims to be entitled to a deed of conveyance from the complainant herein conveying to him all of the said 42 lots in accordance with the terms of the agreement alleged to have been made between William Kennelly, Inc. and Nicholas F. Mahoney.

(15) Complainant charges that said assignment by said Nicholas F. Mahoney to said Charles B. Ross was made with full knowledge on the part of said Charles B. Ross, and that said Charles B. Ross, if he took such assignment of said contract, had full knowledge of all the facts set forth in this Complaint and that he is a part of the conspiracy above mentioned and that he is not a *bona fide* purchaser for value without notice and that the assignment to the said Charles B. Ross is false and fraudulent and is made for the sole

purpose of cheating and defrauding the complainant herein.

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

(1) That the defendants, William Kennelly, Inc., Nicholas F. Mahoney and Charles B. Ross may answer this Bill of Complaint and each allegation therein made.

(2) That the alleged contracts of sale made and executed and alleged to have been made and executed between William Kennelly, Inc. and Nicholas F. Mahoney may be rescinded.

(3) That the defendant William Kennelly, Inc. may be ordered and directed to account to the complainant for all moneys received by it in complainant's behalf.

(4) That the defendant William Kennelly, Inc. may be ordered and directed to return to the complainant all moneys now in its possession belonging to the complainant.

(5) That the complainant may have such other and further relief in the premises as to this Court may seem equitable and just.

(6) That a writ of subpoena may be issued, commanding the defendants to answer this Bill of Complaint and to abide by such decree as this Honorable Court may make in the premises.

HEYMAN & HEYMAN,
Solicitors for and of counsel
with Complainant.

Agreement Annexed to Bill of Complaint.

WILLIAM KENNELLY, INC.
Real Estate Auction Specialists
149 Broadway

(Singer Building)

Telephone Hanover 1020

New York, January 24, 1928.

We, the J. B. & S. Realty Corporation hereby authorize WILLIAM KENNELLY, INC., to offer at public auction on the premises on May 19th, 1928, at 2 P. M. the following property which is owned by us.

Title of Sale: Public Auction Sale

Location of Property: 74 lots on Jones Road, Maple Street and Linden Ave., Englewood, N. J.

Size: As per diagram submitted

Terms: Cash 10% day of sale—20% cash in 30 days—70% on mortgage 1, 2 or 3 years at 6%. 5% discount for all cash in 30 days.

And we hereby agree to pay WILLIAM KENNELLY, INC., for advertising the aforesaid property at auction, a sum not to exceed Five Thousand ($5000.) Dollars payable $1000. on the 16th day of April and $1500. 10 days before the day of sale.

If the bids be unsatisfactory to us, we reserve the right to withdraw the property from the sale and in such an event no commission is to be paid.

If $50,000 or more in actual bonafide sales are made, then the said J. B. & S. Realty Corporation agrees to pay to said William Kennelly, Inc., a further sum of $2500. as and for the advertising of the aforesaid property at auction. If less than

$50,000. worth of property is actually sold, then the said J. B. & S. Realty Corporation agrees to pay a sum equal to 5% of the total sales so made as and for advertising expense of said sale and in the event that less than $50,000 worth of property is sold, no commission is to be paid to said William Kennelly, Inc., for the effecting or making sale of any of said property. If $50,000 or more is sold then the said J. B. & S. Realty Corporation agrees to pay in addition to the said $2500 additional advertising expense, a sum equal to 5% of the total actual bonafide sales.

J. B. & S. Realty Corporation agrees not to sell any of said land unless same be sold through William Kennelly, Inc. as broker.

William Kennelly Inc. will furnish the itemized statement showing at least $5000. disbursements, advertising and conducting of sale.

William Kennelly Inc. agrees to turn over to the J. B. & S. Realty Corporation, all deposits paid at the sale, less commission or advertising expense not later than five days after the sale.

The attorney for the seller agrees to furnish the terms of sale for this sale.

WITNESS our hand and seal this 24th day of January, 1928.

J. B. & S. REALTY CORPORATION
HARRY JAFFE President
JACOB BAER Sect'y Owners

SAMUEL SANN,
Treasurer

WILLIAM KENNELLY, INC.
WM. T. KENNELLY,
President

Answer of Defendant William Kennelly, Inc.

(Filed Oct. 17, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

J. B. & S. REALTY COMPANY, a corporation of the State of New Jersey,

Complainant,

and

WILLIAM KENNELLY, INC., a corporation of the State of New York, *et als,*

Defendants.

On Bill, etc.

The Defendant, William Kennelly, Inc., one of the Defendants to the above entitled action, answering the Bill of Complaint, says that:

1. Admits Paragraph one of the Bill of Complaint.

2. Admits Paragraph Two of the Bill of Complaint.

3. Admits Paragraph Three of the Bill of Complaint.

4. Admits Paragraph Four of the Bill of Complaint.

5. Admits Paragraph Five of the Bill of Complaint.

6. Admits Paragraph Six of the Bill of Complaint.

7. Denies Paragraph Seven of the Bill of Complaint.

8. Denies Paragraph Eight of the Bill of Complaint and alleges that the whole contract consisting of seventy-four (74) lots was sold by this Defendant for the Complainant at the time of the sale.

9. Admits Paragraph 9 of the Bill of Complaint.

10. Denies Paragraph 10 of the Bill of Complaint.

11. Denies Paragraph 11 of the Bill of Complaint.

12. Denies Paragraph 12 of the Bill of Complaint.

13. Denies Paragraph 13 of the Bill of Complaint and says that the prices obtained by this Defendant, were in excess of the upset price of the lots as set by the Complainant through its officers and agents.

14. As to Paragraph Fourteen it says that it has been informed that Nicholas F. Mahoney sold or assigned his right, title and interest in and to the contract for the said forty-two (42) lots to one, Charles B. Ross, and that the said Charles B. Ross claims to be entitled to a deed for said lots from Complainant.

15. It denies Paragraph 15 of the Bill of Complaint.

MATTHEW REILLY,
Solicitor of the Defendant,
William Kennelly, Inc.

Replication to Answer of Defendant William Kennelly, Inc.

(Filed , 1928.)

IN CHANCERY OF NEW JERSEY.

Between

J. B. & S. REALTY COMPANY, a corporation of the State of New Jersey,

Complainant,

and

WILLIAM KENNELLY, INC., a corporation of the State of New York, *et als,*

Defendants.

(69-229) On Bill, etc.

The complainant joins issue on the Answer filed by the defendant, William Kennelly, Inc.

HEYMAN & HEYMAN,
Solicitors for Complainant.

Amended Answer of Defendant, William Kennelly, Inc.

(Filed , 1930.)

IN CHANCERY OF NEW JERSEY.

Between

J. B. & S. Realty Corporation, a corporation of the State of New Jersey,

Complainant,

and

William Kennelly, Inc., a corporation of the State of New York, *et al.*,

Defendants.

On Bill, &c.

The defendant, William Kennelly, Inc., one of the defendants in the above entitled cause, for its amended answer to the bill of complaint filed herein, says:

1. It admits paragraph one of the bill of complaint.

2. It admits paragraph two of the bill of complaint.

3. It admits paragraph three of the bill of complaint.

4. It admits paragraph four of the bill of complaint.

5. It admits paragraph five of the bill of complaint.

6. It denies all of paragraph six of the com-

plaint except that part thereof which states that in one particular case a purchaser paid $10.00 deposit, which the defendant admits.

7. It denies paragraph seven of the bill of complaint.

8. It denies allegations of paragraph eight of the bill of complaint, but alleges that the whole tract consisting of seventy-four (74) lots was sold by this Defendant for the Complainant at the time of the sale.

9. It admits paragraph nine of the bill of complaint.

10. It denies paragraph ten of the bill of complaint.

11. It denies paragraph eleven of the bill of complaint.

12. It denies paragraph twelve of the bill of complaint.

13. It denies the allegations of paragraph thirteen of the bill of complaint and says that the prices obtained by this Defendant were in excess of the upset price of the lots as set by the complainant through its officers and agents.

14. It has no knowledge of the allegations contained in paragraph fourteen of the bill of complaint and for lack of such knowledge denies the same.

15. It denies paragraph fifteen of the bill of complaint.

MARK TOWNSEND, JR.,
Solicitor of defendant,
William Kennelly, Inc.

Answer and Counterclaim of the Defendant, Charles B. Ross.

(Filed , 1930.)

IN CHANCERY OF NEW JERSEY.

Between

J. B. & S. Realty Corporation, a corporation of the State of New Jersey,

Complainant,

and

William Kennelly, Inc., a corporation of the State of New York,

Defendant.

On Bill, etc.

The answer of defendant, Charles B. Ross, to complainant's bill of complaint and his counterclaim thereto.

The defendant, Charles B. Ross, answering the bill of complaint herein says, that:

1. He has no knowledge or information sufficient to form a belief as to paragraph one.

2. He has no knowledge or information sufficient to form a belief as to paragraph two.

3. He has no knowledge or information sufficient to form a belief as to paragraph three.

4. He has no knowledge or information sufficient to form a belief as to paragraph four.

5. He admits paragraph five.

6. He has no knowledge or information sufficient to form a belief as to paragraph six.

7. He has no knowledge or information sufficient to form a belief as to paragraph seven.

8. He has no knowledge or information sufficient to form a belief as to paragraph eight.

9. He has no knowledge or information sufficient to form a belief as to paragraph nine.

10. He denies that William Kennelly, Inc. did not to sell to said Nicholas F. Mahoney forty-two (42) lots as alleged in paragraph ten and says that he has no knowledge or information sufficient to form a belief as to the other allegations contained in said paragraph.

11. He denies paragraph eleven.

12. He denies paragraph twelve.

13. He has no knowledge or information sufficient to form a belief as to paragraph thirteen.

14. He admits paragraph fourteen.

15. He denies paragraph fifteen.

By way of counterclaim against complainant, the defendant, Charles B. Ross, says:

1. That on June 9th, 1928, the defendant, Nicholas F. Mahoney, purchased from the complainant through its agent, William Kennelly, Inc., Auctioneer, forty-two (42) lots situate in the City of Englewood, County of Bergen and State of New Jersey and more particularly described as follows:

> "All those certain lots, tracts or parcels of land and premises situate, lying and being in the City of Englewood, Bergen County

and State of New Jersey known and designated on a certain map entitled, 'Map of Property of J. B. & S. Realty Corp. at Englewood, N. J., approved by the Common Council of the City of Englewood, New Jersey by C. B. Hammond, President and filed with the City Clerk Roth Jamison on March 15th, 1927,' approved in accordance with Chapter 224 P. L. 1921 as amended, as lots numbered sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), in block numbered one hundred seventy-eight (178) and lots numbered seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-eight (38), forty (40), forty-two (42), forty-nine (49), fifty-one (51), fifty-three (53) in block numbered one hundred seventy-nine (179).

and paid on account of the purchase price thereof the sum of Four Thousand Ninety-five ($4,095.00) Dollars, and in addition thereto the sum of One Thousand Fifty ($1,050.00) Dollars as auctioneers knock down fees, making a total of Five Thousand One Hundred Forty-five ($5,145.00) Dollars paid by the said Nicholas F. Mahoney to complainant and its agent, William Kennelly, Inc.

2. That pursuant to the terms of sale and memoranda of purchase entered into by the said Nicholas F. Mahoney with the complainant, through its agent, title to said lands and premises was to be delivered at the office of Harry Cooper, Esq., #1 Exchange Place, Jersey City, New Jersey on July 9th, 1928, and all adjustments were to be made as of said date.

3. That on June 15th, 1928, the said Nicholas F. Mahoney did assign, transfer and set over and convey unto this defendant, Charles B. Ross, all his right, title and interest in and to his contract of purchase of the aforesaid lands and premises for a valuable consideration paid to him by said defendant, Charles B. Ross.

4. That on July 9th, 1928, this defendant, Charles B. Ross, appeared at the office of Messrs. Heyman and Heyman at #1 Exchange Place, Jersey City, New Jersey, which is also the office of said Harry Cooper, Esq., and requested the delivery of a deed, conveying the aforesaid lands and premises to him pursuant to the terms of the several contracts made therefor, but the complainant failed, neglected and refused, to convey the premises aforesaid pursuant to said agreement and memoranda.

5. This defendant, Charles B. Ross, was ready, willing and able, fully to perform the terms and conditions and pay the consideration mentioned in and in accordance with the terms of the sale and memoranda of purchase above referred to.

6. Complainant has failed, neglected and refused, and continues to refuse to convey the lands and premises aforementioned pursuant to the

terms of the memoranda of purchase and terms of sale above mentioned.

7. This defendant, Charles B. Ross, is without adequate remedy in the courts of law, and therefore prays:

1. That the J. B. & S. Realty Corporation, which is a complainant to this suit, may answer this counterclaim and each statement therein made.

2. That the said complainant, J. B. & S. Realty Corporation may be compelled by the decree of this court specifically to perform the several agreements or memoranda of sale entered into by the said J. B. & S. Realty Corporation with the said Nicholas F. Mahoney and assigned to this defendant, Charles B. Ross.

3. That in case the said complainant, J. B. & S. Realty Corporation should fail and neglect to deliver deed within the time limited therefor, by this Court then and in that event the amount paid by this defendant to the said Nicholas F. Mahoney, together with interest and costs may be and become a lien upon the said lands and premises in favor of this defendant, Charles B. Ross, and that said lands and premises may be sold under the direction of this court for the satisfaction of this lien so impressed on said lands and premises; and in case a deficiency should remain after said sale, the said complainant may be ordered by this court to pay said deficiency together with interest and costs to this defendant, Charles B. Ross.

HOLLANDER & LEICHTER,
Solicitors of Defendant,
Charles B. Ross.

Replication to Answer of Charles B. Ross and Answer to Counterclaim.

(Filed , 1930.)

IN CHANCERY OF NEW JERSEY.

(69-229)

Between

J. B. & S. Realty Corporation, a corporation of the State of New Jersey,

Complainant,

and

William Kennelly, Inc., a corporation of the State of New York, *et al.*,

Defendant.

} On Bill, etc.

The complainant, J. B. & S. Realty Corporation, joins issue on the Answer filed by the defendant, Charles B. Ross.

Answer to Counterclaim.

The complainant, in answer to the counterclaim filed by the defendant, Charles B. Ross, says:

(1) It denies all of the allegations of said Counterclaim.

Heyman & Heyman,
Solicitors for Complainant.

Order of Reference.

(Filed , 1928.)

IN CHANCERY OF NEW JERSEY.

Between

J. B. & S. REALTY COMPANY, a corporation of the State of New Jersey,

Complainant,

and

WILLIAM KENNELLY, INC., a corporation of the State of New York, *et als,*

Defendants.

(69-229) On Bill, etc.

Upon motion of Heyman & Heyman, Solicitors for the Complainant herein, and upon the annexed consent of Hollander & Leichter, Solicitors for the defendant, Charles B. Ross; Homer Townsend, Solicitor for the defendant, Nicholas F. Mahoney; and Matthew J. Reilly, Solicitor for the defendant, William Kennelly, Inc., it is on this day of October, 1928

ORDERED that the above stated cause be referred to the Honorable Vivian M. Lewis, one of the Vice-Chancellors, to hear the same for the Chancellor, and to report thereon to him and advise what Order or Decree should be made thereon.

We hereby consent to the entry of the above Order without further notice to us.

HOLLANDER & LEICHTER,
Solicitors for Charles B. Ross.

HOMER TOWNSEND,
Solicitor for Nicholas F. Mahoney.

MATTHEW J. REILLY,
Solicitor for William Kennelly, Inc.

Final Decree.

(Filed Jan. 18, 1932.)

IN CHANCERY OF NEW JERSEY.

Between

J. B. & S. REALTY COMPANY, a corporation of the State of New Jersey,
Complainant,

and

WILLIAM KENNELLY, INC., a corporation of the State of New York, NICHOLAS F. MAHONEY and CHARLES B. ROSS,
Defendants.

69-229.
On Bill, etc.

The complainant having filed its Bill of Complaint herein alleging that it was the owner of certain lands and premises in the Township of Englewood, in the County of Bergen and State of

New Jersey, consisting of 74 lots or plots of ground, and that on January 24, 1928, it entered into a contract with the defendant, William Kennelly, Inc. to sell the same at public auction; and that the said William Kennelly, Inc. did on June 9, 1928, conduct a sale at public auction and did at said sale, sell 32 of the 74 lots or plots of ground; and that thereafter the said William Kennelly, Inc. reported to the said complainant that it had sold all of the said 74 lots or plots of ground, and did annex to said report certain alleged contracts for the sale of 42 of said lots to one Nicholas F. Mahoney; and that said Nicholas F. Mahoney alleged that he had sold, assigned, transferred and set over unto Charles B. Ross the contracts for the purchase of the said 42 lots; and that the said Charles B. Ross had demanded of the complainant conveyance of the 42 plots of ground, pursuant to the terms of the said alleged contracts made between the defendants, William Kennelly, Inc. and Nicholas F. Mahoney, and the complainant having alleged that the alleged contracts were false and fraudulent contracts, and that the said William Kennelly, Inc. did not sell to the said Nicholas F. Mahoney any of the said 42 lots; and having further alleged that the alleged assignment by said Nicholas F. Mahoney to said Charles B. Ross was made with the full knowledge on the part of the said Charles B. Ross that the said contracts were false and fraudulent, and that said Charles B. Ross took the said contracts subject to all the equities of the said complainant herein; and praying that the said alleged contracts of sale made by William Kennelly, Inc. to Nicholas F. Mahoney be rescinded, and that the defendant, William Kennelly, Inc. be ordered and directed to account to the complainant for all moneys received by it in the com-

plainant's behalf, and that the said William Kennelly, Inc. be ordered and directed to return to the complainant all moneys now in its possession belonging to the said complainant; and the defendant, Charles B. Ross, having filed a Counterclaim against the complainant demanding specific performance of said contracts or the repayment by the complainant to him of the moneys alleged to have been paid by him to said Nicholas F. Mahoney; and the said cause having come on to be heard before this Court at the Chancery Chambers in the City of Paterson, in the presence of Heyman & Heyman, Solicitors for and of counsel with the complainant; Matthew J. Reilly and Mark Townsend, Jr., Solicitors for the defendant, William Kennelly, Inc.; Hollander & Leichter, Solicitors for the defendant, Charles B. Ross; Homer Townsend and Charles E. S. Simpson, Solicitors for and of counsel with the defendant, Nicholas F. Mahoney;

And the Court having read the pleadings and heard the proofs and the argument of the respective counsel, and the Court having duly considered of the said pleadings, proofs and arguments; and it appearing to the Court that the complainant is entitled to the relief sought and prayed for by it in its Bill of Complaint; it is on this 12th day of January, 1932, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey,

ORDERED, ADJUDGED and DECREED, and the said Chancellor doth, by virtue of the power and authority of this Court, ORDER, ADJUDGE and DECREE:

(1) That the contracts alleged to have been made by the defendant, William Kennelly, Inc. to Nicholas F. Mahoney for the sale of 42 lots mentioned in paragraph 10 of the complainant's Bill of Complaint, be and the same hereby are declared to be null and void and of no effect.

(2) That the alleged assignment between Nicholas F. Mahoney and Charles B. Ross, assigning to said Charles B. Ross all of the said contracts, be and the same is hereby declared to be null and void as against the complainant herein.

(3) That the Counterclaim interposed in this cause by the defendant, Charles B. Ross, be and the same is hereby dismissed.

(4) That the defendant, William Kennelly, Inc., within ten days from the date of service upon it of a certified copy of this Decree, pay to the complainant the sum of $1535.50 together with interest thereon at the rate of 6% per annum, from June 9, 1928.

(5) That the complainant recover of all of the defendants herein its costs of suit to be taxed, including a counsel fee of $750.00, which is hereby allowed to the said complainant; and it is further

ORDERED, ADJUDGED and DECREED that unless the defendants herein shall pay to the complainant the said sums of money so awarded hereby, within a period of ten days after the service upon them of a certified copy of this Decree, that execution issue therefor, in accordance with the practice of this Court.

E. R. WALKER,
C.

Respectfully Advised,

VIVIAN M. LEWIS,
V. C.

A true copy,

FERD GARRETSON,
Clerk.

Testimony.

IN CHANCERY OF NEW JERSEY.

Between

J. B. & S. REALTY CORPORATION, a corporation of the State of New Jersey,

Complainant,

and

WILLIAM KENNELLY, INC., a corporation of the State of New York, *et al.*,

Defendants.

} On Bill, &c.

Paterson, N. J., April 24th, 1929.

Before Honorable VIVIAN M. LEWIS,
Vice Chancellor.

APPEARANCES:

BENJAMIN HEYMAN, Esq., appearing for Messrs. HEYMAN & HEYMAN, Solicitors for Complainant.

MATTHEW J. REILLY, Esq., and MARK TOWNSEND, Esq., Solicitors of Defendant William Kennelly, Inc.

EDWARD HOLLANDER, Esq., appearing for Messrs. Hollander & Leighter, Solicitors of Defendant Charles R. Ross.

CHARLES E. SIMPSON, Esq., appearing for Homer Townsend, Esq., Solicitor of Defendant Nicholas F. Mahoney.

Mr. Heyman: This is a suit to rescind certain contracts for the sale of real estate, made by Wil-

liam Kennelly, Inc., licensed auctioneers. The object is to set aside certain contracts that he says he made, for the benefit of the defendant corporation.

The Court: All right; put in the proof.

HARRY COOPER, a witness produced on behalf of the complainant, being first duly sworn according to law, testified as follows:

Direct examination by Mr. Heyman:

Q. Mr. Cooper, you are an attorney and counsellor at law? A. Yes, sir.

Q. And you are the attorney for the J. B. & S. Realty Company? A. Yes, sir.

Q. And you know the defendant William Kennelly, Inc.? A. Yes, sir.

Mr. Heyman: I offer in evidence a contract between William Kennelly, real estate specialist, New York City, January 24th, 1928 (reads contract).

Q. This is the contract between J. B. & S. Realty Corporation and William Kennelly, Inc.? A. Yes, sir.

Mr. Heyman: I ask that it be marked.

(Contract marked Exhibit C-1, as of this date.)

Q. Pursuant to that contract, was the sale advertised? A. It was.

Q. I show you a paper and ask you what this is? A. That is a prospectus sent out by Kennelly, to his buyers, and which he used for his advertising.

Mr. Heyman: I offer in evidence, if your

Honor please, a circular sent out by the defendant William Kennelly.

The Court: Let it be marked.

(Circular marked Exhibit C-2, as of this date.)

Q. Was the sale held? A. Not on May 28th.

Q. Was the sale held? A. It was held after that date.

Q. When? A. On June 9th.

Q. Were you present at the sale? A. Yes, sir.

Q. Throughout the entire time? A. Yes, sir.

Q. Did you hear the auctioneer offer the lots for sale? A. Yes, sir.

Q. Did you keep a record of the sale? A. I tried to keep a record of them; I put down the lot numbers, and I would mark down whether they were sold or not.

Q. Now, during the sale, what occurred, with reference to the bids? A. Mr. Kennelly was selling, himself, at the time, and he would put lots on sale and run them up to a price, and then say "sold," and then they would send a man out in the crowd with a board and contract and duplicate underneath, and bring them back signed, or unsigned, to the table alongside of Mr. Kennelly's stand, and his then bookkeeper would tell me whether it was a sale or not; if it was no sale he would say it was our man, and that is no sale.

Q. Now, when there was a sale? A. If there was a sale, Mr. Kennelly's secretary, who was on the stand, he would say: "That is a legitimate sale," and ask to let it go.

Q. Do you mean that was a legitimate sale? A. The sale of the lots.

Q. If it was a sale, did he ask you if it was a sale?

Mr. Hollander: I object to the question on the ground that it is leading.

Mr. Heyman: I will withdraw the question.

Q. Aren't you mistaken when you say a legitimate sale; don't you mean something else? A. He would say a knock-down.

Q. Could he knock it down before he could get a bid?

The Court: Isn't that a conclusion?

Q. What capacity did you occupy with reference to the J. B. & S. Realty Company? A. I was attorney for them, at the time.

Mr. Townsend: I object; the terms of sale speak for themselves.

The Court: I agree with you, and I strike it out.

Mr. Heyman: The contract says—

The Court: I know it, but don't let him construe the contract; let him tell what he did under the contract, but that is as far as he can go.

Q. Was there any agreement made between the J. B. & S. Realty Corporation and William Kennelly, Incorporated, as to how the sale was to be approved, or how the lots were to be withdrawn from the sale? A. There was an agreement as to how the sale was to be approved.

Q. What was it?

Mr. Townsend: I object to the question.

Mr. Hollander: That is part of the agreement.

By the Court:

Q. Did you hear that agreement made? A. Yes, sir; I was there when it was made.

Mr. Townsend: As I understand it, that is the contract, and they cannot vary the terms of the contract, unless it is based on a consideration.

The Court: They might get in evidence to the effect, to carry out the terms of the contract, they got together and made other arrangements. I will allow it, and note your objection.

By Mr. Heyman:

Q. What was said between the parties? A. That I was to stand behind Mr. Kennelly, and if the price was satisfactory, I was to say, "Let it go," or approve of the sale of the particular lots he was offering at that time.

Q. Otherwise? A. Otherwise there was no sale.

Q. And during the sale, did you stand behind the block with Mr. Kennelly? A. I did.

Q. What occurred? A. During the sale, he would run the price up, and he would say, "Sold," without approval, and McDonald get off the stand—

Mr. Townsend: I object.

By the Court:

Q. Who was McDonald? A. He was the secretary of the Kennelly Company.

The Court: What do you object to, on the ground that they have not connected McDonald?

Mr. Townsend: On the ground that they haven't connected Mr. Kennelly with it.

Q. Was he present? A. He was right there with us.

The Court: Let him testify.

By Mr. Heyman:

Q. What did McDonald do when he got off the stand? A. He would say, "There don't seem to be any bidders, and we will run it up and take it out of the sale."

Mr. Hollander: I object to all this line of testimony on the ground that my client is not a party to the contract.

Q. Now, what happened when they got a legitimate bid?

The Court: I wouldn't characterize it.

Q. What happened during the course of the sale of any of these properties? A. They would take bids throughout the crowd, and if he got a price that he thought was all right, he would say, "That is a legitimate bid, shall we take it or let it go?"

Mr. Townsend: I object to that.

(Witness continuing.) I would tell him if it was around the proper price; I would say, "Let it go."

Q. And you would tell him what? A. Yes; let it go.

Q. What would McDonald do then? A. He would tell Kennelly to go ahead with the bid, and he would knock it down.

Q. Now, during the course of the sale, how many lots were sold in that manner, that you approved?

A. I didn't know during the sale how many were sold, until it was all over.

Q. Did you figure them up after the sale was over? A. I couldn't figure them up.

Q. After the sale was over? A. After the sale was over, I went over to the stand where his chief clerk was sitting, and copied off the list of the lots sold.

Q. I show you these papers, and ask you what these papers are; what is this paper? A. This is a copy of the sales list, which his chief bookkeeper had at the table.

Q. Taken from his original records? A. Yes, sir.

Q. And made when? A. Immediately after the close of the sale, on June 9th, 1928.

Q. In your handwriting? A. That is my handwriting; yes, sir.

Mr. Heyman: I offer it in evidence.

Mr. Townsend: I object to it on the ground that it is not the best evidence.

The Court: If you force the objection, I will have to sustain it, but maybe he can connect it up later.

Mr. Townsend: But, we have the original paper.

The Court: Then the objection will be sustained.

Mr. Heyman: May I have this paper marked for identification?

The Court: Yes; it may be marked for identification.

(Paper marked C-3 for identification, as of this date.)

Q. Now, I ask you what this paper is? A. This

is the record which I tried to keep of the sales of the lots, as he put them up for bids.

Q. And you made it how, during the course of the sale? A. While Mr. Kennelly was selling; yes, sir.

Q. In your own handwriting? A. Yes, sir.

Mr. Heyman: I offer it in evidence.

The Court: Admitted.

(Paper marked Exhibit C-4, as of this date.)

Q. I ask you what this paper is? A. This is a copy of the statement that I made at the sale—I made after the sale.

Q. At that time? A. No; not at the time.

Q. All right. Now, after the sale was over, did you have any conversation with McDonald, as to the number of lots that were sold? A. McDonald spoke to me first.

Mr. Townsend: I suppose this is subject to the same objection.

The Court: All right; note the objection.

Mr. Hollander: I make a general objection to all this line of testimony.

The Court: I understand that you object to all this testimony, because it doesn't bind your client?

Mr. Hollander: Yes, sir.

The Court: Was the contract put on record?

Mr. Hollander: No, sir.

By the Court:

Q. How much property was sold? A. About thirty thousand dollars worth.

Q. How long did the sale last—how many days? A. Only about an hour and a half.

Q. How did the sale stop? A. Mr. Kennelly stopped the sale.

Q. I see. He said, "Everything sold," and then you all left? A. We stood around a little while, and then we left.

Q. I mean, you stood around a little while, and talked, and then left? A. Yes, sir.

By Mr. Heyman:

Q. How many lots were sold? A. Thirty-two.

Mr. Townsend: I object to it on the ground that it is a conclusion.

By the Court:

Q. How do you know how many lots were sold? A. I copied the sales slip.

The Court: Have you called for the original?

Mr. Townsend: Yes, sir; I have it here.

The Court: The objection is sustained.

By Mr. Heyman:

Q. Did you talk with Mr. McDonald after the sale? A. Yes, sir.

Q. What did he say? A. He said, "We sold about fifty thousand dollars worth."

Mr. Townsend: I object to it on the ground that it is a self-serving declaration.

The Court: I will allow it.

(Witness continuing.) I said, "I didn't think you sold that many," and I said, "Do you intend to figure Sands' contracts?" and he said, "Yes," and

I said, "They aren't sold," and he said, "Speak to the Major."

By the Court:

Q. Who was he? A. Mr. Kennelly, and he was close by and he said, "I am too busy now," and he walked away, and that was all that was said.

By Mr. Heyman:

Q. When the sale was closed, as announced by Mr. Kennelly, was there any other sale held by anybody, at any time, at that place?

Mr. Townsend: I object to the question.
The Court: How does he know?

By the Court:

Q. What time did you leave the grounds? A. About five o'clock in the afternoon.
Q. Was it sunset? A. No; not yet.

The Court: There may have been sales after that.

Q. Were there any other sales made on the ground, other than you have spoken of? A. To my knowledge, there was no other sale.

By Mr. Heyman:

Q. When you left the grounds, who left there? A. I left with Jaffe.
Q. When did Kennelly leave? A. He left before that.
Q. How long before? A. At least a half an hour.
Q. Did he come back? A. No; he didn't.
Q. Did you see a man by the name of Mahoney there? A. I don't know Mahoney.
Q. Was there anybody left on the grounds at the

time you left the place? A. I don't remember seeing anybody; we were among the last to leave.

Q. Now, I show you these papers and ask you if you have seen them before? A. I have.

Q. And where? A. They were sent over to us, at our office, by William Kennelly, Incorporated.

Q. To whose office? A. To J. B. & S.—to me, as attorney; I don't remember, but they got to our office.

Q. Your office, where? A. No. 1 Exchange Place, Jersey City.

Q. Now, was there a letter accompanying these papers? A. There was a letter from Major Kennelly's office.

Q. Is this the letter? A. That is the letter.

Mr. Heyman: I offer in evidence letter dated June 14th, 1928.

The Court: Admitted.

(Letter dated June 14th, 1928, marked Exhibit C-5, as of this date.)

Mr. Heyman: Accompanying that, if your Honor please, is a list of names, lot numbers, prices and deposit, and also a summary of the auctioned lots, and the number of contracts, all of which I offer in evidence.

The Court: Let them be marked.

(Papers above referred to marked Exhibit C-6, as of this date.)

Q. I ask you to look through these papers, in Exhibit C-6, and tell me if you recognize any of the handwriting on the contracts of sale. A. I don't know the handwriting; I never saw it before.

Q. Did you ever see the handwriting in the body of the instrument before today? A. Inside, in the body of the contracts.

Q. Where did you see it? A. On the contracts.

Q. Where were you when you saw these papers, and the handwriting on them? A. I didn't see these papers until they came to the office with the letter of June 14th.

Q. Let's take the first page, signed by A. B. Hunter, did you see the words "Four lots, $1,000 each; lots 8, 9, 10 and 11, $4,000"; did you see that handwriting before you received that in the mail? A. No; I did not.

Q. Do you know where the handwriting was made? A. I do not; probably at the sale.

Q. You didn't see this made? A. No; I did not.

Q. Now, when you received that, what did you do? A. I had a conversation with you, and we immediately wrote a letter to Kennelly.

Mr. Heyman: May I have that letter?

Mr. Townsend: We only have a copy here; I don't know where the original is.

Mr. Heyman: You only have a copy?

Mr. Townsend: The letter of June 16th?

Mr. Heyman: Yes.

Mr. Townsend: We only have a copy.

Mr. Heyman: I offer in evidence, please, a letter written by us to William Kennelly, Incorporated, by Heyman and Heyman.

Mr. Townsend: I object to it, on the ground that it is a self-serving declaration.

The Court: I will receive it.

Mr. Townsend: My objection is—

The Court: I don't think this is the proper time to put it in evidence.

Mr. Heyman: Yes, I think it is; it is in answer to a letter which we have just put in evidence.

The Court: All right; we will take it

now, noting your objection on the ground that it is self-serving.

(Letter marked Exhibit C-6, as of this date.)

Mr. Townsend: May I move to strike out the latter part of the witness' testimony, on the same ground?

Mr. Heyman: I consent that it be stricken out.

The Court: Yes; strike it out.

Q. Now, what happened after you received these papers; did you close any of these titles? A. We closed some of them.

Q. How many did you close? A. We closed titles to twenty-six lots.

Q. What happened to the other six that you say were *bona fide* sales? A. One we never heard from, and one we refused to go through with, because we didn't authorize the terms of the contract between Kennelly and this party.

Q. That suit is on here today?

Mr. Hollander: That suit is coming up later.

Q. Now, did you ever receive any money from William Kennelly, Incorporated? A. We did not.

Q. Did you ever receive any money, as a result of this auction sale, from the deposits that were made on that day? A. We did not.

Q. And have you ever received a statement from Mr. Kennelly, as for disbursements for advertising and for help and things of that sort? A. We did not.

Q. Did you have a talk with Kennelly after this? A. I did.

Q. When was it? A. About a week after we wrote that letter.

Q. And where was that? A. I spoke to him over the telephone.

Q. And did you recognize his voice? A. I did.

Q. And what was the conversation? A. It was about the sale; he said he had received the money from Mahoney, but that Mahoney didn't want to buy a lawsuit and that the sale was off.

Mr. Simpson: I object to the answer, and ask that it be stricken out; it was about a week after the letter.

The Court: I will allow it.

Q. Have you gone over the contracts sent over by Mr. Kennelly? A. I have.

Q. Have you figured the lots supposed to be bought by Mr. Mahoney? A. Forty-two in dispute.

Q. How many lots included in Mahoney's contract all together? A. Fifty-two lots.

Q. Have you conveyed title to any of those fifty-two lots? A. Yes; we have.

Q. How many? A. Ten of them.

Q. To whom? A. To a man by the name of Veldran, who had an assignment of those particular contracts, or ten lots.

Q. What happened to the other forty-two? A. We wouldn't convey title.

Q. Why? A. Because, the lots were not sold the day of the sale.

Mr. Townsend: I move that that be stricken out.

The Court: I will allow it to stand; you may note an objection.

Q. Now, I ask you to pick out in this batch, the

contracts for the forty-two lots which you refused to convey, and take them out of the batch of contracts.

The Court: What is that batch?

Mr. Heyman: They are the deeds sent to my client by Mr. Kennelly.

The Court: Why do you want him to take them out now?

Mr. Heyman: I want to point out to your Honor, the difference in the contracts themselves—point out what we call the discrepancy.

The Court: I see.

Q. Now, I ask you to take your records, marked Exhibit C-4, and tell us, from your record, whether or not, on June 9th, at the time of this sale, there was sold to any person by the name of Nicholas F. Mahoney, lots Nos. 49, 51 and 53, in Block 179?

Mr. Townsend: Is that the list you made up yourself?

The Witness: Yes, sir.

Mr. Townsend: Now, that is the most important point in this case.

The Court: Didn't he ask him if any deeds were made out to Mahoney?

Mr. Townsend: No.

The Court: Reframe the question.

Q. I asked you if your records show that there were any deeds for a man by the name of Mahoney, for lots Nos. 49, 51 and 53? A. I haven't any name here.

Q. Do your records show any bids for lots Nos. 49, 51 and 53, for three thousand dollars? A. No, sir.

Q. Do your records show any bid for lots Nos. 38, 40 and 42, for twenty-seven hundred dollars? A. I haven't that; I have a bid for one thousand and fifty dollars a lot, N. S.

Q. What does that signify? A. That means they were knocked down to somebody for one thousand and fifty dollars, and the bookkeeper said—

Mr. Hollander: I object to what the bookkeeper said.

The Court: Are you telling us how you made up your slip?

The Witness: I tried to keep track of them.

The Court: The question is very simple.

A. That meant there was no sale.

Mr. Townsend: What did the N. S. mean?

The Witness: I haven't located it, and the bookkeeper told me there was no sale.

Mr. Townsend: Now, the objection to the answer is that the answer is not binding on us.

The Court: I will let it stand.

Q. Who was that bookkeeper? A. I don't know who he was; he was sitting there at the table alongside of us.

By the Court:

Q. Is he here today; do you see him? A. I only saw him that one day; I don't see him here.

By Mr. Heyman:

Q. Is that the only time you ever saw that man? A. Yes, sir.

Q. Didn't you see him at Kennelly's office? A. No; I didn't.

Q. Did he come with Kennelly? A. He evidently did; he was there the day of the sale.

Q. Was he talking to Kennelly? A. No; to McDonald.

Q. Who is McDonald? A. He is the secretary for Kennelly.

Q. I ask you if lots Nos. 31, 32 and 33, in Block 179 were bid for that day at the price of twenty-seven hundred dollars? A. That is the way it is marked here.

Q. What do your records show? A. Lots Nos. 31, 32 and 33, with an "N. S." after it.

Q. Lots 22, 23, 24, 25, 26 and 27, in Block 179? A. No; I have lots 22, 23 and 24, in Block 179, with a price of eight hundred dollars for each lot, with an "N. S." after it.

Q. How about 25, 26 and 27? A. I have it here with an "N. S." marked after it.

Q. Lots 13, 14, 15, 16, 17 and 18, in Block 179, for six thousand dollars. A. I have it here, 13 to 18 for one hundred and seventy-five and with an "N. S." after it.

Q. Lots 10, 11 and 12, in Block 179, at three thousand dollars? A. With an "N. S." after it.

Q. 15, 16, 17 and 18, in Block 178? A. Lots 15, 16, 17 and 18, in Block 178, with an "N. S." after it.

Q. Lots 19, 20 and 21, at nine hundred dollars? A. With an "N. S." after it.

Q. Lots 22, 23 and 24, in Block 178, at twenty-eight hundred and fifty dollars? A. Lots 22, 23 and 24, Block 178, at eight hundred and twenty-five dollars, N. S.

Q. Lots 25, 26 and 27, in Block 178, at eight hundred and fifty dollars? A. I have it at eight

hundred and twenty-five dollars, with an N. S. after it.

Q. Now, go back to 49, 51 and 53 in Block 179, at three thousand dollars? A. I haven't them marked on here at all.

Q. Now, did you approve the sale of those lots, at the figures at which they are recorded in the contracts, which have been offered today?

Mr. Simpson: That calls for a conclusion on the part of the witness.

The Court: I think the question may be reframed.

By the Court:

Q. What happened? A. They weren't even submitted to me for approval.

Mr. Heyman: I offer in evidence a letter written by the defendant Kennelly to the complainant, dated June 22, 1928.

The Court: Admit it.

(Letter marked Exhibit C-7 as of this date.)

By Mr. Kennelly:

Q. Now, I ask you to refer to your records, Exhibit C-4, and see if you have recorded there the sale of lots 44, 46 and 48, Block 179, at one thousand dollars each? A. I have.

Q. Lots 1, 2 and 3? A. I have.

Q. Lots 4, 5 and 6? A. I have.

Q. Lots 19, 20 and 21, in Block 179, at eight hundred and twenty-five dollars each? A. I have.

Q. Lots 50, 52 and 54, in Block 179, at one thousand dollars each? A. I have.

Q. Lots 12, 13, 14 and 15, in Block 178, at one

thousand dollars each? A. Yes; one thousand dollars each.

Q. Lots 8, 9, 10 and 11, in Block 179, at one thousand dollars each? A. Yes.

Q. Lots 43, 45 and 47, in Block 178, at nine hundred and fifty dollars each? A. I have lots 43, 45 and 47, in Block 179, at nine hundred and fifty dollars.

Q. Lots 37, 39 and 41, in Block 178, at eight hundred and eighty-five dollars? A. It is Block 179, eight hundred and eighty-five dollars.

Q. And lots 34, 35 and 36, in Block 178, at eight hundred and sixty dollars? A. That should be Block 179, at eight hundred and sixty dollars.

Q. Now, take the balance of these contracts, Exhibit C-6, and see if you have the contract for the lots which I have just read to you as corrected by you?

Mr. Simpson: The latter part of that question, "As corrected by you", seems to have a significance here. If those contracts are the contracts, they shouldn't be corrected.

The Court: What is the significance?

Mr. Heyman: He said it should be Block 179.

The Court: Then why don't you leave the latter part of it out?

Mr. Heyman: I will withdraw it.

Q. Have you the contracts for all these lots? A. Yes, sir.

Q. Have you conveyed all the lots? A. All except six.

Q. Now, pick out the contracts for the six lots

that you haven't conveyed? A. Here is one, Henry A. Schlitt, lots 34, 35 and 36, in Block 179.

Q. And are you ready and willing to convey those at this time? A. Yes; we are.

Q. All right, pick out the other one? A. Contract with Beatrice V. Thornley, for lots 44, 46 and 48, in Block 179.

Q. And those are lots which you have refused to convey? A. Yes, sir.

Q. And for which suit is pending here today? A. Yes, sir.

Q. Now, have you compared the contracts last mentioned for the lots which you have conveyed and which you admitted were sold, and which you are willing to convey, to Schlitt, and which you have refused to convey to Thornley, with the list of the record kept by the bookkeeper, on the day of the sale? A. I have.

Q. And do you now say they are the same records, or the records show the same lots to have been sold for the same price? A. Yes, sir; this list compares with those prices.

Mr. Heyman: That is all.

Cross examination by Mr. Townsend:

Q. You had been connected with Mr. Heyman's firm, and have been for a number of years? A. Yes, sir; I am a tenant there.

Q. Were J. B. & S. your clients, or the office's clients? A. They were my clients.

Q. Who are the J. B. & S. Realty Corporation? A. Mr. Jaffe, Mr. Baer, and Mr. Sann.

Q. Are they here in the courtroom? A. They are.

Q. Were you consulted by them prior to the

signing of the contract, marked Exhibit C-1? A. Which contract, the one with Kennelly?

Q. Yes. A. Yes; I was there when it was signed.

Q. Did you draw it? A. It was drawn in Mr. Kennelly's office.

Q. And with your approval, it was signed? A. Yes, sir.

Q. Was this J. B. & S. a holding company? A. They bought the land and sold it.

Q. Was the property conveyed to them, or later conveyed to the company? A. No; they bought it.

Q. It was subject to a mortgage? A. A couple of mortgages.

Q. How old were the mortgages? A. I don't know now.

Q. At the time of the sale, was the mortgage due or not? A. That I don't know.

Q. Do you know whether foreclosure proceedings were pending, or had been pending? A. They had not been threatened to my knowledge.

Q. Now, calling your attention to Exhibit C-2; when did you first see this? A. On the day of the sale.

Q. You had seen the advertisement in the papers for the sale? A. Yes, sir.

Q. And the advertising in the paper were the same as appears there in Exhibit C-2? A. Part of it; they didn't have all of it in the papers, of course.

Q. Did they have this in the papers, "Liquidation sale to close out the holdings of the J. B. & S. Realty Corporation, 24 lots, located—"

Mr. Heyman: I object; the pamphlet is the best evidence.

The Court: I will allow him to compare it.

A. I don't know what was in it.

Q. You knew that the sale was advertised? A. I knew that; yes.

Q. And you knew that after having read that ad, that they represented to the public that they were going to close out the holdings of the J. B. & S. Realty Company?

Mr. Heyman: I object to the question unless he shows that it was in the newspaper advertisements.

The Court: I will allow it.

A. I don't remember what was in the newspaper ad; no, sir.

Q. What is your recollection of the newspaper ad? A. It was an ad in a foreign language that Mr. Kennelly uses.

Q. Did you object to the form of the advertisement? A. I did not.

Q. Did you, at any time up to the sale, object to the form of the advertisement? A. No.

Q. Did you object to the representations held out by that advertisement? A. No; I did not.

Q. And do you recall if the advertising said it was a liquidation sale? A. I don't remember what the newspaper said, but they did.

Q. You never made any objections on behalf of your clients? A. I did not.

Q. The first sale that this was scheduled for a sale, there was no sale? A. No, sir.

Q. Due to the fact that there was not enough people there? A. It was a rainy day.

Q. This was held under a tent? A. It was held under a tent; yes.

Q. Then it was postponed with the consent of

your clients, for two weeks, and re-advertised? A. Yes, sir.

Q. And the same character of advertising appeared in the newspaper, didn't it?

Mr. Heyman: I object to the question; the advertising is the best evidence.

The Court: I think it goes, to a measure, to his credibility; I will allow it.

A. I don't remember that; they were smaller ads, because they didn't pay as much money for the second ad as they did for the first one.

Q. You were the attorney for your clients; you were making representations to the public to come there and buy; you don't mean to tell this court, that you, as a lawyer, inspected that advertising and criticized the character of the advertising made, do you?

Mr. Heyman: I object to the question.

The Court: I will allow it.

A. I saw the advertising in the newspaper; what was in it, word for word, I don't remember. It advertised the sale to be held in May, to be held on the 9th of June.

Q. Was there anything in the ad that you objected to? A. I didn't object to it; of course not.

Q. Now, coming up to the time of sale, did you make any objection to Mr. Kennelly, or anyone, as to the representations they had made in the advertising? A. No, sir; I did not.

Q. Or what they had made to the public? A. No, sir; I did not.

Q. Did you have any conversation with Mr. Kennelly, or did anyone, about it; do you know? A. I was in his office certain times.

Q. Was anything said about the upset price? A. Yes, sir.

Q. What was the upset price agreed on? A. There was no upset price stated.

Q. Were you there when anything was said about having people to bid? A. I don't remember being there when anything was said about that.

Q. Don't you know that your clients agreed to pay at least four men to sit in the tents and bid the property up until they got a certain price? A. I don't know anything about that; Kennelly has his own cappers; they all do.

Q. You know that? A. I have heard it.

Q. Did you object to it? A. I did not.

Q. Why? A. I just didn't.

By the Court:

Q. Why didn't you object to it—this forcing others to bid? A. I didn't understand that was customary at auction sales.

By Mr. Townsend:

Q. You thought that was entirely proper? A. I don't know whether it was proper or not; I didn't object to it.

Q. How did you find it out? A. They told me.

Q. Who told you? A. McDonald, and the salesmen there.

Q. Who told you? A. Several of Mr. Kennelly's men.

Q. Was Mr. Jaffe there? A. I don't remember.

Q. Mr. Sann there? A. They were there on the ground.

Q. They were all there? A. Only two of them.

Q. Mr. Sann and Mr. Jaffe? A. Yes, sir.

Q. But you didn't hear anybody make any ob-

jection to it? A. No; I didn't hear anybody make any objections to it.

Q. Now, this contract is dated January 24th. Did you see Mr. Kennelly and have any conversation with him between that time—between that date and the time the first sale was supposed to be held? A. I think I was over to his office; yes.

Q. Were you at this sale that was postponed? A. You mean the first sale?

Q. Yes. A. Yes, I was there.

Q. Now, going down to the second sale, who went there with you? A. Who went with me?

Q. Yes. A. What do you mean?

Q. Anybody go with you? A. Jaffe was there—Sann was there.

Q. Did you go with them, or did you meet them there? A. I think I met them there.

Q. That is on the ground before the sale? A. Yes, sir.

Q. Did you see Mr. Kennelly there? A. Yes, sir.

Q. Did you have any conversation with him? A. I might have had some casual conversation with him.

Q. Whatever conversation you had with him was casual? A. I don't remember any particular conversation before the sale.

Q. Did you have any conversation with anybody else, that you recall, other than casual? A. Not that I remember right now.

Q. Then the sale started, did it? A. Yes, sir.

Q. Did you hear Mr. Sann make some bids? A. Yes, he made some bids.

Q. Was he a dummy? A. I don't know.

Q. Did you inquire? A. No, sir.

Q. He was one of your clients? A. Yes, sir.

Q. And he sat out in the tents? A. Yes, sir.

Q. Were any of the lots conveyed to him? A. No, sir.

Q. Why? A. Because, he didn't have any of the contracts.

Q. Did he after? A. He might have.

Q. Did you have any of the contracts for him? A. No, sir.

Q. What did you say or do when he bid? A. I didn't do anything.

Q. Did you say to Mr. McDonald or Mr. Kennelly, that he was a dummy? A. I said, "It was not a bid; that was one of our men."

Q. Who authorized you to say that was not a bid? A. Nobody authorized me to say it.

Q. Just your judgment? A. Yes.

Q. Did you know before that Mr. Sann was going to bed? A. I did not.

Q. Did anybody say that they were going to bid? A. No, sir.

Q. As a matter of fact, it was the other way—that they were not going to bid and this was a legitimate sale? A. There was no conversation about it.

Q. Just tell the Court, then, why, when Mr. Sann made a bid you turned to the secretary and Mr. Kennelly and said, "That is a dummy"?

Mr. Heyman: I object to the question.

The Court: The objection is sustained.

Q. That it was no bid; it was one of our men?

By the Court:

Q. Why did you turn to the officer and say, "This is no bid; that is one of our men"? A. Because, for the same reason that he would turn to me and tell me that when one of his men bid.

Q. Didn't you know your clients were going to bid? A. No, I didn't know that.

By Mr. Townsend:

Q. Why didn't you go over to him and ask him if he was going to bid? A. I was behind the table.

Q. He wasn't over twenty or twenty-five feet from where you sat? A. About that distance.

Q. Why didn't you go over and ask him that? A. I didn't think it was necessary.

Q. You knew he did that repeatedly? A. He didn't so much, repeatedly.

Q. Are you sure about that? A. I don't know, but I think it was only once or twice.

Q. Did you see him come up to Mr. Kennelly? A. No.

Q. Did you see him come up to anybody? A. He might have come up to the bookkeeper.

Q. You saw him come up and give his check, didn't you? A. He didn't give his check.

Q. Did you see him give anything? A. I don't know; he might have signed anything there; I didn't see him sign anything.

Q. You are familiar with his signature, aren't you? A. I have seen it?

Q. That is his signature, isn't it? A. It looks like it.

Mr. Townsend: I ask that this be marked for identification.

The Court: All right.

(Check marked T-1 for identification, as of this date.)

Q. Now, after having inspected this check, T-1 for identification, do you wish to withdraw your

answer about the check? A. I didn't see him give any check.

Q. Now, Mr. Cooper, don't you wish to change your testimony that he only bid on lots twice?

Mr. Heyman: I object to the question; that is not the testimony; he said once or twice.

A. I said once or twice.

By the Court:

Q. You mean to say he only bid on lots once or twice? A. That is my testimony and it stands.

By Mr. Townsend:

Q. It stands? A. Yes, sir.

Q. I show you one of the terms of sale in one of the contracts, and ask you whose signature that is? A. It looks like Sann's signature.

Q. You know it is Sann's signature, don't you? A. I say, it looks like it; I didn't see him sign it.

Mr. Townsend: I ask that it be marked for identification.

The Court: Let it be marked.

(Contract marked T-2 for identification, as of this date.)

Q. I show you another agreement of sale and ask you if that is not Mr. Sann's signature? A. I don't know.

Q. Does it look like it? A. It doesn't look like the other one; I don't know; I didn't see him sign it.

Mr. Townsend: I ask that that be marked for identification.

The Court: All right.

(Contract marked T-3 for identification, as of this date.

Q. I show you another similar contract, and ask you if that is not Mr. Sann's signature? A. Same answer; I don't know; I didn't see him sign it.

Q. Does it look like his signature? A. It might be.

Mr. Townsend: I ask that that be marked for identification.

The Court: All right.

(Contract marked T-4 for identification, as of this date.)

Q. I show you two more similar contracts and ask you if they are not Mr. Sam's signature? A. I make the same answer; I don't know.

Q. Do they look like it? A. One looks like a carbon copy of something.

By the Court:

Q. Do they look like his signature? A. Some do and some don't; the first ones did, but this one doesn't look like it.

By Mr. Townsend:

Q. You think these do not look like it? A. I don't think they do; no.

Mr. Townsend: I ask that these be marked for identification.

The Court: All right.

(Two contracts marked T-5 and T-6 for identification, as of this date.)

Q. So far as the form of these contracts, that have been marked T-3 to T-6 for identification, inclusive, they are the regular forms of contract,

terms and conditions of sale that you drew and approved, are they not? A. They are the same as the ones I drew.

Q. As a lawyer, you were very attentive to your client's interest? A. I tried to be.

Q. Did you make any inquiries of Mr. Sann, as to why he bid? A. No; I didn't ask him.

Q. Did you ask Mr. Sann why he gave a check? A. I didn't ask him.

Q. Did he ask your advice? A. No, sir.

Q. You had represented to the public that this was a liquidation sale?

Mr. Heyman: I object to the question.

The Court: I will allow it; you may note an objection to it.

A. I haven't represented anything.

By the Court:

Q. Weren't you familiar with it? A. I saw the advertisement.

By Mr. Townsend:

Q. You didn't object? A. I didn't object; no.

Q. Did you think it was a liquidation sale? A. I didn't think anything of the kind; I knew it was an auction sale, and knew it was to be sold.

Q. You were the attorney for the sale for your clients, and you mean to tell the Court, you didn't make any inquiries about it? A. As to what?

Q. As to whether this was a liquidation sale or not? A. We made a contract to sell at public auction.

By the Court:

Q. Didn't you discuss it with your clients? A. We didn't discuss it at all; it was an auction sale.

Q. Wasn't the character of the sale discussed by you? A. The word "liquidation" wasn't mentioned.

Q. I didn't ask you that; I asked you if the character of the sale was discussed? A. Nothing was said about liquidation or any other character.

Q. You knew the details of how the property was being sold? A. Just an auction sale.

By Mr. Townsend:

Q. You heard the terms of sale read off, didn't you? A. Yes, sir.

Q. And the terms of sale are those that are included in the contracts in evidence? A. The terms of sale were read off of one of these forms, I guess.

Q. Was anything said at the sale that you were to have dummy bidders?

Mr. Heyman: I object to the question.

The Court: I will let him reframe the question; he has not used the word "dummy" at all.

Q. When you left the sale, did you go away alone, or was someone with you? A. When I went down to Jersey City, I rode along in the car.

Q. Which one was that? A. I don't remember.

Q. You don't remember whether it was Mr. Sann or Mr. Jaffe? A. I don't remember.

Q. Did Mr. Sann say anything, on the way down, about his bidding? A. I don't remember that.

Q. You don't recall that? A. No, sir.

Q. And you don't remember that you questioned him about his rights to make bids? A. I don't remember discussing it after the sale.

Q. You told the auctioneer that he had no right to bid? A. I didn't say anything to the auctioneer.

Q. To his secretary? A. I said that was our man and that wasn't a bid.

Q. When did you find out that he gave his check? A. No; I knew it right after that he had signed contracts.

Q. Who told you? A. That he had some contracts?

Q. Who told you? A. Sann.

Q. Was this before you left, or on the way down? A. It was after the sale; I don't remember.

Q. How long after the sale? A. The same day.

Q. Before you left the tent? A. I don't remember.

Q. After he showed you that, what, if anything, did you say to him? A. I didn't say anything to him about the contract.

Q. Why? A. Why should I say anything about it?

Q. You had already advised the auctioneer, in substance, that he had no right to bid?

Mr. Heyman: I object to that.

The Court: The witness has testified that he advised the auctioneer that he had no right to bid.

Mr. Townsend: He told the secretary.

The Court: He said it was no sale; he had no right to bid.

By the Court:

Q. What did you say about these contracts; you saw them in his hand; he was your client; what did you say; you had advised the auctioneer it was no sale; what did you say to him? A. Nothing; we were discussing the sale—how many lots were sold; that is all.

By Mr. Townsend:

Q. Did he ask you whether this check could be collected? A. No.

Q. Did he ask your advice whether the contracts could be enforced against him? A. He didn't; no.

Q. And you didn't volunteer any advice to him? A. I did not.

Q. Did he tell you what he had bid, after he signed these contracts and had given this check? A. No; he didn't say anything.

Q. Now, I understand you to say that there was no upset, or fixed price, on these lots? A. That is right.

Q. And you were sitting alone by the auctioneer's desk? A. Part of the time, I was.

Q. And you said you turned to him and said that was no sale? A. No bid.

Q. No bid? A. No bid; that is our man.

Q. I am not referring to Mr. Sann; I am referring to the ones Mr. Sann didn't bid on? A. What about them?

Q. What would you say after the sale took place? A. Before he would knock them down, McDonald would turn to me, if he thought it was a real bid, he would turn to me and say, "This is a legitimate bid; will you accept it?"

By the Court:

Q. Did you discuss with Kennelly what he meant by a legitimate bid? A. He had his own men bidding.

Q. Did you ask him what he meant? A. If it were a real bidder, he would knock it down, without asking me.

Q. McDonald was the auctioneer? A. No; he

was alongside of him; Kennelly was the auctioneer, and he was alongside of him.

Q. And were they rapid in making those acknowledgments to you? A. If he didn't ask me for an approval, he would knock them down, and we could hardly keep track of them.

Q. Would they do that before the bid was made, or after? A. After the sale was made they would say, "This is not legitimate; that is our man."

By Mr. Townsend:

Q. Did you have any interest, except as an attorney, in the J. B. & S. Company? A. No.

Q. Didn't have any money in the company? A. No.

Q. Don't you know that the second mortgage was past due, and it was about to be foreclosed? A. It wasn't about to be foreclosed, because nothing was ever said about it.

Q. Your clients never took it up with you? A. No, sir; nothing about the second mortgage.

Q. So, I understand, you were the sole judge, as to whether the price was a proper one, or not? A. For a certain length of time, and then Mr. Jaffe came up.

Q. You didn't say that before? A. You didn't ask me.

Q. Or to Mr. Heyman, you didn't say that? A. He didn't ask me.

Q. Then the time you were there alone, you considered, yourself, the sale? A. Largely—

Mr. Heyman: I object to the question.

The Court: Withdraw the question, and reframe it.

Mr. Townsend: All right.

Q. I understand you are the one that decided whether the price was sufficient or not? A. Before Mr. Jaffe came up, yes.

Q. I assume, however, that you had dealt extensively in Bergen County property?

Mr. Heyman: I object to the question.

The Court: I will allow it.

Q. Had you dealt extensively in real estate, in Bergen County?

Mr. Heyman: I object to that question.

The Court: I will allow it.

Mr. Heyman: He said he was—

The Court: I will allow it.

A. No, sir; I had not.

Q. Had you ever bought and sold property there? A. Not in Bergen County; no, sir.

Q. Are you familiar with the values there? A. No, sir.

Mr. Townsend: That is all.

Redirect examination by Mr. Heyman:

Q. How was the price fixed, for your guidance, if any? A. There wasn't any fixed price; we figured that if we got around a thousand dollars, we would let some of the lots go.

Q. You say the terms of sale were read off before the sale? A. Yes, sir.

Q. By whom? A. One of Mr. Kennelly's men.

Mr. Heyman: That is all.

Cross examination by Mr. Holland:

Q. Was there any explanation made by the auctioneer, except having the terms of sale read? A. The usual bunk about its being beautiful property.

New Jersey State Library

Q. What did he say? A. I don't know what he said.

Q. And you were there all the time? A. Yes.

Q. Did he say it was a liquidation sale? A. He read the contract; I don't remember whether he did or not.

Q. You don't know whether he said that or not? A. I don't know; he might have used that word.

Q. Did you see Mr. Mahoney there? A. I don't know Mr. Mahoney.

Q. Did you see him after that? A. I don't think so; I don't know him to this day.

Q. Do you know Mr. Ross? A. He was in our office once.

Q. Can you point him out? A. No; I have confused him with somebody else.

Q. Mr. Ross, will you stand up? Did you see that man down at your office? A. Yes, sir.

Q. Was there a tender made, and a demand made for the conveyance of the forty-two lots in question; do you know whether a demand was made or not? A. I don't know; you came down to our office with Mr. Ross and tried to settle the matter, but it wasn't settled; that is all I know about the matter.

Q. Do you know whether a demand was made on July 9th, the date set forth in your bill of sale? A. I do not.

Q. Do you know whether they were ready and willing to pass title to Mr. Ross? A. They were not willing.

Q. And you know the J. B. & S. Company had a contract with Mr. Kennelly? A. Yes, sir.

Q. A further contract was—

Mr. Heyman: I object to that; it is all in the contract.

The Court: The objection is sustained.
Mr. Holland: That is all.

Cross examination by Mr. Simpson:

Q. How many lots were there to which title was conveyed? A. Make that more definite.

Q. How many lots were conveyed? A. Since the date of the sale?

Q. Yes. A. Twenty-six.

Q. And those were lots sold at the sale of June 9th? A. Yes, sir.

Q. No question about that? A. No, sir.

Q. And there were three lots to which you wouldn't convey title? A. Yes, sir; and one that didn't show up.

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

Q. Stand up. Did you see that lady at the sale? A. I don't recall.

Q. Do you recall that sale made to her? A. Yes, sir; I recall that sale.

Q. What do you recall about the sale to her? A. As I remember, the final bid was one thousand dollars, and Mr. McDonald turned around to me and said, "This is a real bid; shall I let it go?" and I said, "Yes, let it go," and when the contracts came back to the table, the bookkeeper said, "All this lady has is ten dollars," and I said, "We will never O. K. a sale for ten dollars."

Q. You said you wouldn't O. K. the sale for ten dollars? A. Yes, sir; I said that.

Q. Did you accept it? A. I didn't accept it.

Q. Did you see it pass? A. No; I didn't see it pass.

Q. Did you see her contract? A. I have a copy of her contract.

Q. And this contract was reported to you in this letter from Major Kennelly? A. Yes, sir.

Q. And do you know whether she paid the balance, under the terms of sale? A. I don't know whether she did or not.

Q. Did you see a copy of the contract? A. Yes, sir; I have a copy here.

Q. Was there a notation on the bid that you received from Major Kennelly, like this? A. Yes, sir; there is.

Q. Did you object to this? A. Yes, sir; I wrote a letter to him right away.

Mr. Heyman: Here is the letter.

The Court: He can ask him if he wrote.

The Witness: Yes, sir; I did write.

Redirect examination by Mr. Heyman:

Q. Was any money paid to you? A. Not a penny, during the whole sale.

Q. The payments were made to Major Kennelly? A. Yes, sir.

Q. And he remitted it to you? A. No; we didn't get any money from him, or any communication.

Q. And you refused to pass title, because you only got ten dollars? A. We didn't get anything; Mr. Kennelly paid his knock-down fee.

Mr. Townsend: I object to that, and ask that it be stricken out.

The Court: I will allow it to stand.

Q. Who addressed you on the deposit of ten dollars? A. Who spoke to me?

Q. Yes. A. The man who had charge of the sales; he didn't address me; he said, "All this woman has is ten dollars," and I said, "We will not O. K. a sale for ten dollars."

Q. Did you hear the conversation with the lady? A. No, sir; the man was down in the crowd.

Q. Did the lady come up to the table? A. I don't know.

Q. Did you talk to her? A. I did not.

Recross examination by Mr. Simpson:

Q. Mr. Cooper, how long have you been practicing law? A. Oh, about twelve or thirteen years.

Q. And you have devoted your talents to what particular part of your profession? A. Title work.

Q. Real estate?

Mr. Heyman: No; he says title work.

Q. Now, before this sale, was this catalogue—I guess you would call it a catalogue—Exhibit C-2, exhibited to you? A. No; I don't think it was.

Q. Didn't you insist that your name be printed on it, as attorney for the owners? A. No, sir; I did not.

Q. Now, do you say you didn't see that before it was circulated, or sent out? A. No; I did not see it before it was sent out to the public.

Q. When was the first you saw anything connected with Exhibit C-2? A. I may have received one through the mail, and I saw one at the sale.

Q. You didn't have anything to do with it at all? A. No, sir; I did not.

Q. And you don't know anything about it? A. We gave them a blue-print; that we were supposed to do.

Q. Didn't you see the outside cover of that paper, Exhibit C-2? A. If I looked at it, I must have seen it.

Q. Didn't you see it before the sale? A. I think I received it through the mail.

Q. Didn't you have a hand in the preparation of this paper, Exhibit C-2? A. I did not.

Q. You say you may have received a copy before the sale? A. Yes; I think I did, in the mail.

Q. Now, you saw that headline "Liquidation Auction," didn't you? A. I must have seen it, at the time.

Q. You knew what a liquidation auction was? A. The same as any other auction.

Q. That was your understanding of it? A. Yes.

Q. At the sale, did you ask the Kennelly Company, or any of his men, to announce that this was a liquidation sale, or not a liquidation sale? A. I didn't ask them to announce anything.

Q. You didn't? A. No, sir.

Q. Now, this Mr. McDonald that you spoke of, he was the representative of the Kennelly Company, wasn't he? A. At what time?

Q. At the time of the sale? A. Mr. Kennelly was there, too.

Q. You mentioned Mr. McDonald being next to you? A. He was secretary of the company, yes.

Q. And it was he who checked up everything with you, is that right, during the sale? A. During the sale, yes.

Q. As any question came up, he asked you your opinion about it? A. No questions came up, except prices, and he asked me about them.

By the Court:

Q. How near did you sit to the auctioneer and bookkeeper? A. I didn't sit; I stood up.

Q. How many were on the platform? A. Just those two, and I was about one foot to the rear and back of them.

Q. Anybody with you? A. Part of the time, Mr. Jaffe was there.

Q. And who else was there? A. The bookkeeper was there.

Q. Outside of the auctioneer and bookkeeper, you and Mr. Jaffe were managing the sale? A. I was there to direct it.

By Mr. Simpson:

Q. And at no time did you give them an upset price on the lots? A. I did not.

Mr. Simpson: That is all.

WILLIAM S. STUHR, a witness produced on behalf of the complainant, being first duly sworn according to law, testified as follows:

Direct examination by Mr. Heyman:

By the Court:

Q. You are a member of the Bar of this State? A. I am.

Q. And have been for how long? A. About eleven or twelve years.

By Mr. Heyman:

Q. Were you at the premises mentioned in this controversy, at Englewood, Bergen County, on June 9th, the date of this sale? A. Yes, sir.

Q. And do you know Mr. Mahoney? A. Yes, sir.

Q. And did you see him there on the date of this sale? A. I did.

Q. Were you there during the conduct of the sale? A. I came there after the sale was partly through; I don't know how long it had been going

on. I came there with Mr. Thomas White and I was anxious to see how the sale would go.

Q. Did you see Mr. Mahoney there? A. Yes, sir.

Q. Did you have a conversation with him? A. Yes, sir.

Q. What was it?

Mr. Townsend: I object to it.
Mr. Hollander: I object to it.
The Court: I will allow it.

A. I saw Mr. Mahoney and he said he had bought some lots at the sale, and I asked him what he paid, and he told me, but I don't remember now, and I asked him about the number of lots and what price he had paid, and I walked through the crowd, and I knew some of them, and spoke to them, and I remained there until the sale was completed.

Q. What do you mean, "the sale was completed"? A. The people had left.

Q. Had Major Kennelly left? A. Yes, sir; all of them had gone.

Q. Did you see Mr. Mahoney there? A. Yes, sir.

Q. What was the conversation? A. Mr. Mahoney was there, and some men from Mr. Joseph P. Day's office, and I said to him, "Nick, what did you do there?", and he said, "I bought ten lots", and he pointed them out to me, and showed them to me, and I said I thought the price he paid was very cheap, and I asked him if he wanted to sell them, and he said, "Yes", and at first he was a little reluctant about selling them, and I asked him what profit he wanted, and he said, "Five hundred dollars", and I asked Mr. White if that was satisfactory, but we didn't close then, and some doctor

came there and he offered them to me, and finally Mr. Mahoney made a sale of contract to us for two hundred dollars over what he paid to Kennelly, and then there was some talk about the checks, and we stayed there for about a half an hour or so, and these men went in one car and I went in Mr. White's car, and I met Mr. Mahoney again, and we talked the matter over and left it indefinite, but we didn't give him the check and didn't buy the lots.

Q. Mr. Stuhr, you controlled, in some manner, the second mortgage on this property, did you? A. Yes, sir.

Q. And did you ever foreclose? A. No, sir.

Q. Did you ever threaten to foreclose? A. No, sir.

Q. Has the mortgage been paid yet? A. The mortgage was for forty-two thousand, five hundred dollars, the second mortgage, and was in my name, and I assigned it over to the bank, I borrowed against it, and the bank had an absolute assignment of it, but they were guided by what I asked them.

Q. Has it been fully paid? A. No; there is a balance of thirteen or fourteen thousand dollars.

Q. And lots are being released, as lots are sold? A. Yes, sir.

Q. And you have agreed to do that? A. Yes, sir; but I have to get the consent of the bank each time.

Q. But you haven't threatened to foreclose the mortgage, have you? A. Personally, I have not.

Q. Has the trust company done it? A. I don't know about that; I presume they would go after me first.

Mr. Heyman: That is all.

Cross examination by Mr. Townsend:

Q. Do you hold the first mortgage, too? A. No; I had the second mortgage.

Q. The property was in your name before it was conveyed to the J. B. & S. Realty Corporation? A. Yes; the title was in my name, but I only owned one-third of it.

Q. When was the title passed? A. I think it was January, 1928.

Q. Was there any demand of payment of that mortgage made? A. No; only we promised them that we wouldn't bother them.

Q. The second mortgage you took back as part of your purchase price, or sale price? A. Yes, sir.

Mr. Townsend: I move to strike out all this testimony of Mr. Stuhr, on the ground that it took place with Mr. Mahoney after the sale.

The Court: I will let it stand.

Mr. Townsend: That is all.

JOSEPH WHITE, a witness produced on behalf of complainant, being first duly sworn according to law, testified as follows:

Direct examination by Mr. Heyman:

Q. Mr. White, what is your business? A. I am in the real estate and insurance business.

Q. Where? A. Up in Union City.

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

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

Q. Were you present at a sale last June 9th? A. Yes, sir.

Q. Did you see Mr. Mahoney there that day? A. Yes, sir.

Q. Did you have any conversation with him? A. Yes, sir.

Q. When did that conversation take place? A. On the day of the sale, while the sale was in progress, and after the sale.

The Court: You don't have to corroborate Mr. Stuhr, do you?

Q. You took part in that conversation, did you? A. I started it.

Mr. Hollander: I move that this testimony be stricken out on the ground that it is not binding on my client.

The Court: All right; I will note your objection.

Mr. Heyman: That is all.

No Cross Examination.

HARRY JAFFE, a witness called on behalf of the defendant, being first duly sworn according to law, testified as follows:

Direct examination by Mr. Heyman:

Q. Where do you live, and what is your business? A. 167 Van Ostrand Avenue, Jersey City.

Q. What is your business? A. I am a builder.

Q. You are one of the owners of this J. B. & S. Realty Company? A. Yes, sir.

Q. And you were present at the sale? A. Yes, sir.

Q. On June the ninth? A. Yes, sir.

Q. And did you, at that time, have any conver-

sation with Mr. McDonald, at the time of the sale, and during the bidding? A. I was right near the stand—

Mr. Simpson: I object to the testimony, on the ground that it is hearsay, with regard to the defendant Mahoney.

The Court: I will note your objection, and admit the testimony.

(Witness continuing.) Right near the stand, where the auctioneer was.

Q. And did you have any conversation with this man, Mr. Kennelly, or Mr. McDonald? A. No, sir.

Q. Was Mr. Cooper there? A. He was there.

Q. Did he have any conversation with the man? A. No, sir.

Q. What happened in the course of the bidding? A. Mr. McDonald was asking me, "This is a legitimate bid; shall we sell it?"

Q. What did you say? A. I said, "Yes."

Q. How many times did that occur? A. About three or four times.

Q. You weren't there during the entire sale? A. Not there by the stand; no.

Q. And did you do any bidding? A. No, sir.

Mr. Heyman: That is all.

Cross examination by Mr. Townsend:

Q. What was your office with the J. B. & S. Company? A. The office?

Q. Yes; are you president, secretary or treasurer? A. I am the president.

Q. You are the president? A. Yes, sir.

Q. How long had this company been organized, at that time? A. I think close to two and a half or three years; it is about three years.

Q. Were you present when this contract, Exhibit C-1, was signed? A. In Kennelly's office?

Q. Yes. A. Yes, sir; I was present.

Q. You were the man who conducted the negotiations with Mr. Kennelly, about his advertising, and about how much he would be allowed for it, when the contract was signed? A. Yes, sir; I was present when the contract was signed.

Q. You asked them if the sale was to be advertised in the newspapers? A. Yes.

Q. It was advertised in the newspapers? A. Yes, sir.

Q. And you saw the advertisement? A. Yes, sir.

Q. And the advertisement in the newspaper was the same as the advertisement you saw on Exhibit C-2; that is so, isn't it? A. Yes, sir.

Q. Were you sincere in your representation to the public, that this was a liquidation sale to close out your holdings? A. We never talked to the auctioneer about the advertising.

Q. Were you sincere in your advertising to the public? A. No; not the liquidation sales.

Q. You saw the advertising, before the sale? A. I saw a lot of advertising, but I never objected to it.

Q. Did you ever complain to Mr. Kennelly about the use of the word "liquidation"? A. No, sir.

Q. Why? A. Pretty nearly all the auctioneers advertise the same way.

Q. You were the president of the company? A. Yes, sir.

Q. And you didn't want to work a fraud on the public? A. No, sir.

Q. Why didn't you object? A. Major Kennelly

was a big man; I thought he knew what he was doing.

Q. He was working for you; he was your agent, under the contract—can you answer that question? A. I didn't pay any attention to the advertisements.

Q. Was this a liquidation sale? A. It was not a liquidation sale.

Q. Did you object to it? A. No, sir.

Q. Did you go up to the public and say there that this advertisement is not true; this is not a liquidation sale? A. I didn't go up.

Q. Why? A. I wasn't the auctioneer.

Q. Did you ask Mr. Kennelly to make an announcement? A. No, sir.

Q. Why? A. I left it to Kennelly.

Q. You didn't get up and say, "This is not a liquidation sale; those words are not true"? A. I didn't hear him say that.

Q. Why didn't you ask him to get up and tell the people there, that this was not a liquidation sale? A. I didn't think it was necessary to say that.

Q. You were perfectly willing to stand there and let the public believe that; is that right? A. I meant good.

Q. You meant good? A. Yes, sir.

Q. And this representation to close out the holdings of the J. B. & S. Realty Corporation wasn't true, was it?

Mr. Heyman: I object to the question.

Mr. Townsend: I submit that it is proper cross examination.

Mr. Heyman: I withdraw the objection.

A. It wasn't to sell out the corporation; no.

Q. "To close out the holdings"; that wasn't true? A. No, sir.

Q. And I suppose you took the same position about that as you did about the representation of the liquidation sale; is that right? A. I didn't mean to have a liquidation sale.

Q. You didn't say or do anything about that, did you? A. No, sir.

Q. You didn't ask Mr. Kennelly, or his representative, to do that, did you? A. No, sir.

Q. You didn't get up, the day of the sale, and say, "Ladies and gentlemen: that is not true; we are not closing out the holdings"? A. I didn't say anything.

Q. Why? A. I didn't see why I should get up and say anything, when Mr. Kennelly has everything to do with it.

Q. You were the president of the company? A. Major Kennelly had charge of the sale.

Q. Why didn't you go to Major Kennelly, or one of his men, and complain? A. I didn't think it was necessary, when he didn't say it.

Q. You were perfectly willing to stand there and let the poor public be fooled, weren't you? A. The public weren't fooled.

Mr. Townsend: That is all.

Cross examination by Mr. Holland:

Q. Mr. Jaffe, did you see this lady at the sale? A. No; I didn't see her.

Q. Did you see her and Mr. Cooper, and Mr. McDonald talking about it at the stand? A. No, sir; I didn't hear anything.

Q. Did you hear Mr. McDonald say anything? A. I heard Cooper say that Mr. McDonald told him that this was only a ten dollar deposit.

Q. What did Mr. McDonald say, in your presence? A. He didn't say anything about this lady to me.

Q. Did he say anything to Major Kennelly, in your presence? A. I didn't hear it.

Q. Do you know what Major Kennelly said about the ten dollar deposit?

Mr. Heyman: By whom?

Mr. Holland: Mr. McDonald.

Mr. Heyman: I object to it.

By the Court:

Q. What happened to the ten dollar deposit? A. Mr. Cooper told me there was a ten dollar deposit on three lots.

By Mr. Holland:

Q. When did he tell you that? A. After the sale.

Q. Was anything said during the sale? A. Mr. McDonald told Mr. Cooper, during the sale, that there was a ten dollar deposit.

Q. Did you hear it? A. I didn't hear it.

Q. Then you don't know what took place until after the sale? A. I only know what Mr. Cooper told me Mr. McDonald told him.

Mr. Holland: That is all.

Cross examination by Mr. Simpson:

Q. Mr. Jaffe, how long have you been in the real estate business? A. About fifteen or twenty years.

Q. And you know all about auction sales, don't you? A. I am not quite familiar, except this auction sale.

By the Court:

Q. Did you ever have one before? A. No, sir.

Q. Did you ever attend one? A. I have attended them, but I didn't have them of my own; this is my first sale.

Q. First sale of your property, or property you were interested in? A. Yes, sir.

By Mr. Simpson:

Q. Did you see one of these pamphlets, Exhibit C-2, before the sale? A. I seen it; yes.

Q. How long before the sale did you see it? A. About the same time of the sale; about a day before.

Q. Didn't you see one down in Mr. Cooper's office? A. I think I did.

Q. You think you did; did you? A. I think I did.

Q. Did you?

Mr. Heyman: I object to that.

The Court: I will allow it.

By the Court:

Q. Did you? A. It is a long time ago; I don't think I did see it.

By Mr. Simpson:

Q. You did see the sign at the sale, didn't you? A. Yes, sir.

Q. You have testified to using these words, "He has got all to do on the sale"; what did you mean by that? A. That he is the auctioneer.

Q. And you had given him the instructions; what he saw fit to do was all right? A. Not the prices.

Q. But outside of that? A. He was the boss.

Q. And that was the understanding on which you permitted him to have the sale? A. Yes, sir.

Q. You didn't want to make any suggestions; you left it all to him? A. Outside of prices.

Q. What did you say about the prices? A. When we signed the agreement with Kennelly, Kennelly told us we would get from eighteen hundred to two thousand dollars a lot.

Q. Was that in the paper? A. No, sir.

Mr. Simpson: I move to strike that out.

Mr. Heyman: No; he asked for the conversation.

The Court: I will allow it to stand, and note your objection.

Q. When did you discuss prices with Mr. Kennelly? A. When we signed the agreement, in his office.

Q. How long before the sale? A. About three months, I believe.

Q. You had that talk, and made the contract, in January, didn't you? A. Around that time; yes, sir.

Mr. Simpson: That is all.

(Complainant Rests.)

SAMUEL SANN, a witness produced on behalf of the defendants, being first duly sworn according to law, testified as follows:

Direct examination by Mr. Townsend:

Q. Mr. Sann, you are one of the officers of the J. B. & S. Corporation? A. Yes, sir.

Q. And what office do you hold? A. Treasurer.

Q. You are the treasurer? A. Yes, sir.

Q. And the J. B. & S. Corporation—the name is derived from the names of the owners—yourself, Mr. Jaffe, and whom? A. Mr. Baer.

Q. Mr. Baer? A. Yes, sir.

Q. Is he here? A. Yes, sir.

Q. You have been present in the court room ever since this case was started this morning? A. Yes, sir.

Q. You came out here with Mr. Heyman? A. Not Mr. Heyman.

Q. I mean your partners? A. Yes, sir.

Q. Mr. Heyman is your attorney? A. Yes, sir.

Q. There was a first mortgage on this property, in Englewood, that is the subject of this litigation, was there not? A. Yes, sir.

Q. And is it not a fact that this mortgage became due?

Mr. Heyman: I don't know what this all has to do with it?

The Court: I don't either, but you can object to it, if you want to.

Mr. Heyman: I object to it.

The Court: It might have a bearing on the sale. It might have that bearing; we have to know what his inside interests were.

Q. In August, 1928, or thereabouts? A. I don't remember exactly the date, but it was some time due.

Q. August 10th, 1928, did not that mortgage become due; did that mortgage become due on August 10th? A. Must I answer these questions?

The Court: Certainly; that is what you are here for.

Q. August 10th, 1928? A. Yes, sir.

Q. Your second mortgage became due on January 15th, 1928? A. Yes, sir.

Q. You never got any extension of that second mortgage? A. It didn't make any difference.

By the Court:

Q. Never mind; answer the question. You didn't get any extension of the second mortgage? A. No, sir; we didn't ask for any extension.

By Mr. Townsend:

Q. I show you Defendants' Exhibit T-1 for identification, and ask you if that is your signature? A. Yes, sir.

Q. I show you Exhibit T-3 for identification? A. Yes, sir.

Q. And ask you if that is your signature? A. Yes, sir.

Q. I show you Exhibit T-4 for identification, and ask you if that is your signature? A. Yes, sir.

Q. I show you Exhibit T-6 for identification, and ask you if that is your signature? A. Yes, sir.

Q. I show you Exhibit T-2 for identification, and ask you if that is your signature? A. Yes, sir.

Q. I show you Exhibit T-5 for identification and ask you if that is your signature? A. Yes, sir.

Q. In the lot that you conveyed title to, was that for all cash, or was it subject to a mortgage? A. Nothing of the kind—the sign—

Q. I am not referring to this at all. There is testimony here that your corporation conveyed a deed to some of this property, to a certain person; I am asking you—

Mr. Heyman: Which one?

Q. Lot 8, Block 178, to A. B. Hunter; was that sold for cash? A. For cash; yes, sir.

Q. Wasn't sold subject to the mortgage? A. No, sir; he didn't want that.

Mr. Townsend: I didn't ask that, and ask that it be stricken out.

The Court: Strike it out.

A. No, sir.

Q. And you didn't take back any mortgage? A. No, sir.

Mr. Townsend: That is all.

Cross examination by Mr. Heyman:

Q. Did you get all cash from Mr. Mahoney, or his assignee?

Mr. Townsend: I object to it.

Mr. Heyman: I withdraw the question.

Q. Why didn't you take back a mortgage from Mr. Hunter? A. He wanted it free and clear.

Q. Did you give him a discount? A. Yes, sir.

Q. If he wanted a mortgage on it, would you have taken that?

Mr. Townsend: I object to it.

The Court: Objection sustained.

Q. Did you offer to take back, from Mr. Hunter, a mortgage, in accordance with the terms of this contract?

Mr. Simpson: I object to the question on the ground that it is not binding on the defendant Mahoney.

The Court: I will note that.

Q. Did you offer to take back a mortgage from Mr. Hunter? A. Yes, sir; we did.

Q. How did you come to sign this check, that has been shown here today?

Mr. Townsend: I object to the question; it is not proper cross examination.

The Court: I will allow it.

Mr. Townsend: This man is an adverse witness to us.

The Court: Yes; because he asked me if he should answer the questions. If you will make him your witness—

Mr. Heyman: If you will allow me to recall him in rebuttal.

The Court: I will.

Mr. Heyman: That is all.

WILLIAM KENNELLY, a witness produced on behalf of the defendant corporation, being first duly sworn according to law, testified as follows:

Direct examination by Mr. Townsend:

By the Court:

Q. Where do you live? A. 100 West Fifty-ninth Street, New York City.

By Mr. Townsend:

Q. You are an auctioneer? A. Yes, sir.

Q. And have been for how long? A. Twenty odd years.

Q. And you are president of this Kennelly, Incorporated? A. Yes, sir.

Q. Are you the gentleman who conducted this auction sale? A. Yes, sir.

Q. Are you the gentleman who executed, on behalf of your company, this contract marked Exhibit C-1? A. Yes, sir.

Q. Referring to Exhibit C-2; is that the advertisement that you made of this auction? A. Yes, sir.

Q. Was that published in the newspapers, prior to the sale?

Mr. Heyman: I object on the ground that the papers themselves are the best evidence.

The Court: If he saw them?

Mr. Heyman: Not if he saw them.

The Court: I will allow it, and note your objection.

A. Yes, sir; it was published.

Q. Now, prior to the signing of this contract, Mr. Kennelly, did you have a conference with the officers of this J. B. & S. Corporation? A. Yes, sir; they came in my office.

Q. Which ones were they? A. If I remember correctly, they were Mr. Sann and Mr. Jaffe, the president.

Q. Did they make any representations to you, in respect to the character of this sale?

Mr. Heyman: I object to the question on the ground that it is leading.

Mr. Townsend: I will withdraw it.

The Court: Yes; it is leading. What was said?

Q. What was said by them, Major? A. They said they wanted to sell their property, and close it out; that they had tried to do it at private sale, but couldn't do so, and they wanted to make arrangements to have an auction sale.

Q. Did you say anything to them, or ask them any questions, with respect to that? A. Yes, sir; I did. We discussed where the property was, and how much was to be spent for advertising, etc.

Q. Did they say why they were anxious to sell this property?

Mr. Heyman: I submit that this is a leading question. I think this witness is intelligent enough to answer questions, without any assistance.

Q. What did they say? A. That their mortgages were becoming due, and they wanted to dispose of the property.

Q. Now, in response to that, or after this contract was signed, did they make any deposit with you, at the time of the signing of the contract? A. I think so; I will have to look at the contract. Our usual contracts is fifty per cent. on signing, and the balance before the day of sale. Yes; six thousand dollars was paid on the sixteenth day of April, and a fifteen hundred dollar payment, ten days before the sale.

Q. I assume that you made up the form of the advertisement? A. No; my advertising manager does that.

Q. Do you know whether that was submitted to these officers before it went out? A. Yes, sir; the matter is submitted before it goes out, usually.

Mr. Heyman: I object to any question about what is usually done.

The Court: That is what the witness volunteered.

Mr. Heyman: I move that it be stricken out.

By the Court:

Q. Were these papers submitted? A. Yes, sir.

By Mr. Townsend:

Q. Did they object to it? A. No, sir.

Q. Where did you get the word "liquidation" from? A. From them.

Q. Now, this sale had been postponed once, had it not? A. Yes, sir; the sale was scheduled to take place on May 19th.

Q. Now, after this contract, or at the time the contract was signed, was there any discussion between you, respecting as to who might bid on it?

Mr. Heyman: I submit that that is unquestionably unfair. This man is an intelligent man, and it is unnecessary to lead him in any way.

The Court: Unless it is to rebut your witness. You can ask him what further conversations there were.

Q. Were there any conversations with them, with respect to anybody bidding on the property? A. No, sir; not at that time.

Q. Was there at any time? A. That was at another subsequent time. to my surprise, the day before the second set date of the sale—we adjourned it for two weeks, and on the Friday before the sale I was informed that they were going to protect the property.

Mr. Heyman: I object.

The Court: Why?

Mr. Heyman: Because it is hearsay.

The Court: I am going to let it in.

By the Court:

Q. Whom did you talk to? A. Either Mr. Jaffe or Mr. Sann; I am not sure which.

Q. What did they say? A. They said they were going to protect the property, and I told them that we could employ four men, which they paid for at ten dollars apiece. I didn't know that until the Friday before the sale.

Q. Did they pay for them? A. Yes, sir; that is in their statement.

By Mr. Townsend:

Q. Now, then did you have the conversation with respect to employing these men? A. That was on Friday.

Q. Friday, before the second sale? A. Yes, sir.

Q. What did you say, and what did they say? A. I said it was a liquidation sale, to clean up their property, and I said—I said that every lot was to be sold, and there was to be no protection.

Q. What did they say? A. They said, "We have decided to put prices on these lots," and they wanted them protected, and I told them how they could protect them.

Q. What did you say? A. I said we would employ four men, at ten dollars apiece, to represent them and do the bidding.

Q. Was there anything agreed on, as to how many bids they would make? A. No, sir; they told me they were to close out the holdings of the realty company, and these four men to do the bidding for them, and that was all.

Q. Was there upset prices on these lots? A. Yes, sir; that was given to me on Saturday.

Q. Who gave you that? A. I don't know; it

may have been Mr. Cooper, or it may have been Mr. Sann, or Mr. Jaffe.

Q. But you are sure it was either one of those three men? A. Yes, sir.

Q. What was the price? A. Either eight hundred and fifty, or eight hundred and seventy-five dollars a lot.

Q. Was anything said as to whether these men were to continue to bid, or make only one bid? A. They were to make only one bid.

Q. Do I understand you to say that that arrangement was finally completed on a Saturday morning? A. It was on a Friday afternoon.

Q. And where did this conversation take place? A. In my office.

Q. In New York City? A. In New York City; yes, sir.

Q. Now, was anything further said as to whether anyone should bid, in addition to those four men? A. Nobody else was to bid at all; these four men were to represent the realty company, and no bid was to be considered, only by them.

Q. Now, do you know—referring to the conditions of sale—terms and conditions of sale—who prepared those? A. The cashier.

Q. Your cashier? A. Yes, sir—you mean the printer?

Q. No; the terms? A. Those terms were prepared by the firm of Heyman & Heyman.

Mr. Hollander: Who is that, Mr. Cooper? I understand Heyman & Heyman are the attorneys for the realty company.

Q. Who prepared that form? A. That was prepared and turned over to us by Mr. Cooper.

Q. Who prepared the form? A. The form is

drawn by our advertising manager, and approved by the J. B. & S. Realty Company.

Q. Did you read the terms of sale? A. Yes, sir; we always read the terms of sale before the auction sale.

Q. Will you look first at Exhibit C-6 and tell me whether you read those terms and conditions of sale before the auction? A. Yes, sir; this was read before the sale—read so everybody in the tent could hear me.

Q. Did Mr. Cooper, or Mr. Jaffe, or any officer of the J. B. & S. Company make any objection to the terms of sale, as you read them? A. No, sir.

Q. How many people were present at this auction? A. I would say between one hundred and one hundred and fifty, and maybe less.

Q. Now, why didn't the auction take place the week before? A. The week before the bus broke down, and it was a rainy day and there were a very few people in the tent—possibly five or six.

Q. And at whose request was the sale adjourned for two weeks?

Mr. Heyman: I object to the question on the ground that it is not bearing on the case.

The Court: I will allow it.

A. At the request of Mr. Jaffe and Mr. Sann. We had a conference, and they were there and they were discouraged, and I advised them to postpone it for two weeks. I told them that we kept the plates and we could advertise it again and we adjourned the sale for two weeks, and they came in my office the following Monday.

Q. Did you re-advertise the sale? A. Yes, sir.

Q. In what manner? A. A liquidation sale to

close out the holdings of the J. B. & S. Realty Company.

Q. Where did you advertise it? A. In the New York newspapers and the New Jersey newspapers.

The Court: We will now take a recess until two o'clock.

AFTER RECESS.

WILLIAM KENNELLY, a witness having already been called and sworn on behalf of the defendants is recalled and testified as follows:

Direct examination (continued) by Mr. Townsend:

Q. Was there any conversation between you as to who should bear the expense of this extra advertising? A. Yes, sir; the J. B. & S. Realty Company.

Q. Who had stated that? A. Mr. Sann and Mr. Jaffe.

Q. Do you know, offhand, what the advertising cost you? A. I would say about two thousand to twenty-five hundred dollars.

Q. I don't know whether I asked you this question or not, Mr. Kennelly—at the time the sale started, did you read the terms and conditions of the sale loudly? A. My men did; yes, sir; I heard them read.

Q. Mr. Cooper has testified that before the sale it was agreed that he was to stand beside you and to decide whether the price was satisfactory, and if not, he was to reject the bid; was that the fact? A. No, sir; not that I know of.

Q. Do you recall Mr. Sann having bid on any of this property? A. Yes, sir; very distinctly.

Q. What took place on the first bid that he made, when the price was knocked down to him? A. A man was sent down with the terms of sale to sign, and he signed up and gave him a check and he reported to me that he was buying for himself.

Q. Do you know how many lots he bought? A. No; I do not.

Q. Did he give a check? A. He gave one check and signed the different contracts.

Q. After the close of the sale, did Mr. Sann have any conversation with you? A. Yes, sir.

Q. Just tell us what it was? A. When the sale was about to close, Mr. Sann came up the aisle and came up to the stand and said, "Major, I want you to get me out of those lots; I don't want them." I said, "You bought them for yourself; I understood you were out of it, and these four men were here to protect you," and there was quite an argument, and then Mr. Mahoney came up to where we were standing.

Q. What did Mr. Mahoney say? A. "I will give you nine hundred dollars for anything you got left, including the auctioneer's fee."

Q. Was that in the hearing of Sann? A. He was quite close to us, I presume he heard it.

Q. How close was he? A. Within three or four feet.

Q. What did you do then? A. On account that Mr. Sann said he didn't want them, I said, "What will you give for what is left?" and Mr. Mahoney said nine hundred dollars, and somebody said nine hundred and fifty dollars, and Mr. Mahoney said one thousand dollars, and we knocked them down to him, because it was over there and very quick, because there was nobody else to buy.

Q. Now, did that conclude the sale? A. Yes, sir; that concluded the sale; everything was sold.

Q. Did you talk to Mr. Jaffe after the sale? A. Yes; I shook hands with Mr. Jaffe and Mr. Cooper and Mr. Sann, after the sale, and said, "Goodbye" and went away.

Q. Was any objection made about any of these sales?

Mr. Heyman: I object to the question. Let him ask what happened.

Q. All right; what happened? A. They seemed to be satisfied and didn't offer any objection.

Q. Do you remember anything—specifically anything that Mr. Jaffe said? A. I think he said—it is quite awhile ago—I think he said, "We are glad to get rid of them."

Q. I show you a book entitled the auction book, referring exclusively to page 70, on, and ask you what that is? A. This is the record of bids for lots at the liquidation auction sale of J. B. & S. Realty Company.

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

Q. Who was Mr. McDonald? A. He was the salesman of our company and cashier.

Q. And all that is for the J. B. & S. Realty Company? A. Yes, sir.

Q. Were you present when that was made up? A. Yes, sir; I was standing right next to him.

Q. And did you see him make it up? A. Yes, sir.

Q. And was that made up at the—when was it made up? A. As we were selling a lot, it was put right down.

Q. Is Mr. McDonald still in your employ? A. No, sir.

Q. When did Mr. McDonald leave your employ? A. Yesterday.

Q. Prior to leaving your employ, had Mr.—I withdraw that. Where does Mr. McDonald live? A. In the Bronx.

Q. In New York City? A. Yes, sir.

Q. Prior to leaving your employ, had Mr. McDonald agreed to be here today? A. Yes, sir.

Q. Now, referring to page 71 of that record, and to lots 12, 13, 14 and 15, Block 178, I see the price fifteen hundred dollars and an "X"; what does that mean?

Mr. Heyman: I want to object to the use of this book on the ground that it is not made by this gentleman, and it hasn't been shown that he was unable to get the man.

Mr. Townsend: If Mr. Heyman objects, I think the objection is valid.

The Court: The objection is sustained.

Q. I show you a book and ask you what this is? A. This is the advertising book of clippings of the sale being advertised in the New York and New Jersey newspapers.

Q. I refer you to a page herein that appears to be cut from a newspaper and ask you what that is? A. That is an advertisement placed by us in the Englewood Press of May 4th, 1928, a liquidation auction sale to close out the holdings of the J. B. & S. Realty Corporation.

Q. And is that the property that is involved in this controversy? A. Yes, sir.

Q. And I show you another ad, bearing the

headline: "New York Times, Sunday, May 13th," which has the same wording? A. Yes, sir.

Q. Does that refer to the same property? A. Yes, sir.

Q. And that was for the sale of May 19th, that was postponed? A. Yes, sir.

Q. Now, will you find for me an ad that refers to the sale that took place on June 9th? A. There it is; New York Herald, June 3rd.

Q. I now refer to the ad in the New York Herald of June 3rd, 1928, in which it says: "Notice. Owing to the bad weather on Saturday, May 19th, the liquidation auction of seventy-four choice residential lots, on Jones Road, Englewood, Linden Avenue, to Maple Street, Englewood, New Jersey, has been postponed until next Saturday, June 9th, at two P. M. Sale under the tent, rain or shine." Did that appear in the newspaper? A. Yes, sir.

Q. And was there a similar ad in the Newark News of June 8th? A. Yes, sir.

Q. Any other? A. Yes; here is another one in the New York American, on June 3rd.

Q. Similar ad in the New York American on June 3rd? A. Yes, sir.

Q. Now, in addition to that newspaper advertising, I understand you prepared an ad marked in evidence, marked Exhibit C-2; is that correct? A. The date on this particular book map was changed and sent out again.

Q. With the same wording? A. Yes, sir.

Q. Except the date? A. Except the date; yes, sir.

Q. How was that sent out? A. That was mailed to—circularized with this copy, and it was sent to others that may be interested in the sale, and telegrams were sent the day before.

Q. Now, I notice that in the newspaper ads of the new sale, the word "Liquidation" was used, but the words "To close out" were not used; what was the reason of that? A. There was no reason for that; it was the same sale adjourned two weeks.

Q. Is this the new ad that you mailed out? A. Yes, sir; that is the new ad, June 9th.

Mr. Townsend: I ask that this be marked in evidence.

The Court: All right.

(Advertisement marked Exhibit T-7, as of this date.)

Q. Do you remember Mrs. Thornley? A. Yes; I do.

Q. Did she make a bid on any of the lots? A. Yes, sir; I believe she did on three lots.

Q. Lots 47, 48 and 49? A. Yes, sir.

Q. What was done on that? A. When that bid was knocked down the man came up to me and said the lady only had ten dollars and I turned around and said, "This is not a speculator, and I believe she will go ahead with the sale, but all she has with her is ten dollars, and I advise you to go ahead and take it," and he said, "All right," and then we signed the lady up.

Q. And is this the contract which was signed? A. Yes, sir.

Q. Was anything said at that time, by her, as to when the balance was to be paid? A. She was to come—

Mr. Heyman: I object.

By the Court:

Q. What was said? A. She said she would come to our office and pay the difference.

Mr. Heyman: Did she say that to you?

The Witness: No; she didn't say it to me.

The Court: Was it said in your presence?

The Witness: No; she was sitting down about that distance and she sent word up to me.

By the Court:

Q. Did she come to your office? A. Yes, sir.

Q. And pay the balance? A. Yes, sir.

By Mr. Townsend:

Q. And did you report that to Mr. Jaffe—the fact that she said she would come? A. Yes, sir.

Q. What did Mr. Jaffe say? A. "Perfectly all right, and go through with it."

Mr. Townsend: I offer this contract in evidence.

Mr. Heyman: I have no objection, but the original is already in evidence and marked Exhibit C-6, which is a batch of contracts, and I suggest that this particular one be marked Exhibit C-6-1.

(Contracts marked Exhibit C-6-[1], as of this date.)

Q. I show you a map, and ask you what that is? A. This is a map of the property, sold at auction, for the J. B. & S. Realty Corporation.

Q. I notice it has some figures on it?

Mr. Heyman: If you are going to use that map, I would like to make my objections.

The Court: You can't use it, unless you prove it.

By the Court:

Q. Was the map made by you? A. Yes, sir.

By Mr. Townsend:

Q. Where did you get this map?

By the Court:

Q. Who made it; do you know? A. Map of property of Charles B. Ross.

Mr. Townsend: It was made subsequent to the sale.

The Court: Then you can't use it.

Mr. Townsend: I am not going to offer it; I want to refer to certain figures on there that he put on himself.

By Mr. Townsend:

Q. I see certain figures on this map—

Mr. Heyman: I object to the use of the map for any purpose at all.

The Court: The objection is sustained.

Q. I see certain figures and certain writings on this map, and ask you who put them there?

Mr. Heyman: I object.

The Court: He objects to the use of the map.

Mr. Townsend: I am not referring to the map.

Q. I hold in my hand a piece of paper with certain figures thereon in blue ink and pencil—and lead pencil and ask you whose writing that is?

Mr. Heyman: I object to the use of the paper, unless it is in evidence.

The Court: I think so.

Mr. Townsend: I submit that I have the right, as a preliminary question, first; that this man made certain figures on this paper—

The Court: You can't use it; I will have to sustain the objection. You will have to get it in another way.

Q. Have you compared the prices on the contract with the upset prices that they gave you, as to whether they are carried one below the other, or one exceeds the other?

Mr. Heyman: May I ask whether the upset price was given to you in writing or verbal?

The Witness: Verbal.

Mr. Heyman: Now, I want to object to the price given, on the ground that it is offered for the purpose of varying the terms of a written contract.

Q. Will you answer that question? A. Yes; I did compare them.

Q. How did they compare? A. That the prices that Mr. Sann bought the property at, when I thought he was actually buying, were lower than the prices that Mr. Mahoney paid, and that Mr. Mahoney was the highest average on the whole property that was sold.

Q. How much was the average above the upset price? A. That was one hundred and twenty-five dollars more; Mahoney paid one hundred and twenty-five dollars a lot, plus the auctioneer's fees, on upset prices per lot.

Q. Did he pay you a deposit? A. Yes, sir.

Q. This contract that you have offered, and

which has been marked in evidence, Exhibit C-6, No. 4; is that a true statement? A. I think this is correct. There was to be a charge of five per cent.—

Mr. Heyman: I want to object to any—
The Witness: All right.

Q. I show you a piece of paper and ask you whose handwriting is that? A. That is our cashier, Mr. Loftus.

Q. Was that made up under your direction and supervision? A. Yes, sir.

Q. Does that show—

Mr. Heyman: I object to it.
The Court: Did he make it up?
Mr. Townsend: No, sir; it was made up under his supervision and direction.
The Court: The objection is sustained.
Mr. Townsend: That is all.

Cross examination by Mr. Heyman:

Q. Now, Mr. Kennelly, you say that you were given a verbal upset price of eight hundred and seventy-five dollars? A. Average; yes, sir.

Q. What do you mean by average? A. We had so many lots, at so much a piece.

Q. How much? A. Eight hundred and seventy-five dollars.

Q. Then it wasn't an average? A. Yes, sir; it was an average.

Q. Tell us the price of one lot? A. The corner may be a little more.

Q. How much? A. Maybe fifty dollars, or maybe a hundred dollars, but we had to average so much a piece.

Q. How much were you to receive for the corner of Jones Road and Linden Avenue? A. I will have to look at the auction book.

Q. For the upset price? A. No, sir; for the price we got.

Q. Never mind what you got; I say the upset price on that corner? A. With an average price of eight hundred and seventy-five dollars, for seventy-four lots, I would say a thousand dollars, or eleven hundred dollars.

Q. What was the price fixed by the J. B. & S. Realty Company? A. They gave a price of eight hundred and seventy-five dollars on the whole lots.

Q. Can you tell us what the upset price was for the lot on the corner of Jones Road and Linden Avenue? A. I would say about a thousand dollars.

Q. How about lot 17, in the middle of the block? A. Where does that lot front? Some of the lots face on Jones Road.

Q. You are testifying from memory now? A. I can tell without looking at the map.

Q. How much were you to receive for the lot in the middle of the block next to the corner of Jones Road and Linden Avenue? A. Facing where?

Q. On Linden Avenue? A. I would say about eight hundred dollars.

Q. Was there any price given to you for any lots by the J. B. & S. Realty Company? A. No, sir.

Q. This was to be a liquidation sale? A. Yes, sir.

Q. What is your interpretation of that? A. Just what it says—liquidation.

Q. No; not what it says; tell me what your interpretation of the phrase, "Absolute liquidation to close out the estate of the J. B. & S. Realty Company" is? A. To dissolve the realty company.

Q. To dissolve the realty company? A. Yes, sir.

Q. That is what your understanding of a liquidation sale means? A. Yes, sir.

Q. To close out the corporation? A. Yes, sir.

Q. Tell us what you mean? A. To close out the holdings of the realty company.

Q. Your language is, "Liquidation auction of seventy-four choice residential lots on Jones Road, Linden Avenue and Maple Street, Englewood." That is the adjourned sale? A. It is the same as the original one.

Q. Liquidation auction to close out the holdings of the J. B. & S. Realty Corporation. Now, explain to us exactly what that means in your line? A. To close out the holdings and winding up the holdings of the realty company.

Q. Then this was to be a closing out without any reservation? A. Yes, sir.

Q. And that is the way you understood it? A. Yes, sir.

Q. And these lots were to be sold, without reservation of any kind? A. That is right.

Q. So that at no time the J. B. & S. Realty Company had any right to reserve the right? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. You signed this paper, Exhibit C-1? A. Yes, sir.

Q. That is your signature, isn't it? A. Yes, sir.

Q. Take it and read it to yourself, and see if there is anything in that paper that says this is to be an absolute sale, without reservation? A. No, sir.

Q. What does it say? A. "If the bids are unsatisfactory to us we reserve the property from

the sale, and in such event no commission is to be paid."

Q. What does that mean to your mind, Mr. Kennelly? A. This means that they were to protect the property if they saw fit to do so.

Q. What does that writing indicate to your mind? A. That they had a right to protect the property at the sale, but that was changed.

Q. How? A. By his O. K.-ing all the literature that one day.

Q. There was no agreement in writing? A. No, sir.

Q. Did you ask him to make that agreement in writing? A. No, sir.

Q. You knew this contract reserved to the owner the right, in the event that the bids were unsatisfactory, to withdraw the property? A. Yes, sir.

Q. Why didn't you ask him to give you a memorandum in writing changing the terms of this contract? A. I didn't think it was necessary; I could have gotten it.

Q. That is your method of doing business? A. We trust people.

Q. You do business by word of mouth, don't you? A. A great deal of it; yes, sir.

Q. Certainly. Now, you said in your direct examination that on the afternoon next preceding the day of sale, that is, June 8th— A. Yes, sir.

Q. The sale was June 9th? A. That is right.

Q. Now, on the evening of June 8th, Mr. Sann came to your office? A. That is right.

Q. And saw you personally? A. I think so; yes, sir.

Q. What do you mean by that? A. I will say yes, Counsellor, he did.

Q. By the way, Mr. Kennelly, when you first be-

gan to negotiate the sale of this property for the J. B. & S. Realty Corporation, Mr. Sann and Mr. Jaffe told you it was to be an absolute liquidation sale; they told you that? A. They told me at first it was to be a liquidation sale to close—

Q. I want you to tell this court, if, when Sann and Jaffe came to your office, they told you this was to be an absolute liquidation auction sale?

Mr. Townsend: I object to the question, on the ground that the witness was giving his answer and was interrupted.

The Court: I think the word "absolute" should be stricken out and the rest will stand.

Q. I want an answer, yes or no. A. I don't think so.

Q. Then, why, in your direct examination did you say that they used the word, "liquidation" when they first came to you? A. They did, but not "absolute".

Q. What do you mean by that? A. They used the word "liquidation," but not "absolute".

Q. The word "absolute" is stricken out? A. Then it is right.

Q. They told you they wanted a liquidation auction sale? A. Yes, sir.

Q. They used those words? A. Yes, sir.

Q. At that time, there was no talk about cappers, was there? A. No, sir.

Q. You didn't mention cappers to them, or they didn't mention cappers to you? A. No, sir.

Q. As a rule, Mr. Kennelly, you don't use cappers at your auction sales?

Mr. Townsend: I object to the question.

The Court: I will allow it.

A. No, sir; we don't.

Q. Now, to your surprise, on the Friday afternoon preceding the date of the sale, they told you they were going to protect their property, is that right? A. Yes, sir.

Q. To your surprise? A. Not exactly to my surprise.

Q. You said that in your direct examination, "to my surprise"? A. Yes, it was to my surprise, but there was a reason for it.

Q. You are positive you were surprised? A. I was surprised, but there was a reason for it.

Q. You were surprised that they came to you and told you they were going to protect their property, is that right? A. Yes, sir.

Q. What do you think these words in the contract mean, "if the bids be unsatisfactory to us, we reserve the right to withdraw the property from the sale, and in such an event no commission is to be paid"; what did you think that meant? A. Just what it says.

Q. What? A. Just what it says.

Q. Tell us what you think it means? A. That they reserve the right to protect their properties on the sale.

Q. Then, why were y ou surprised when they came to you and told you they were going to protect their property? A. Because, when my advertising manager prepared the advertisement, they told me personally that it was to be an absolute sale.

Q. They came to you and told you— A. No; they didn't come to me, they told me over the phone.

Q. Who told you? A. Mr. Sann.

Q. When? A. While my advertising man was preparing the ad.

Q. Before your advertising matter went out, he had told you this was to be an absolute sale? A. Yes, sir.

Q. And that was the reason for your surprise when they came in the day before the sale? A. Yes, sir.

Q. Are you sure it was the day before the sale? A. Oh, I am positive.

Q. Why are you positive? A. Because, if the day before that they hadn't come across with the fifteen hundred dollars we wouldn't go on with the sale and I would go up in the tent and tell the public why the sale wasn't going on.

Q. When was that? A. The Thursday before the Saturday.

Q. What did you tell them? A. Unless they came over with the money on that afternoon, and not Friday afternoon, the sale would not go on.

Q. And they came over on Thursday afternoon? A. No, sir; they sent the check over; I don't know who brought it over.

Q. Why? A. Because, they didn't have the money, and I don't know where they got it; they had to dig it up.

Q. And this was to be a sale without reservation? A. I had no choice in the matter.

Q. I thought you said it was to be without reservation? A. If they changed their minds, you have to abide by it, because you are working for them.

Q. And they said they wanted to withdraw the sale if the price wasn't satisfactory? A. Yes, sir.

Q. And you agreed to that? A. I had to.

Q. You had to? A. Yes, sir.

Q. So you knew the day before the sale that this was not an absolute sale to close out this estate, didn't you? A. I knew we could get those prices.

Q. So you knew on the day of the sale, that it was not to be an absolute sale? A. Yes, sir; that is true, counsellor.

Q. You didn't tell that to the buying public? A. No, sir.

Q. You didn't think that was necessary? A. No, sir.

Q. But you knew that you had advertised this sale as a liquidation sale to dispose of the holdings of the J. B. & S. Realty Company? A. That is true.

Q. And you knew that "liquidation" meant "close out"? A. Yes, sir.

Q. Why didn't you so inform the public? A. My duty is to the owner.

Q. Your duty is to the owner? A. And the buying public.

Q. Your duty is to the owner? A. Yes; we don't know who the buying public is, but we are under contract to the owner to sell.

Q. And your duty is to protect the owner? A. Yes, sir.

Q. And you always seek to do your duty to the owner? A. Yes, sir; we do.

Q. Regardless to whether or not the public is hurt? A. That is not so, counsellor.

Q. So you protect the public to? A. We protect the owner, but never fool the public.

Q. All your sales are absolute liquidation sales, aren't they? A. Not all of them; no, sir.

Q. What do you do when there isn't any liquidation sale? A. We advertise it as a public auction.

Q. And what do you do? A. We sell it to the public, reserving the right to make one bid.

Q. Did you do that on this? A. This was a liquidation sale.

Q. So there was no understanding about the owner being on the property? A. No, sir; no understanding.

Q. When did these pamphlets go out? A. About a month before the first sale and the second sale as quickly as we could get them out.

Q. Who came over to you on the Friday preceding the sale? A. I think, Mr. Sann.

Q. Are you sure? A. Somebody in authority, either Mr. Sann or Mr. Jaffe.

Q. It wasn't both? A. It might be both.

Q. And Mr. Cooper? A. I don't think I met Mr. Cooper until the day of the sale.

Q. Now, offhand— A. I remember Mr. Cooper at the sale, but I don't remember his ever coming to the office.

The Court: I will have to take a recess now, and will give you another date on the 28th day of May, if that is satisfactory.

(May 28th, satisfactory to all.)

(Hearing adjourned until May 28th, 1929, at ten o'clock at Paterson, N. J.)

I Exchange Place, Jersey City, N. J.,
Tuesday, May 28, 1929.

Mr. Townsend: If your Honor please, I think there are three cases to be tried together. So far as my case is concerned—

The Court: Mr. Heyman has his case in.

Mr. Hollander: Yes, and I think Mr. Kennelly was on the witness stand under cross examination.

WILLIAM KENNELLY resumed the stand and testified further as follows:

Mr. Heyman: Let us see. What was the last question?

(The last two questions and answers were read as heretofore recorded.)

Further cross examination by Mr. Heyman:

Q. Mr. Kennelly, just tell us what happened when you say Mr. Sann came up to you and told you that he was not going to take this property that he had bought. A. Why, Mr. Sann said that he was not going to take this property that he bought, that he wanted me to get him out of it.

Q. Was this after the sale was over, after you had left the block, or before? A. Oh, no. No, Counsellor, because it was reported to me—

Q. When was it? Was it before or after? A. It was before I left the block.

Q. Before you left the block? A. Yes.

Q. Had you closed the sale or not? A. No, sir.

Q. You were still selling? A. Yes, sir.

Q. Had you any other lots to sell at that time? A. No, not anything else to sell.

Q. The sale was all over, was it not? A. All except Mr. Sann's.

Q. The sale was all over, was it not? A. Yes, sir.

Q. You had sold every lot on the map, had you not? A. We thought we had.

Q. Had you or had you not? A. We had not.

Q. What was left to sell? A. Mr. Sann's lots.

Q. Who had bought those lots? A. Mr. Sann.

Q. Who contracted to buy those lots? A. Well, we say he did.

Q. Then the sale was over, was it not? A. We thought it was.

Q. I want you to tell this Court whether or not, at the time that Mr. Sann came to you, as you say, you had actually struck off every lot which this company owned. A. Yes.

Q. Then the sale was over, was it not? A. There was a dispute going on then, Counsellor.

Q. When? When Mr. Sann came up? A. When he came up to me.

Q. There was a dispute? A. Yes.

Q. With whom? A. There was a dispute with Mr. Sann.

Q. Oh, there was a dispute before he came up to you? A. No, sir. When he came up to the stand. The dispute with Mr. Sann started when he refused to sign any more terms of sale and give any more checks.

Q. The dispute started when he refused to sign any more contracts? A. Yes, or give a check for his purchases.

Q. Then you sent for him, did you? A. Yes, sir; I sent for him then.

Q. Oh, and why did you send for him? A. Because we thought that Mr. Sann had purchased these lots for his own account; and we understood from Mr. Sann and the members of the syndicate in advance that they were to do no bidding, they were not to do any bidding at the sale, that they had their representative there to protect the property for them, and Mr. Sann was buying on his own account any he bought. And, as these lots

were purchased, he paid his check for them and signed the contracts under the terms of sale. I think he gave one or two checks.

Q. Go ahead and tell us what the dispute was. A. The dispute was—

Q. When? A. When we thought the sale was over.

Q. After you had struck off all the lots? A. After we had struck off the lots.

Q. Then you learned that the dispute arose; is that right? A. Yes, sir.

Q. And you sent for Sann, did you? A. Yes, sir.

Q. How did you learn that there was a dispute? A. By my men reporting to me,—one of my employees reporting to me. We will call him the chief of the sign-up men.

Q. What is his name? A. Mr. Rendeker.

Q. R-e-n-d-e-k-e-r; is that correct? A. Yes, sir.

Q. Proceed. A. They reported to me that Mr. Sann refused to sign any more contracts of sale.

Q. Before you get to that, were you still on the block? A. Yes, sir, all the time.

Q. Had you made the announcement that all the lots had been sold? A. No, sir; we had not.

Q. You had not yet made that announcement? A. No, sir.

Q. All the people were still assembled, were they? A. Well, there were quite a few left, yes.

Q. About how many? A. Well, I would say possibly—oh, possibly, oh, maybe forty or fifty people.

Q. Then you sent for Sann, did you? A. Yes, sir.

Q. And Sann came up to the block where you were standing? A. Yes, sir.

Q. Who was present in addition to Sann and

yourself? A. Oh, I think there was—I do not know who was present with Mr. Sann.

Q. Then what happened? A. Why, I said, "Mr. Sann, I understood you bought these lots for yourself. You said that you or no member of your syndicate were to do any bidding at the sale, that the men who were employed there, and for which you were paying ten dollars apiece, were to protect your property."

Mr. Sann said, "Well, I don't want these, get me out of it."

So we put them right up at public auction again.

Q. You put them right up again, did you? A. Yes, sir.

Q. And made a public announcement, did you? A. Yes, sir.

Q. What was the announcement? A. Just simply this, Mr. Sann had put these lots up. Just about the end of the argument, Mr. Mahoney—during the course of the argument, Mr. Mahoney was standing there, and he came up to the stand to see what the argument was about. Mr. Mahoney knew that Mr. Sann was one of the owners, and Mr. Sann said, "Get me out of this." So I knew that Mr. Sann's average had been about, I should say, eight hundred and fifty dollars per lot.

So Mr. Sann said to put them up at auction again, which I did. And Mahoney said, "I will give you nine hundred dollars for each lot anybody has left." Mahoney said nine hundred and somebody said nine hundred and fifty. And then he said a thousand. He took all that is left. I do not know how many were left, but he took all that is left at a thousand.

Q. That is exactly what happened? A. Yes, sir.

Q. That is exactly what you told Mr. Sann? A.

That is what—Sann was there, right by the stand.

Q. Did you announce to those around you, who were there, that Sann had refused to go through with these contracts, and that you were going to resell the lots? A. No, sir; we did not.

Q. Did you make any announcement at all about the resale of those lots? A. Of these particular lots?

Q. Of these lots, yes. A. Of these lots? We might have said—

Q. Not what you might have said, but what you did say.

Mr. Townsend: I submit that Mr. Kennelly has a right to answer.

The Witness: I think we did, Counsellor.

The Court: It does not aid cross examination to speed it so rapidly as you are doing.

Mr. Heyman: If your Honor please, the witness's answer was predicated on a supposition. It seemed to me very clear that the answer was not responsive.

The Court: He was trying to answer you properly. Go ahead.

By Mr. Heyman:

Q. Did you, at that time, notify the public that was sitting there or standing there in your tent that you were going to resell the lots that were sold to Mr. Sann? A. We announced, Counsellor, that we were. I think we announced that we were going to sell lots numbers so and so, over which there was a dispute. I think we did that.

Q. You are not sure about it? A. Well, it is always our custom to do that.

Q. You are not sure about it, I say. A. Well, I would say yes.

Q. Is your answer based upon custom only? Or do you know?

Mr. Townsend: I submit that the question is argumentative.

Mr. Heyman: Custom is not responsive.

A. Well, I would say yes, we did, Counsellor.

Q. That is your answer? A. Yes.

Q. That you made that announcement? A. Yes, sir.

Q. Mahoney bid a thousand and you struck them off to him? A. Yes. No, he bid nine hundred.

Q. Somebody else bid nine hundred and fifty? A. Yes.

Q. And Mahoney bid a thousand dollars? A. A thousand dollars.

Q. What did Mahoney say when he bid you nine hundred? A. He said, "I will give you nine hundred"—he said, "I will give you nine hundred dollars for anything that is left."

Q. What did you say to him then? A. I said, "We will put them up."

Q. Did you make your announcement to the public before Mahoney bid nine hundred or after? A. That we were putting them up?

Q. Yes. A. We made it before.

Q. Before Mahoney bid you the nine hundred? A. Of course, Counsellor.

Q. Are you sure about that? A. I am positive; yes, sir.

Q. After Mahoney bid you the thousand dollars, you sold them to him? A. Yes, sir.

Q. Did he sign the contracts? A. Yes, sir.

Q. That day? A. Yes, sir.

Q. At the place? A. Yes, sir.

Q. Did you see him sign them? A. Yes, sir.

Q. And did he give you a check for ten per cent. at that time? A. Well, that goes into the department of—

Q. He gave you a check for ten per cent. at that time, did he? A. I think he did, yes.

Q. Do you know? A. Well, I should say yes. That is the cashier's business, however.

Q. Do you know? A. That is the cashier's department.

Q. Do you know? A. I would say yes.

Q. Do you know? A. I would say yes.

Q. You say yes to what? That he gave you ten per cent. or that you know? A. That he completed his purchase that day.

Q. And gave you ten per cent. at the time of buying these lots; is that right? A. Yes. I think he gave us ten per cent. on some of these things, and then came into the office and gave us the balance a little later, but he signed these contracts on the day of the sale.

Q. At the place A. Yes.

Q. At the place of the sale? A. At the place—

Q. At the place of the sale? A. Under the tent, yes. In the place of the sale, Counsellor.

Q. What did you get ten per cent. on at that time? A. Ten per cent. on the total purchases.

Q. Ten per cent. on the total purchase price? A. Yes.

Q. I thought you said he gave you ten per cent. of part, and then came into the office and gave you the balance? A. Yes, I did say that.

Q. What did he give you ten per cent. on? A. Of the purchase price.

Q. Of the total purchases? A. Well, I could not

say of the total purchases. That is a matter for the cashier's department. That is their work.

Q. But roughly, do you know it? A. Yes, sir. I did not look over the cashier's shoulder. I assume he carries out his business as any other bookkeeper would, who is a very reputable cashier and knows his business.

Q. That is, you do not know what Mahoney paid at that time? A. No, I do not, not the exact amount.

Q. Then, if you did not know, why did you say that he gave you part then and came into the office and gave you the balance? A. I saw him signing these contracts, and I saw him making out a check.

Q. I thought I heard you say a minute ago that Mahoney gave you a deposit on part and came to the office and paid the balance later? A. Why, because I found that out since, yes, sir, that he gave us a check for a certain amount at the sale and came in and gave a check for the balance due.

Q. Then your testimony here today is from what you have learned after the sale? A. Oh, no, no, Counsellor.

Q. Is this what you have learned from inquiry after the sale? A. Oh, yes, I have looked over and checked back the details.

Q. Why did you take only a part deposit? A. That is customary at the sales.

Q. But the contract is specifically ten per cent. at the time, is it not? A. Yes; but, Counsellor, you cannot do that. You have got to go along with the buyer. If a buyer, even in the early part of the sale, gives us a substantial check and, just so long as he signs the contract of sale with the terms

of the sale on the day of the sale, we have got to go along with him.

Q. That is all you are interested in, in getting the contract signed? A. The terms of sale signed, Counsellor.

Q. That is all that you are interested in, in getting the terms of sale signed? A. Yes.

Q. Because on the terms of sale which you receive depends your commission; is that right? A. Well, no.

Q. Is that right or not? A. No, that is not right.

Q. Then what is right? What are you interested in? A. Our commissions are deducted from the ten per cent. received at the sale.

Q. I did not ask you what they are deducted from. A. But I am telling you, Counsellor. That is the system.

Q. All I am asking you is this: If your commission does not depend on the number of lots sold. Is that correct? A. No, it does not.

Q. Suppose we refer to the language of the contract: "If fifty thousand dollars or more in actual and bona fide sales are made, then the J. B. & S. Realty Corporation agrees to pay to William Kennelly, Inc. the further sum of twenty-five hundred dollars, as and for the advertising of aforesaid property.

"If less than fifty thousand dollars worth of property is actually sold, then the J. B. & S. Realty Corporation agrees to pay a sum equal to five per cent. of the total sales so made, as and for advertising purposes of said sale.

"In the event that less than fifty thousand dollars worth of property is sold, no commission is to be paid to William Kennelly, Inc." A. That is correct.

Q. Then on the number of lots sold and the amount realized depends the amount of your commissions? A. No, the amount would not depend on the number of lots, no. On the amount realized, yes.

Q. So, if you did not sell these forty-two lots to Mahoney, you would not have been entitled to this commission, would you?

Mr. Townsend: I object to that. The contract speaks for itself.

Mr. Heyman: I withdraw the question.

Mr. Townsend: I submit, if your Honor please, that that is objectionable.

The Court: Counsellor has withdrawn the question, so the objection is withdrawn.

Q. When did you see Mahoney next after the day of this sale? A. Oh, I think I saw him some time the following week, when he came in—

Q. Where? A. In my office.

Q. Who was with him at the time he came there? A. Why, he was by himself.

Q. And he signed up the contracts of sale at that time? A. No, I just told you that he signed the terms of sale in the tent on the day of the sale.

Q. Oh, he did not sign the contracts then? A. The cashier reported to me on the day he came in.

Q. No, not what the cashier reported to you. Just tell us what you know. A. I know he signed the contracts—

Q. I am talking about the day he came to your office. Did you see him? A. Yes, sir; I saw him.

Q. Personally? A. Personally.

Q. Did you talk with him? A. Yes, sir.

Q. What did he do? A. He just said—

Q. Never mind what he said. What did he do? A. He just came in and shook hands with me.

Q. Is that all that he did? A. Why, yes; that is all.

Q. Did he give you any money that day? A. No; I am not the cashier, Counsellor.

Mr. Heyman: I ask that this witness be instructed to answer the question.

By the Court:

Q. Did he give you any money that day? It is a very simple question. A. He cleaned up his purchase. I think he did.

Q. Then he gave you some money? A. Yes, I think he did.

By Mr. Heyman:

Q. Did he give it to you personally? A. Yes. No, no; the cashier.

Q. Did he do anything else that day, so far as you personally know? A. That is all.

Q. Do you remember what day that was? A. Why, it was—it was about maybe Monday, I should say, or Tuesday following the sale.

Q. And the sale was held on a Saturday? A. A Saturday; yes, sir.

Q. What date? A. I think it is June 9th. The date is on the book.

Q. If Saturday was June the 9th, Sunday would be the 10th, and Monday would be the 11th; is that correct? A. Yes, sir.

Q. Would you say it was on the 11th? A. I could not say, positively.

Q. Or was he there, would you say, on the 12th? A. I would say that he was there either the 11th, or the 12th, or the 13th.

Q. Or the 13th? A. Yes.

Q. Are you sure it was not the 14th? A. It might have been the 14th.

Q. It might have been the 14th? A. Yes.

Q. After the sale was over, Mr. Kennelly, did Mr. Cooper come up to you and ask you to check up with him the number of lots sold? A. This Mr. Cooper?

Q. This gentleman right here. A. Why, I do not remember.

Q. Is it not a fact, Mr. Kennelly, that immediately after the sale and before you are supposed to have resold the lots to Mahoney, you left the block and left the place immediately? A. Immediately after Mahoney bought and everything was cleaned up, and—

Q. No, before Mahoney bought? A. Oh, no. No, Counsellor.

Q. Did you leave immediately after he bought? A. After we announced that everything was cleaned up, we walked out of the tent; shook hands with everybody and went home.

Q. You shook hands with everybody and left right away? A. Yes, sir.

Q. Whom did you leave there? Do you remember? A. Why, I think the cashier was left there.

Q. Mr. McDonald? A. I do not know. I think so, yes. Mr. McDonald was there.

Q. Have you seen Mr. McDonald since our last hearing of this cause? A. Yes, sir.

Q. Did you ask him to come over here? A. Yes.

Q. Is he coming over? A. No, I did not ask him to come over, Counsellor. I did not discuss this case with him.

Q. Let us get back to the Thornley case. Your man came up to your stand and reported to you

that this lady had only ten dollars with her? A. That is true.

Q. And you turned around and said to Mr. Jaffe that he ought to take it; is that right? A. Well, I think it was Mr. Jaffe, yes, Counsellor.

Q. Well, now, are you not sure? A. I think I turned to this gentleman, too.

Q. Mr. Cooper? A. I think so. He was right close around there somewhere. I do not know where he was.

Q. You told him what? A. That we had these three lots sold to this lady, and that after we sold them to her we found out that she has just so much cash with her; but I do not believe that she is speculating, and I felt she wanted the land, and she paid the highest prices for it, and she was entitled to it. And one of the J. B. & S. Realty Company said, "Well, we will close it."

Q. Why did you turn around and report that to Mr. Cooper or to one of the other gentlemen? A. Why, for the simple reason that she did not have the full ten per cent.

Q. Why did you report it to him? A. Because we could not complete the purchase without the full ten per cent.

Q. Why did you report it? A. Because she had not the full ten per cent.

Q. Why couldn't you complete the purchase? A. Because she did not have the full ten per cent. Because she did not have it.

Mr. Townsend: I object to that, because it is an attempt to interpret the terms of this written contract.

The Court: I do not think so. I think it is rather cross examination. I will allow it, and you may answer.

Q. Why couldn't you complete it, because she only had ten per cent.? A. She only had twenty dollars.

Q. Why couldn't you complete it with a couple of dollars? A. Because she could not comply with the terms of the sale.

Q. That is the answer? A. Yes, sir.

Q. Therefore, you would have to get their approval, is that right? A. Yes, why, of course.

Q. And you did get their approval, did you not? A. Yes, sir; we did.

Q. That is the reason you completed the contract with her? A. Yes, sir.

Q. Of course, this same approval did not apply to any other sale which you had made, did it? A. Why, of course, it applied—

Q. Did it? A. Why, of course.

Q. You made a couple of sales during the day, did you not, Mr. Kennelly, to some of the men whom you had there under salary to bid? A. Oh, no.

Q. No sales were made at all to any of your men? A. We—

Q. No sales were made at all during that time to any of your men? A. No actual sales? No, sir.

Q. What do you mean by no actual sales, no, sir? A. No sales—

Q. Did you or not on that day knock down to any man in your employ any of these lots? A. No, sir.

Q. Every lot which was knocked down by you that day was a bona fide purchase; is that correct? A. We—no, sir.

Q. Now, let us get this straight. Did you or did you not, out there on that day, knock down as

sold any of these lots to any person in your employ? A. No, sir.

Q. To any person whom you had employed for the J. B. & S. Realty Company? A. Yes, sir; we employed four men to represent them, to do their bidding.

Q. Yes. And you did on that day knock down as sold to those men, or some of them, some lots? A. No, not knocked down as sold—bid in for the owners' account.

Q. Well now, just tell us what you did while you were on the block. A. We say, "Sold." And the man who buys is the owners' representative, a man whom they employ, and we are paid for it, Counsellor.

Q. Did you on that day out there sell or knock down as sold to any person whom you had employed for the benefit of the defendants any of the lots in question? A. Yes, sir.

Q. And those lots were afterwards resold by you, were they not? A. Why, of course.

Q. To whom? To Mr. Mahoney? A. To actual buyers.

Q. And at the time you knocked down those lots as sold, which, as a matter of fact, were not sold, did you ask for the approval of any of these defendants? A. No, sir.

Q. No. Because they were not bona fide sales? A. Yes, sir.

Q. And there was no necessity for your getting any approval of those sales? A. They had given it.

Q. There was no necessity? A. No, absolutely none.

Q. Because they were not bona fide sales? A. Why, of course.

Q. When you did get a bona fide bid, did you notify them? A. Why, no; we did not have to.

Q. Was it necessary? A. No, they had given us their prices.

Q. Was it necessary for you to notify them? A. No, sir.

Q. You had absolute authority to sell, did you not? A. Yes, sir; those were their prices.

Q. Now, you say you had four men whom you had employed for their benefit, to protect their property for them? A. Why, of course.

Q. So that when you received a bona fide bid, you did not report it to them at all? A. Why, I do not have to. That was their price.

Q. You did not do it? A. Certainly not, Counsellor.

Q. And they did not tell you that they approved each sale as it was made to bona fide purchasers? A. No, sir; no, sir.

Q. The sale to Mahoney was at a flat figure of a thousand dollars; is that right? A. Average, yes.

Q. Oh, now! Mr. Kennelly, you have just testified that Mahoney came up and said, "I will give you nine hundred for everything you have got left." A. That is right.

Q. And somebody else gave nine hundred and fifty dollars bid? A. That is right.

Q. And then Mahoney bid a thousand and you knocked them down to him? A. Yes, sir.

Q. Then there was a flat figure of one thousand dollars for every lot; is that right? A. Yes, sir.

Q. Are you absolutely certain of that? There can be no question about the price of a thousand dollars for everything that was left? A. I think that is right, Counsellor.

Q. Do not let us think here, Mr. Kennelly. A. Yes, that is right. That is right, yes.

Q. Let us be sure it is right. A. I say yes. Yes, that is right.

Q. And Mahoney immediately signed his contracts of sale; is that right? A. Yes, sir.

Q. Did you see him sign them? A. I saw him sign some contracts.

Q. These are the contracts which have been offered in this case and which now bear the signature of Mahoney? A. Yes, sir.

Q. Those, referring to Exhibit C-6 (2), are the contracts? A. Yes, sir.

Q. Look at them. A. I can see them, Counsellor.

Q. Look at each one. A. Yes, each one separately. I see them.

Q. Tell us whether those are the contracts for the sale of those lots? A. Yes, those are the contracts.

Q. At a thousand dollars apiece? A. Yes, sir.

Q. By the way, Mr. Kennelly, can you tell us whose handwriting appears in the body of these contracts aside from the signature and address of Mr. Mahoney? Do you know that handwriting, "July 9th, six lots, one thousand dollars, June 9th, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, a hundred and seventy-nine, six thousand dollars. Six hundred dollars. Twenty-five. Seven hundred and fifty."

Do you know whose handwriting that is in? A. This particular contract?

Q. Do you know whose handwriting it is? That which I have just read to you, I mean? A. It looks like my cashier's writing.

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

Q. I show you now Exhibit C-6 (1), and I ask you if you can identify the handwriting which I will read to you now? A. No, I can't, Counsellor.

Q. Four lots? A. No.

Q. One thousand dollars each? A. No.

Q. Eight, nine, ten, eleven; a hundred and seventy-eight; four thousand dollars? A. No.

Q. Mr. Kennelly, in Exhibit C-6 (1), you have included the statement which reads, "Summary of auction sale of lots at Englewood, New Jersey, June 9, 1928, seventy-four lots sold for $71,660, less deposit on lots forty-four, forty-six, and forty-eight, Block one-seven-nine, three hundred dollars."

Those are the lots which were sold to Mrs. Thornley, and for which you received ten dollars on account of the payment? A. Yes.

Q. Why did you charge this company with the three hundred dollars which you had not received? A. Because they were to collect the balance.

Q. They were to collect the balance? A. Yes, sir.

Q. That is, your statement is that Mrs. Thornley was to pay over to the owner the three hundred dollars which she had agreed to pay on those lots? A. I have got to study this thing a little bit, first. We are a little bit confused here, I think. This is the cashier's work, not mine.

Q. All right, go ahead and study it. A. Well, I do not know why the cashier did it this way.

Q. You do not? A. No, I do not.

Q. The fees is what? A. Balance on auction fees on lots forty-four, forty-six, and forty-eight—

Q. We are just talking about you and your fees. A. They were to collect them from the buyer, yes, if they approved of the sale.

Q. They were to collect them from the buyer? A. Yes.

Q. Does the contract, which has been marked C-6 (1), show anything in it? A. No, just a minute.

Q. Does it show anything in the contract? A. I cannot see it, Counsellor.

Q. Which shows that the defendant shall collect from the buyer and pay it to you? A. No, there was nothing in there.

Q. Why do you say that they were to collect it from the buyer? A. Because, when they approved of the sale—

Q. Yes. A. And this lady went through with it—

Q. Yes. A. And they were to collect the auctioneer's fees that were due us, and the balance that was due us.

Q. When was that agreement made? A. That is understood, if she was to go through with the purchase.

Q. That is something that is imagined now, is it? A. No, that is the custom.

Q. Was there any agreement made between you and Mr. Sann or any person representing the owner— A. No.

Q. They were to collect the balance due under the contract plus the auctioneer's fees? A. Why, it is assumed that she would close title.

Q. Was there any agreement? A. No, there was no—

Q. At the time you received the approval? A. No.

Q. That they were to collect the money for your benefit? A. No.

Q. And pay it over to you? A. No.

Q. There was no agreement? A. No, it is only

sixty-five dollars on a seventy-one thousand dollar purchase, Counsellor.

Q. Maybe if you will forget the comedy, we will be able to progress more rapidly.

The Witness: What does it amount to?

The Court: Just answer questions.

Q. Was there any agreement made with the defendants— A. No, there was no agreement.

Q. That we, the defendants, were to collect any moneys from Mrs. Thornley? A. No.

Q. Was there? A. No.

Q. The agreement was that she was to come to the office and pay you the balance of the deposit; is that not so? A. Uh—

Q. Is that not what you testified to here today? A. I cannot quite remember that, Counsellor.

Q. Don't you remember saying— A. No, no. I do not remember. That is a matter of detail for the cashier's department. We have a big organization, and I cannot remember every little thing. If I could, I would say yes, with pleasure.

Q. So you do not remember having said this morning that at the time that Mrs. Thornley paid the ten dollars, you reported it to the owner and they told you to take it? A. Yes, sir.

Q. And that she would come to your office and pay you the balance afterwards? A. I cannot remember saying that.

Q. You do not remember it? A. No, sir, I do not remember saying that, but I can say this:

Q. Never mind, let us get along. You received ten dollars from her, did you not? A. Yes, sir.

Q. And it was along before June— A. June, the 9th, Counsellor.

Q. It was on June 9th? A. Yes, sir.

Q. And you applied that immediately on account of your knock-down fee, did you not? A. The ten dollars?

Q. Yes. A. Why—

Q. Did you or did you not? That is a very simple question to answer. A. I do not know.

Q. Look at this statement and tell us. A. That does not help me.

Q. Oh, yes, it does. A. Show me where.

Q. Well, read it. Read the second charge of sixty-five dollars. What does it say? A. Yes, it does.

Q. It does? A. Yes.

Q. Then, you deducted an amount of ten dollars due to this company and applied it on account of your fees, did you not? A. We did not deduct the sixty-five from the ten, no.

Q. But you deducted the ten dollars due you, from the amount which was due to the company on deposits, and you applied it on your fees? A. On the total sum; yes, sir, which is the custom. She only put up ten dollars, and we deducted sixty-five. You could not take sixty-five from ten.

Q. That money was not yours, was it? A. If she had put up the rest of it, why, yes.

Q. Was that your money? A. Yes, it was.

Q. Then, Mr. Kennelly, Mrs. Thornley did not give the company any money at all on her lots, did she? A. She paid us ten dollars.

Q. She paid you ten dollars on account of your fees? A. On account of the purchase, for the purchase.

Q. Just tell us which it is, will you not? A. It is ten dollars on account of the purchase, Counsellor.

Q. Then you did not receive ten dollars on ac-

count of fees, did you? A. No, it was not on account of fees.

Q. Then your statement to this company is wrong, is it? A. No, sir; it is not wrong.

Q. How do you account for the fact, then, that you have deducted from the amount due to you, namely, seventy-five dollars, for knock-down fees, on the three lots, the ten dollars which she gave you? A. The purchase we assumed would be completed, and the sixty-five dollars that she owed for knock-down fees, if that is the correct amount, Counsellor.

Q. Is it? A. I think it is, sir.

Q. Don't you know? A. Well, it is twenty-five dollars a lot.

Q. Look at the contract and see. A. That contract does not say anything.

Q. It does not say a word? A. No.

Q. Look at the terms of sale. A. That is not the terms of sale.

Q. Look at the terms of sale, and tell us what the fee is. A. Twenty-five dollars knock-down fee.

Q. To be paid by whom? The purchaser? A. Yes.

Q. In addition to the contract price? A. Oh, yes, when she completed her purchase.

Q. Fine. Well, then, why did you not credit her with the ten dollars on account of this purchase? A. They were credited.

Q. What? A. They were credited.

Q. They were credited? A. Sure, they were credited with the ten dollars on the purchase price.

Q. This is the credit that you have given them? A. I assume so; yes, sir.

Q. That is the credit which you have given

them; is that correct? A. I assume that to be a correct statement; yes, sir.

Q. Can you read this statement which I have shown you? A. I can read it, yes, Counsellor.

Q. Just tell us what the item represents. Begin at the top and tell us what each item represents. A. Each item. The first item, seventy-four lots sold for $71,760. Ten per cent. of lots sold, $7,166, less deposit due on lots forty-four, forty-six, and forty-eight, block one seven nine, three hundred dollars; balance of auctioneer's fees on lots forty-four, forty-six and forty-eight, sixty-five dollars. Advertising due per terms in signed auction agreement, twenty-five hundred dollars. Commission at five per cent. on $71,760, $3,583. Making a total of $6,448, and the balance due the J. B. & S. Realty Corporation $718.

Q. So, according to this statement, this defendant was entitled to seven thousand one hundred and sixty-six dollars as ten per cent. of the purchase price? A. When you get through using it, give it back to me. Just let me look at it, please.

Q. Just look at this one item, Mr. Kennelly, of $7,166. That is what they would be entitled to receive from you as deposits on these lots? A. Yes, sir, if all those deposits were received.

Q. Oh, if they were all received? A. Yes.

Q. And if not? A. If not, the balance of the statement would show it.

Q. Let us forget this a moment. Just a moment. If you had not received all the deposits, what would have occurred? A. Why, we assume that they would close on a balance of ten per cent. due.

Q. You assumed that they would close— A.

That they would close on a balance of ten per cent. due.

Q. What would happen to the deposits that you did not actually receive? A. Well, just what do you mean, Counsellor?

Q. Suppose Mrs. Thornley did not actually go through with this sale? A. She did go through with the sale.

Q. But you suppose she had not, and she left you with ten dollars only, would you then have charged this company with ten per cent. of the purchase price, for your fee?

Mr. Townsend: I object to that, if the Court please, on the ground that it is argumentative.

The Court: I think it is. The objection is sustained.

Q. What occurs, Mr. Kennelly, when the purchaser does not go through and give you the ten per cent. deposit pursuant to the contract?

Mr. Townsend: I object to that as being immaterial and not proper cross examination.

The Court: I will allow that.

A. What occurs, you mean on any other sale?

Q. Yes.

The Court: Yes. You may answer.

A. If the owner approves of the sale, we usually charge our commission and the knock-down.

Q. And the owner pays it? A. Yes, sir.

Q. That is what you did in this case, is it not? A. Yes, sir.

Mr. Heyman: That is all.

Redirect examination by Mr. Townsend:

Q. Major, did Mrs. Thornley subsequently come in and pay the balance of the deposit? I do not know whether I asked this question on direct examination or not, your Honor. A. Well, I do not know. I do not know that, Counsellor.

Mr. Heyman: Well now, wait.

The Court: "I do not know." That is a good enough answer.

A. Yes, sir.

Q. Who would know? A. Well, my cashier would know, Mr. Townsend.

The Court: Is there anything further?

Mr. Townsend: That is all.

The Witness: May I say this?

By Mr. Townsend:

Q. Let me ask you this question: A. Oh.

Q. Mr. Heyman spoke to you about having sold, at least having property being bid in by some of the paid representatives of the J. B. & S. Realty Company. Do you recall whether those lots—I do not know whether it appears in the record what those lots were. Can you tell by reference to this book what those lots were? A. Yes, sir. Well, I could tell if you had a map which I marked up, showing the lots. I could show you by that, Counsellor.

Q. I show you a prospectus and ask you what that is. A. That is a book map in the sale.

Q. Was that published before the sale? A. Yes, sir.

Q. Was it sent out to the different customers, or the different prospective buyers or anyone? A.

Yes, sir, mailing lists were all circularized with it, and they were distributed throughout the towns adjacent to this sale.

Q. I notice that inside it says, "Map of property of J. B. & S. Realty Company, Englewood," and that on that map there is some handwriting? A. Yes, sir.

Q. Figures and handwriting. Whose handwriting is that? A. That is mine. All of it.

Q. What does that indicate, so far as the figures are concerned?

Mr. Heyman: I object. May I ask when these figures were put on there?

Mr. Townsend: I do not know.

Mr. Heyman: That is a piece of paper that may have been—

The Court: Has that paper not been used before?

Mr. Heyman: No, sir.

The Court: Oh, is it something new?

The Witness: Yes, sir; it is.

Mr. Townsend: I am just attempting to qualify him now. What is the question? (The question was read as above recorded.)

Mr. Heyman: I object, if the Court please, to the use of this paper unless it is established and put in evidence.

Mr. Townsend: I will be glad to put it in evidence at the proper time. What I was trying to ask—

The Court: I think the objection should be sustained. You cannot use it now in this way. You were now, as I understand, asking him to read from the paper. If you put the paper in evidence, you can use it, of course.

Mr. Townsend: I desire to put it in evidence, but I want to bring out what it is, first.

Q. When were those figures put there? A. They were put on this morning.

Q. By whom? A. By me, sir.

Q. Where? A. In your office.

Q. Where were they taken from?

Mr. Heyman: I object to that. What difference does it make where they were taken from?

By the Court:

Q. How did you come to put it on this morning? A. Well, sir, I told the counsellor that I would like to make this map for you, showing the stuff that Sann bought up, and the stuff that Mahoney bought, comparing prices. This map shows that.

Mr. Heyman: I object, if the Court please, to the use of that paper because—

The Court: The objection is sustained. Keep cool. It is a hot day.

Mr. Townsend: Last week we attempted to use a map, and Mr. Heyman objected to the use of that map because of certain marks thereon. This is a map that we attempted to use on a direct case.

The Court: This is not the map.

Mr. Townsend: No, sir; that is not the map. This was a map of the property of O'Toole that was subsequently made up. Mr. Heyman objected to the figures which we had on that map. What we did was to transpose those figures from that map to this map, which was a map used by them at the sale.

The Court: You are referring to this one?

Mr. Townsend: Yes, and that is the prospectus.

The Court: What are you doing? Do you offer it?

Mr. Townsend: Yes.

The Court: Oh, you are offering it.

Mr. Heyman: I object to it, if the Court please.

The Court: I do not think it is properly established yet. It may be marked for identification.

(The map referred to was marked Townsend's Exhibit 20 for identification of this date.)

Mr. Townsend: I see figures on there. I do not want to ask—

Mr. Heyman: If the Court please, I want to object to the use of this paper at this time.

The Court: Yes, the objection is sustained. I have already sustained it. I do not see why you persist in this attempt to establish.

Mr. Townsend: I certainly cannot establish what is on there without first putting the qualifying question. I am not attempting to prove anything from this map. Your Honor said I could mark it for identification, in order to prove it.

The Court: You cannot identify it in this way.

By the Court:

Q. Who prepared the map? A. I did, sir.

By Mr. Townsend:

Q. No, the map itself. Who prepared the map? A. This was prepared in my office, this map, with the approval of the J. B. & S. Realty Company.

By Mr. Heyman:

Q. Who prepared it? A. My office man.
Q. Is he here? A. No, sir.

The Court: You will have to get him.

By the Court:

Q. Those figures were put on here this very day, or yesterday? A. Yes, this morning; yes, sir.

The Court: I will sustain the objection then.

By Mr. Townsend:

Q. I note, that according to Exhibit C-1, being the original contract between you and the J. B. & S. Realty Company, the contract provided this, "Location of property, seventy-four lots on Jones Road, and so forth, Englewood; size as per diagram submitted." Now, is that the diagram that was submitted? A. This is a copy of it; yes, sir.

Q. Is that a correct copy of the diagram? A. The exact copy of it. It is a survey.

Q. Was that the diagram used at the time of this auction sale? A. Yes, sir.

Mr. Heyman: I object to that.

Q. It was?

The Court: Wait a moment. What is the objection.

Mr. Heyman: He is trying to prove this copy, if your Honor pleases.

The Court: I thought he used the word copy. I will sustain the objection.

Q. No. Was that the diagram used at the time of this auction sale?

The Court: This diagram here?

Mr. Townsend: Yes.

The Court: What are you trying to do by this indirect method of getting it in?

Mr. Townsend: I am going to prove it.

The Court: The objection is sustained. Get the surveyor who made the copy.

Mr. Townsend: I cannot. I do not know who he is.

The Court: It is all here on the record. You can get it there. We do not know when it was made. All we know today is as we are enlightened by the testimony of this witness, who tells us that these figures were put on yesterday by him.

The Witness: No. This morning, sir.

The Court: This morning. Just think of it! I suppose when he comes down to redirect examination, you will be confronted by an objection on the ground that this is self-serving, in view of the testimony.

Mr. Heyman: That map is in evidence.

Mr. Townsend: Then, is this objected to as not being a true copy of the map?

Mr. Heyman: No, this is in evidence.

By Mr. Townsend:

Q. Regardless of the map, Mr. Kennelly, will you refer to the map that is marked Exhibit C-2 and tell me the lots, if you can, that were put up first and bid in by the employees of the J. B. & S. Realty

Company? A. Well, if I have—I would have to see the auction book for that, Counsellor.

Q. All right, we will get the auction book.

By the Court:

Q. Do you have it here? A. Yes, sir; it is here.

Q. You have not been over this before, have you? A. Yes, sir, we were over it all before.

The Court: I thought so. This has all been gone over, Counsellor.

Mr. Heyman: It seems to me that that book was ruled out too, if your Honor please.

The Court: I know that this question was propounded, and the witness on the stand now says to the Court that he was asked the very same question before and answered it.

Mr. Townsend: Do you mean here this morning?

The Court: No, no; at the last hearing. I am only telling you what he says, of course.

The Witness: I thought so, your Honor.

Mr. Townsend: I am bringing out or inquiring into matters brought out by Mr. Heyman on his cross examination as to some of these lots having been sold to the paid representatives of the J. B. & S. Realty Company.

The Court: You went into that, as I recall, very extensively, at the last hearing, about these sales. Of course, I do not know whether the detail was in, but I remember that witnesses on both sides testified to sales having been made to various representatives of this concern. I do not know what it is.

By Mr. Townsend:

Q. Let me ask you this question: Do you know those lots that were sold, or at least, which were bid in, that Mr. Heyman spoke about, by representatives of the J. B. & S. Realty Company, without referring to any memorandum? Do you know, without referring to any memorandum? A. I do not think so, Counsellor. It is hard to keep those figures in your head.

Q. Do you know whether these lots that were bid in by the representatives of the J. B. & S. Realty Company were afterwards bid in by Mr. Sann? A. Yes, sir.

Q. And are they part of the lots that are in dispute in this matter? A. Yes.

Mr. Townsend: I now offer Exhibit C-2 for identification in evidence.

Mr. Heyman: Let me see it. I have no objection.

(The paper which was previously marked Townsend's Exhibit 2 for identification was received in evidence.)

Mr. Heyman: What is it you are offering, Mr. Townsend?

Mr. Townsend: Exhibit C-2 are the contracts of sale signed by Mr. Sann.

Mr. Heyman: And the check?

Mr. Townsend: And the check.

By Mr. Townsend:

Q. I now show you contract of sale, forms of contract of sale, with a check, and I ask you what that is.

Mr. Heyman: It speaks for itself, if your Honor please.

The Court: I will allow you to ask the question. Go ahead.

A. The properties that we sold to Mr. Sann, or at least we thought we sold to Mr. Sann—

Q. Are those the ones that he refused to sign, that you spoke of in your cross examination by Mr. Heyman?

Mr. Heyman: It seems to me, if the Court please, that we should rest the examination at this time. The contracts speak for themselves.

The Court: They do, but I am going to allow the question.

A. Yes, they are.

Mr. Townsend: I am going to offer these in evidence.

The Court: He offers them in evidence, Mr. Heyman:

Mr. Heyman: Oh, I object to that, if the Court please.

The Court: I will allow them to go in as being with relation to these transactions, in view of the cross examination.

Mr. Heyman: This is all new matter, if your Honor please. This is not redirect examination.

The Court: I know. It is bringing up a lot of new matter, but at the same time it will lead to cross examination, if Counsel pursues it. You may note your objection to it, and the Court, under the broad rules of this court will take it. You may move to strike it out afterwards, if you want to, you

know, as not being material, relative, proper or otherwise.

Mr. Heyman: As not being redirect examination, if your Honor please. That is the principal objection I raise now.

The Court: Yes. I think probably on that point you are entirely correct.

Mr. Townsend: If the Court please, may I say a word?

The Court: No. It is in.

(The unsigned forms of contract of sale were received in evidence and were marked Townsend's Exhibit 21.)

The Court: We have the advantage of ruling it out later if we wish.

Mr. Heyman: May I, at this time, move to strike it, if your Honor please?

The Court: Yes.

Mr. Heyman: I move to strike his testimony from the record.

The Court: Very well. The motion is overruled.

Mr. Heyman: And an exception noted?

The Court: Yes.

By Mr. Townsend:

Q. Will you compare those contracts with the contracts of Mahoney, and tell us whether there is any difference in prices paid by Mr. Mahoney and the prices bid by Mr. Sann?

Mr. Heyman: I object to the question. The contract speaks for itself, if your Honor pleases.

The Court: I did not hear the question, because Mr. Townsend lowered his voice.

(The question was read as above recorded.)

Mr. Heyman: I object to it, because the contracts speak for themselves, and it is very misleading. It is not proper redirect examination.

The Court: I think it is not redirect examination. He is merely recalling the witness. You had him on direct, but if it did not go in on the main case, it has now become important by reason of the cross examination which Mr. Heyman has developed.

Mr. Townsend: Yes, if the Court please, he has developed new matter on cross examination, and I conceive this is important on redirect.

The Court: While new matter is within the rule laid down by our Court of Errors, on the credibility, naturally, to some extent, I would allow it for the purpose of attacking the credibility of the witness as to certain transactions. I think it is admissible for that purpose, although I suppose he might have rested on that rule. I propounded that, not for the purpose of developing any new evidence, but for the purpose of attacking the witness' credibility.

Mr. Townsend: If he wants to rest on that, I will not offer it.

The Court: I am going to accommodate the case as far as we can, without prolonging it too much.

(The question was read as above recorded.)

A. Yes, the lots that were bought—the prices paid by Mr. Mahoney were higher.

By the Court:

Q. Higher than Mr. Sann's? A. Yes, all the way through.

By Mr. Townsend:

Q. How much higher? A. I would say an average of about between fifty and a hundred dollars, with possibly one exception.

Q. What one is that, sir? A. I think it was lots thirty-eight, forty, and forty-two, and as soon as we find them here, I can find that out. Lots thirty-eight, forty, and forty-two. I do not see them here. Are those all of Sann's purchases here?

Q. They are all that I have. A. No, I think they were higher all the way through.

By the Court:

Q. Mahoney's? A. Mahoney's; yes, sir. $5,200 each.

Mr. Townsend: May I ask this as an omitted question, if the Court please? I do not want to—

The Court: A leading question?

Mr. Townsend: No, an omitted question.

The Court: Oh, you wish to ask another question that you omitted.

Mr. Townsend: Yes.

The Court: Very well, proceed.

By Mr. Townsend:

Q. Did you know Mr. Mahoney before this? A. I never saw Mr. Mahoney until he bought the lots, until he made a bid, in other words.

Q. At the time he bought this property, that you described to the Court, was there any objection made by any of the officers of the J. B. & S. Realty Company? A. None at all.

Q. Major, did anything transpire after the date of this auction, in respect to Jones Road, that you heard about? A. Yes, sir.

Mr. Hollander: If the Court please, this is all new matter.

The Court: Mr. Townsend has asked for the privilege of asking it. It will only open the door to further cross examination if he prolongs it, but I will allow him to do it. He is asking a question that he overlooked.

Mr. Townsend: A matter that has come to my knowledge since, your Honor.

The Court: Yes, proceed.

The Witness: May I answer?

The Court: Yes.

A. Yes, sir. About a week after the sale, or possibly two weeks, it was definitely announced in the newspapers that Jones Road was to be the main approach to the bridge.

Mr. Hollander: If the Court please, is that not improper, that a week after it was announced in the newspaper?

The Witness: That is the reason they did not let these sales go through.

The Court: I will allow it to stand.

Mr. Heyman: I take an exception.

The Witness: That is the reason they did not let these sales go through.

Mr. Townsend: That is all.

Cross examination by Mr. Hollander:

Q. Major, what bank do you do business with in New York? A. With the American Trust Company.

Q. Do you know whether Mrs. Thornley paid the balance of her deposit? A. I think she did, but I cannot say definitely. I could tell if I saw the check.

Q. Look at this check and look at the endorsement. Does that bear the impress of your— A. Yes, sir; that check was received by us and put through the bank.

Q. What is the amount of the check? A. $368.

Mr. Hollander: I offer it in evidence.

Mr. Heyman: May I see it, please?

(Counsel hands the check referred to to Mr. Heyman.)

Mr. Heyman: I have no objection.

Mr. Townsend: What are you offering?

Mr. Hollander: Mrs. Thornley's payment.

Mr. Townsend: On your case?

Mr. Hollander: Yes.

Mr. Townsend: As long as it is understood that it is to be offered as part of his case, I do not object.

Mr. Hollander: Oh, yes.

The Court: I remember the transaction. There was testimony regarding it at the last hearing.

Mr. Townsend: And there was considerable of this cross examination. That is why I wanted to clear it up, that Mrs. Thornley—

The Court: I am going to give Mr. Heyman his choice of cross examination, whether he desires to cross examine now or

if he desires to have the witness recalled at a later date, after he determines whether cross examination is necessary. I do not think cross examination should be forced to proceed now, because probably new matter has been introduced in these questions on redirect examination. I thought probably you would like to have the record written up.

Mr. Heyman: I would like the time to think that over.

(The check referred to was marked Exhibit H-1 in evidence.)

By Mr. Townsend:

Q. You spoke about Mr. Mahoney having made some deposits of ten per cent., and given some checks. A. Yes, sir.

Q. Do you know whether he bought any property that was not questioned?

Mr. Heyman: What is that?

Q. Do you know whether he bought any property that was not questioned? A. Why, some of the property—

Mr. Townsend: It is admitted in evidence here, in the exhibits, if your Honor please.

The Court: That is all, then.

Mr. Townsend: All right. Did he give you a check at that time?

A. Yes, sir.

Mr. Townsend: That is all.

The Witness: Is there anything further?

The Court: No, not now. I will give you

the right, after his testimony is written up, to conduct a further examination.

Mr. Heyman: This afternoon, if your Honor please?

The Court: No, after the testimony is written up.

Mr. Heyman: I think I would rather go on now, if your Honor please.

Recross examination by Mr. Heyman:

Q. Whose handwriting is in the body of the contract, marked Exhibit T-21? A. That is either the cashier or the assistant cashier.

Q. Do you know? A. No, I do not know, Counsellor.

Q. Whose handwriting is the check attached to Exhibit T-21 in? A. I was told that it was—

Q. Oh, no. A. That is Mr. Sann's.

Q. That is Mr. Sann's? A. May I look at this original check?

Q. No, no.

The Court: I think I will let the answer stand, "I was told that it was Mr. Sann's." You are cross examining him and you drew the answer out.

Mr. Heyman: I move that it be stricken out, on the ground that it is not responsive, if the Court please.

The Court: On the ground that it is irresponsive. Very well. I did not catch that.

Q. Do you know whose handwriting is contained in the check attached to Exhibit T-21?

Mr. Townsend: Answer yes or no, Major. If you do not know, say so. If you do know, say so.

A. I do not know.

Q. Do you know whose handwriting is contained in the contracts marked T-21? A. I do not know.

Q. I call your attention to the fact that there are two different kinds of handwriting in these contracts. A. Yes.

Q. Do you know whose handwriting either one of those two are in? A. No, sir.

Q. I show you Exhibit T-2. Do you know whose handwriting is contained in the check attached to Exhibit T-2? A. I know the signature of Sam Sann; yes, sir.

Q. Do you know whose handwriting is in the body of it? A. No, sir; I do not know.

Q. Do you know whose handwriting is in the body of the contract? A. No, sir. Oh, in the body of the contract?

Q. Yes, in the contract. A. That is Sann's signature there.

Q. In the body of the contract? A. No, I do not, Counsellor.

Q. Do you know who wrote these contracts, both T-2 and T-21? A. No, Counsellor.

Mr. Heyman: If your Honor please, I move that these contracts to be expunged from the record.

The Court: They may be marked for identification. I do not see how you are going to hold them, Mr. Townsend. The witness has testified that he does not know who wrote them. They are not properly proved before the Court. They have no probative force sufficient to—

Mr. Townsend: They are already in evi-

dence, if the Court please. Mr. Heyman overlooked this fact—

The Court: I will take it under advisement.

Mr. Townsend: May I say, in view of the statement that Mr. Heyman has made, that Mr. Sann on the stand himself admitted that they were his contracts and he signed them.

Mr. Heyman: He admitted the signatures, if your Honor please, and nothing else.

Mr. Townsend: If that is not his contract, I do not know what it is.

Mr. Heyman: This contract, T-41, if your Honor please, does not bear any signature.

The Court: The Court will let them stand and deal with them later.

Mr. Townsend: Very well.

The Court: What do you want further?

By Mr. Heyman:

Q. You said in your previous testimony that the lots which you had sold to Mr. Sann were originally sold to the man whom you had employed in their behalf. Is that correct?

Mr. Townsend: No, sir.

Mr. Heyman: Is that correct?

Mr. Townsend: I object, if your Honor please.

Mr. Heyman: Oh, this is cross examination, if it please the Court.

The Court: Wait a moment, gentlemen. One at a time.

Mr. Townsend: I object, if the Court please.

The Court: On what ground?

Mr. Townsend: On the ground that there is a misleading statement that was not in the testimony.

The Court: He is asking the witness whether he said it. Read the question to the witness.

(The question was read as above recorded.)

A. Yes.

The Court: That is for him to answer.

The Witness: Yes, I think so. I will have to go all over the maps again, if your Honor please.

The Court: "Yes, I think so."

A. We have thousands of lots.

Mr. Heyman: Is the witness making a speech for your Honor's benefit?

The Court: No, he says, "Yes, I think so." That is his answer. Let it stand. Proceed.

By Mr. Heyman:

Q. For the sake of convenience, do you not call these men whom you had employed for their benefit cappers? A. No, sir.

Q. You do not call them cappers? A. No, sir, never.

Q. What is the name you give them? A. The legal term? We call them the owners' representatives.

Q. Describe cappers to us. A. I could not, sir.

Q. You do not know what a capper is? A. No. We do not sell furniture.

Q. You know what a capper is, do you? A. No, sir.

Q. You had no cappers at this sale? A. No, sir.

Q. You had owners' representatives? A. Yes, sir.

Q. Tell us how many lots you had sold to owners' representatives? A. I could not tell you that, Counsellor.

Q. Was it all of the lots which you afterwards sold to Mr. Sann? A. No.

Q. How many? A. I could not tell you that, sir, without referring to this book. We have a great many of these sales. You know that.

Q. Have you a record of the lots which you sold to the owners' representatives? A. I think so.

Q. Well, now— A. I won't say I think so. I will say yes, Counsellor. It is in your auction book.

Q. When you stand up on the block and one of the owners' representatives bids, you do not mark that down as a sale in your book, do you? A. No, sir. We do not get any commission on that.

Q. You know who the owners' representatives are when they are bidding, do you not? A. Yes.

Q. You employ them, do you not? A. Yes.

Q. You on behalf of the owners pay them, do you not? A. The owner pays for them.

Q. Don't you pay them? A. No, sir, we do not furnish these owners' representatives, Counsellor. The owners do not want to do the bidding themselves when they ask us to get them these men.

Q. You paid these men out of your own pocket, did you not, and charged it up against the account of the owners? A. No, the owners paid for them.

Q. Now, just one moment. A. We paid these

representatives with the owners' money. Is that what you want of me?

Q. Why is it necessary to ask you a question so simple four times, Mr. Kennelly? I ask you if it was not the fact that you paid the men for their services as owners' representatives and deducted it from the moneys belonging to the owners? A. Yes, that is a fact.

Q. That is very plain English, is it not?

The Court: Never mind characterizing your question. You may comment on it in the argument.

Mr. Heyman: We are wasting a lot of time.

The Witness: Well, but, your Honor, each sale is different. I cannot remember each particular client.

By Mr. Heyman:

Q. You knew who these men were at the time of the sale, did you not? A. Oh, yes, sir.

Q. You knew when they bid that they were not *bona fide* purchasers, did you not? A. Oh, yes.

Q. Yes. A. We know when we are making—

Mr. Heyman: No, no.

The Court: No.

Mr. Townsend: Please just confine yourself to answering the questions, and we will get along much quicker, Mr. Kennelly.

By Mr. Heyman:

Q. Did you not make an announcement at that sale that the main highway was going to run through or around this property or adjoining this property? A. Oh, no.

Q. What? A. Oh, no.

The Court: He says he did not. That is all.

A. We did not know—

The Court: No, do not keep on answering. You have answered no. That is an answer to the question.

By Mr. Heyman:

Q. Just look at this Exhibit C-2. A. Yes, sir.

Q. Just look at it and read it, or let me read it for you, "To the Investor." A. Let me read it, will you, Counsellor?

Q. Read it out loud so that we can all hear it.

The Court: Read it out loud, yes.

A. "To the Investor. This auction sale affords opportunity to make investment in this Bergen County model residential section, in a city of rapidly increasing land values, and with every chance of continued enhancement. Jones Road is to be widened and eventually it will be one of the main thorofares to the new Hudson River Bridge."

Q. Go ahead and read it. A. "Lots on Jones Road are now restricted to residential purposes, but these restrictions expire in about four and a half years."

Q. Did you announce at the time of the sale that Jones Road was to become the main highway to the Hudson River Bridge? A. We did not know it at that time, Counsellor.

Q. Did you read this circular? A. Yes, sir.

Q. Did you distribute this circular at the sale? A. No, it was distributed before the sale.

Q. I mean before the sale. A. Yes.

Q. On the day of the sale? A. No.

Q. Under the tent? A. No, sir.

Q. Did you not hand it out to the people assembled? A. Not that I know of, no. Yes, I will say yes. Thousands of them were sent out.

Q. And they were distributed at the time of the sale or prior thereto to the people assembled there? A. Yes.

Mr. Heyman: That is all.

The Court: That is all. Call your next.

Mr. Townsend: This is a question on redirect.

The Court: We have to get through with this sometime. Go ahead.

Mr. Townsend: I am going to ask about something he brought out on his recross examination.

The Court: Very well, proceed.

Redirect examination by Mr. Townsend:

Q. Do you know whether all the lots or just some of the lots that were bought by Mr. Sann were bid for by the owners' representatives?

Mr. Heyman: Wait a moment.

The Court: I did not catch the question.

(The question was read as above recorded.)

Mr. Heyman: I object to the question. He has answered it three or four times.

A. Why, some of them, yes.

Mr. Townsend: That is all.

Recross examination by Mr. Heyman:

Q. How many? A. I could not tell you.

Q. There was one? A. Well, I could not tell you. It might have been one or might have been fifty.

Mr. Heyman: That is all.

Mr. Townsend: That is all. That is our case.

Mr. Heyman: Is the defendant's case closed?

The Court: I think the defendant's case is closed, is it not?

Mr. Townsend: I am through. If the Court please, I submit that we are entitled, as far as our case is concerned, the one that I am representing, that is, the suit against the auctioneer, before the other case goes on, I am entitled to have that case completed one way or the other.

The Court: He said it is completed, except the rebuttal.

Mr. Townsend: Then, I submit that he should put in his rebuttal.

Mr. Heyman: Yes, I have; but what are the other defendants going to do? Are we going to try each case separately or are we trying them together?

The Court: I suppose the general practice in this court is to try them together.

Mr. Heyman: I am asking if their defense is entirely finished.

Mr. Townsend: Our defense is entirely finished in this case. There are two separate causes of action.

The Court: There are two separate causes of action. Then put in your rebuttal.

HARRY COOPER was recalled as a witness in rebuttal, on behalf of the plaintiff, and testified as follows:

Direct examination by Mr. Heyman:

Q. Mr. Cooper, at the time of this sale or at any time during this sale, did you hear Mr. Sann say to Mr. Kennelly or anyone connected with that company that he wanted him to get him out of his contracts by reselling the lots? A. I did not hear it—any such, no.

Q. Will you explain to us exactly what occurred at the end of the sale or toward the end of the sale with reference to the lots now claimed to have been purchased by Mr. Mahoney?

Mr. Townsend: I object to that on the ground that it is not rebuttal.

Mr. Heyman: Very well, I will withdraw the question.

Q. I read you the testimony of Mr. Kennelly, "Q. After the close of the sale, did Mr. Sann have any conversation with you?"

Mr. Townsend: What page?

Mr. Heyman: Page 63.

Q. And the answer is "Yes, sir." "Q. Just tell us what it was." "A. When the sale was about to close, Mr. Sann came up the aisle, and came up to the stand, and he said, 'Major, I want you to get me out of those lots. I do not want them.' I said, 'You bought them for yourself. I understood you were out of it, and these four men were here to protect you.' And there was quite an argument. Then Mr. Mahoney came up to where we were standing."

I ask you this: Did that take place? A. No, sir; it did not.

Mr. Townsend: Just a minute, sir. I object to it on the ground that it is not rebuttal, and he should not characterize the testimony of another witness. In addition to that, it is leading.

The Court: It is very leading, of course, but it is in the way of being rebuttal.

Mr. Heyman: If the Court please, this is the only way I can deny it.

Mr. Townsend: If the Court please, on his direct examination, he has asked Mr. Cooper everything that took place. Mr. Cooper testified in great detail as to what took place. Now he is bringing him back and asking him a leading question, and saying, "Did that take place?" That is not rebuttal.

The Court: It is a very doubtful proposition; I will let it stand, however.

By Mr. Heyman:

Q. Did that take place? A. It did not.

Q. Did Mr. Sann ever say to Mr. Kennelly—

The Court: Shorten it.

Mr. Heyman: What?

The Court: I say, shorten the rebuttal.

Mr. Heyman: Yes, sir.

Q. "A. I want you to get me out of those lots"? A. He did not say it.

Q. Did you see Mr. Mahoney at that time? I mean at the time of the end of the sale, at the

close of the sale, did you see Mr. Mahoney? A. I did not know Mahoney.

Q. Did you see any man come up and say to Mr. Kennelly, "I will give you nine hundred dollars for anything you have left"? A. No such thing ever happened.

Mr. Townsend: I object to that, if your Honor please.

The Court: The objection is noted. Has he testified to all this?

Mr. Townsend: Yes, he has.

Mr. Heyman: That is not so, if your Honor please.

The Court: I cannot tell without referring to the record. If it is, we will strike it out. Go ahead.

Q. Did you hear Mahoney offer nine hundred dollars for any of the lots at that sale, at the close of the sale? A. He did not.

Q. Did you hear anybody offer nine hundred and fifty dollars? A. There was no such thing happened at all.

Q. Did you hear Mr. Mahoney bid one thousand dollars? A. No, he did not.

Q. Did he bid a thousand dollars at that time?

The Court: He said he did not.

Mr. Heyman: He said he did not hear him. The question now is directly, "Did he bid a thousand dollars at that time?"

A. No, he did not.

Q. Was there an argument between Mr. Sann and the auctioneer? A. There was not. I did not see any argument between Mr. Sann and the auctioneer.

Mr. Townsend: All these questions are very leading, if your Honor please.

Mr. Heyman: This is a categorical denial.

The Court: I will let it stand. Go ahead.

Mr. Hollander: I want to have my exception and objection noted on behalf of the defendant George B. Ross.

The Court: You are down on the list. You had it before.

By Mr. Heyman:

Q. Did you ever make any agreement with Mr. Kennelly that you on behalf of the defendant corporation would pay four men to be engaged by him? A. I did not.

Q. To protect the owners' interest in this property? A. No, sir.

Mr. Townsend: I object to that on the ground that the question is leading.

The Court: All right. It is what he says.

Q. Did you hear any member of this corporation, at any time, make an up-set price for any of these lots? A. I did not, and, to my knowledge, the others did not.

Mr. Townsend: What is that?

The Court: "I did not, and, to my knowledge, the others did not." Is that right?

A. Yes.

Q. Did you at any time, either personally or in connection with Mr. Sann or Mr. Beck, ever tell Mr. Kennelly that this was a legitimate sale? A. I did not.

Mr. Townsend: I object to that. Just a moment.

The Court: I will allow it as rebuttal.

Q. Did you speak to Mr. Kennelly at the end or close of this sale? A. I did speak to him.

Q. And did you say anything to him about the number of lots which were sold? A. Yes.

Q. What was it you said to him? A. That—it was in response to a statement made by Mr. McDonald that he said that we made our fifty thousand dollars. I said, "You are not going to figure Sann's sales, are you?" He said, "Well, speak to the Major about that."

I went over to Kennelly and he said, "I am busy; I am busy." And he started to walk away.

Q. Started to walk away from where? A. From the sale.

Q. Did he go away from the tent altogether? A. Yes, sir, left the grounds.

Q. Are you sure that that occurred directly after the sale? A. Immediately after the sale; yes, sir.

Q. What do you mean when you say the close of the sale? A. He said, "All sold," and walked away.

Q. He stepped down from the block? A. Yes, sir.

Q. When did you have this conversation? A. Right after he stepped down from the block, and went in front of it. He said, "I am busy now," and walked to go away—it was right in front of the block.

Q. He left the premises then? A. Yes, he did.

Q. Was Mr. Sann there at that time? Was he at that spot where you were when you asked Mr. Kennelly the question?

Mr. Townsend: If the Court please, I submit this is perfectly unfair, for Mr. Heyman to testify for the witness. If there ever was a leading question, that is it.

The Court: It is leading, of course, it is rebuttal, and what he is endeavoring to do without referring to the record, as I understand, is to quote the testimony of Kennelly. That is all.

Mr. Heyman: That is exactly what I am doing, if your Honor please.

The Court: Of course, on cross examination in rebuttal. that is a very proper way to do, it seems to me. I will allow it.

A. Mr. Sann was there at the end of the sale.

By Mr. Heyman:

Q. Was he there where you were when you spoke to McDonald and Kennelly? A. Yes.

Q. Did he have any arguments at that time? A. He did not.

Q. Were you present when the Thornley contract was made? A. I was not present when she signed the contract.

Q. No, I mean this: Did you know about the Thornley contract? A. I knew about the Thornley, yes, after the sign-up man had come back to the desk where the cashier was sitting.

Q. Prior to the acceptance of the contract, did Mr. Kennelly turn around to you or Mr. Jaffe and ask either of you for your approval of that sale? A. He did.

Q. What happened? A. While they were bidding, he got a thousand dollar bid from Mrs. Thornley. McDonald turned around to me and said, "Well, this is a real buyer. Shall we let it go" I said, "Yes, that is all right." He sold it. But there was no mention made of a ten-dollar deposit.

Q. When did you first discover that? A. After, when I was standing alongside of the cashier's desk, when the sign-up man came back.

Q. When was that? A. When the sign-up man came back, and he was the one who called my attention to it.

Q. What happened? A. He said, "They accepted a ten-dollar deposit. I told them before not to do that."

Q. What did you say? A. I said, "We did not approve the sale with a ten-dollar deposit."

Q. Whom did you say that to? A. To the cashier. I think his name was Loftus.

Q. What did he say? A. He said, "I have told them before not to do that."

Q. At the time of the sale or directly before the time of the sale was Exhibit C-2 read or explained to the people at the place? A. Well, I do not remember that this whole thing was read. It was handed out to the people as they came into the tent. I do not think that this circular itself was read out loud.

Q. Were the contents announced to the people? A. The terms of sale set forth in those contracts were read out loud by an employee of Major Kennelly.

The Court: Read the question. Listen to the question, Mr. Cooper.

(The question was read as above recorded.)

A. Not from this circular, no.

By Mr. Heyman:

Q. Did he describe the property? A. He made a speech there. He said that the Jones Road was the main road going from—

By the Court:

Q. Who made the speech? A. It was a speech praising the property so as to get the buyer to buy.

Q. How close were you to him? A. About ten feet.

Q. You mean that Major Kennelly made the usual auctioneer's speech? A. The usual auctioneer's bluff.

The Court: Is there anything further from this witness?

Mr. Heyman: Cross examine.

Cross examination by Mr. Townsend:

Q. Mr. Cooper, when did you first find out that the Jones Road had officially been designated as one of the main arteries to the bridge? A. I do not know now that it is; and I never heard that before.

Q. You never heard it? A. No, sir; I do not know now that it is, and I never heard that before.

Q. When those circulars were distributed throughout the crowd, the circulars you have just referred to, did you make any objection? A. No, sir.

Q. Did you say anything at all? A. No, sir. No, sir, I did not.

Q. Did you say anything to your clients about objecting to them? A. No, sir.

Q. Did you object to anything that Mr. Kennelly said, any announcement that he made? A. No, sir; I did not.

Q. Why? A. I did not think it was necessary.

Q. Did you think it was the truth? A. Well, I thought it was the usual auctioneer's speech. I

had no reason to doubt that what he was saying was the truth.

Q. And that is the reason you made no objection? A. There was nothing objectionable that he said, so far as I could see.

Q. When did you first find out that Sann's bid was not a legitimate bid, as you say? A. When did I first find out that?

Q. Yes.

Mr. Heyman: What was the question?

(The question was read as above recorded.)

A. I knew that Sann was not buying for himself, but for the corporation.

Q. When did you know that? A. When he made his bid.

Q. Had you been told before that that was what he was going to do? A. No, I had not been told that he was going to do it at all.

Q. How did you figure out that he was not buying for himself? A. I knew that he was not buying it for himself.

Q. How did you know that? A. Nothing in particular, but I figured that he was buying to protect himself.

Q. You thought he was buying to protect himself? A. Under the terms of the contract, they had the right to withdraw property, and that was his method of withdrawing it.

Q. Did you get up and ask Major Kennelly to announce that to the crowd? A. No, sir.

Q. Did you not make any announcement to the crowd? A. No, sir; I did not.

Q. Did you consider that procedure all right?

A. Just as much all right as to have these men there bidding.

Q. You thought it was perfectly all right? A. I did not see any harm in it.

Q. When did you first find out that he gave a check? A. Sometime that afternoon.

Q. What did you do when you found that out? A. What did I do? Nothing.

Q. Why not? A. What could I do?

Q. Did you talk to Sann? A. Yes, sir.

Q. Sann is here in Court, is he not? A. Yes, sir.

Q. And he has not been called to the stand?

Mr. Heyman: Oh, yes; he has.

The Witness: Yes, he was on the stand before.

Q. You talked to Sann? A. Yes.

Q. How long was it from the beginning until the end of the sale? A. The whole thing only took about an hour or so.

Q. How did you know that he gave a check? A. He told me he had given a check when the sale was over. He told me he had given the check.

Q. Did you ask to see the check? A. No, I did not.

Q. Why not? A. I was not interested to find out why.

Q. Did he tell you he had signed contracts of sale? A. I knew he had bid, and I figured he had signed them.

Q. Did you not ask him whether he had signed contracts of sale? A. No, he told me he had signed contracts of sale.

Q. Did you ask him? A. I did not ask him; no, sir.

Q. Did you make any objection to his having signed the contracts of sale? A. No, sir.

Q. Why not? A. Because he had signed it.

Q. You were his lawyer. A. I did not object to his signing them.

The Court: You were his lawyer.

The Witness: Yes, sir; I was his lawyer at the time.

By Mr. Townsend:

Q. Did you say anything to Mr. McDonald? A. I thought that it was not—that they were not legitimate sales; that is all.

Q. When did you say that? A. When we knocked them down. He did not ask me about those sales at all; he went right ahead and knocked them down.

Q. I repeat. So, as soon as they knocked them down, you turned to McDonald and told him that they were not legtimate sales? A. I did not say that.

Q. You turned and said that— A. I did not say it to Mr. McDonald. I said it to Loftus, the cashier.

Q. You told Loftus, the cashier, that is not a legitimate sale? A. Yes.

Q. Without knowing anything whatever about it? A. I knew he was not buying for himself.

Q. You did not know at that time that he had given a check, did you? A. No, sir; I did not.

Q. You did not know that he had signed terms of sale, did you? A. No, sir.

Q. And you made no inquiries about that, did you? A. No, sir; I did not.

Q. Still you took it upon yourself to say that that was not a legitimate sale? A. Yes, I did.

Q. Why? Because you had not been consulted? A. Why, because they did not ask me for my O. K. I was not asked to O. K. those sales.

Q. Did you see him pick up a check book? A. No, sir.

Q. Did he? A. I do not know whether he did or not.

Q. Did you ask him whether he did or not? A. I did not.

Q. Then, when he told you, Mr. Cooper, that he had given this check and signed the contracts, what did you say to him? A. I did not say anything to him at all.

Q. Where were you when he told you that? A. When the sale was over?

Q. Where were you? A. Just alongside of the stand.

Q. Outside of the stand? A. Alongside of it, just a small platform.

Q. Did you tell him that he should give his checks back? A. No, I did not.

Q. Why not? A. Why should I tell him that?

Q. You were his lawyer. A. I did not know that he had given checks.

Q. Did you know that at that time? A. I did not see him give any checks.

Q. You told us that he told you he had given a check. A. He told me he had given a check, when the sale was over.

Q. Did you tell him to go in again and get his check back? A. No.

Q. Why? A. Because I did not think it was necessary.

Q. Did you tell him to go and get his contracts back? A. No, I did not.

Q. Did you tell him that that was a fake sale? A. I did not say anything about a fake sale.

Q. Did you go to any of Mr. Kennelly's representatives and say that he ought to give the checks back or the contracts back? A. No, I did not. I never did.

Q. Did Sann say anything to you about getting them back? A. No, he did not.

Q. Did he say that he was going to leave them there? A. No, he did not say anything to me about a check.

Q. In other words, the way you figure it, then, is this: Here is a man who has obligated himself for some ten or twenty thousand dollars worth of lots—whatever the figure may be—and he has given his check for $690, for a fake sale that you say was to receive the people, the public. A. I did not say that.

Q. Well, was it or was it not? I am asking you whethre it was a legitimate sale or not? A. It was not a legitimate sale, no. That is what I say.

Q. And you knew it?

> The Court: The question is directed to you. It is a very important question: And you knew it, that it was not a legitimate sale.

A. I knew it was not a legitimate sale.

By Mr. Townsend:

Q. And you knew it, and yet you say that here he leaves the tent entirely and says nothing whatever to Major Kennelly or anyone else about getting back those checks or those contracts. A. I say that I did not ask him.

Q. You said on your direct examination to Mr.

Heyman that he said nothing whatever. A. I did not hear him say a word about getting the checks back.

Q. You were right there. A. I was there, yes.

Q. And you still want to stick to that story? A. Yes. I was there.

Q. You still want to stick to the story that you did not hear him say anything whatever? A. I do. He did not say anything about the—

Q. Did you hear him say anything? A. No, I did not hear him say anything to Major Kennelly at all.

Q. Did you hear him speak to Major Kennelly? A. No, I spoke to Major Kennelly myself.

Q. Did you hear him speak to Major Kennelly? A. No.

Q. You did not hear him say that he gave back his checks, did you? A. No, sir; I did not.

Q. Do you mean to say he did not admit that he gave his checks back? A. No.

Q. Why, you were his lawyer? A. I did not see any reason for getting them back. In the first place, the check that he gave was not a check. It was a blank without any bank on it or anything.

Q. Oh, is that so? A. Yes. He signed a blank check.

Q. Referring to T-2, drawn to the order of William Kennelly for $690, you, as a lawyer, say that that is not a check, do you? A. I did not say that it was not a check. I told you that he signed it in blank and there was no bank mentioned in it. That is what he told me.

Q. Is there a bank mentioned on there? A. It is. That is the first time I saw the check, except the other hearing.

Q. You saw it at the other hearing. I showed

it to you, did I not? A. That is what I say, the other hearing, and this time I saw the check.

Q. Why haven't you taken steps to get the check? A. Because he told me he had signed it in blank.

Q. When did he tell you that? A. The day that he gave the check, the Saturday of the sale.

Q. You have seen him since last Saturday, or since the last hearing, have you not? A. Yes, sir.

Q. Did you discuss with him this check? A. No, sir.

Q. You knew since the last hearing that he did give a genuine check, did you not? A. I knew he had given a check. I did not look to see.

Q. You saw at the last hearing that it was a genuine check? A. Yes, I saw this check at the last hearing, yes.

Q. You have not even discussed with him about getting this check back or anything? A. No, sir; I did not.

Q. And, knowing the facts, as you now state, you still want to reiterate, do you, that there was no argument between Major Kennelly and Mr. Sann? A. There was not.

Q. Nothing was said between them? A. No, sir.

Q. Sann never even asked for his money back or for his contract back? A. No, I did not hear him ask for his contract or his money.

Q. You were right there, you say? A. I was right there. I did not hear it.

Q. You knew at that time, did you not, that he had given a check? A. At the end of the sale I knew he had given a check.

Q. Please. Will you confine your answer to my question? A. At what time, Counsellor?

Q. At the time you said he came up to you and

stood beside Major Kennelly, did you know at that time that he had given a check? A. Make it more specific? At what time? I will be able to answer you.

Q. I mean at the time you referred to in your answer to Mr. Heyman, at the time that conversation took place. A. When the sale was over he came up to me.

Q. When was that? A. When the sale was over. At the end of the sale he came up to me.

Q. That is when Sann came up to you? A. Yes.

Q. Did you know at that time that he had given a check? A. Yes, he told me that he had given a check.

Q. Why did you not ask Major Kennelly to— A. I did not think it was necessary to ask him.

Q. Why? You knew it was a fake sale, you say.

Mr. Heyman: He did not say a fake sale.

Mr. Townsend: Well, whatever it was, whatever he did say.

Mr. Heyman: I object to that.

The Court: Well, he does not give the words, but he conveys about the same meaning that the witness is conveying to the Court. The sale was not a legitimate sale.

Mr. Heyman: That is it.

By Mr. Townsend:

Q. Why did you not ask Major Kennelly to give back the check? A. I did not ask him. I had no reason for not asking him; I just did not ask him; that is all.

Q. You knew that he had taken it, and you told McDonald that it was not a legitimate sale? A.

Well, I did not say that to McDonald. I told Mr. Loftus, when the sale was being made, while he was knocking them down. I told him that.

Q. You said that it was not a real sale? A. Yes, not a real sale.

Q. You say that you did that without consultation with Sann, you afterwards found out that he had given a check and signed a contract, and you say that there was no conversation whatever between Sann and Major Kennelly. Now, I ask you why, as a lawyer, protecting the interests of your client, you did not demand those checks back? A. I didn't ask. I did not know just the attitude of Mr. Sann. I did not ask.

Q. Did Sann ask for them back? A. I did not hear him.

Q. Did Sann ask you to get them back? A. No, sir; he did not.

Q. Did you tell Sann to ask for them back? A. No, sir.

Q. You went home with Sann then? A. Yes, sir.

Q. Nothing was said going home, I take it, about the checks? A. Well, I do not remember now particularly about checks. We discussed the whole thing, I suppose.

Q. Was anything said about a check? A. Except that he had given the check.

Q. He did tell you that at the time? A. Well, nothing was said—as I said—

Q. Nothing was said going home. Or at least it was not so important that you could remember it? A. Well, we discussed the whole matter going home. He did not know what the check was. He did not know what he had signed.

Q. He knew he had obligated himself by con-

tract for some thirty-eight thousand dollars of lots?

Mr. Heyman: I object to that. There is no evidence to that effect, if your Honor please.

Mr. Townsend: All right, we will figure it out.

Mr. Heyman: You will not find it there.

Mr. Townsend: We will find it somewhere. Twenty-seven and sixty-five—nineteen thousand dollars worth of contracts. You knew then that he had obligated himself to buy nineteen thousand dollars worth of that property, had given a check for at least ten per cent. of it, and you say that that thing was not discussed going home, or if it was, it was so unimportant that you cannot remember it?

A. I did not say anything of the kind.

Q. Was it discussed? A. I did not know how many lots he had bought or what the price was or what the amount of his check was.

Q. If you did not know that, why did you take it upon yourself to tell McDonald or anybody else that it was not a sale? A. At the time he knocked them down, I told them it was not a sale.

Q. Why did you tell them? A. Because, when their members bid on a sale, I told them it was not a real sale, and when Sann bid I told him the same thing.

Q. You told him he was a member? A. Told who was a member?

Q. Sann. A. I did not tell him anything of the kind.

Q. He was the same thing? A. Well, he was one of the owners.

Q. And from that day to this, you have not discussed with Sann the getting back of his check or his contracts, or his being relieved of his obligation of nineteen thousand dollars? A. I told you I did not know how many contracts he signed, or anything.

The Court: Why do you not answer the question?

A. I do not know.

Q. You do not know whether you discussed it or not? A. I do not know the question.

(The question was read as above recorded.)

A. No.

By the Court:

Q. You have not discussed it? A. No.

By Mr. Townsend:

Q. You knew that he had signed the contract, did you not? A. Yes, I knew he had signed the contract.

By the Court:

Q. Did you not see him frequently? A. I did not see him frequently.

Q. Did you not see him since this sale? A. Yes, I have seen him since that time.

Q. Did you not discuss this sale? A. Yes, but not how many contracts he signed or getting the checks back.

By the Court:

Q. Why not, in view of your statement that the sale was not legitimate, and in view of your opinion which you have already given to the court that, at the time, this sale was not a legal or proper sale? Why did you not discuss it? As a member of the Bar, why did you not do that? A. We did not discuss the amount.

Q. That is the question: As a member of the Bar, as a lawyer, why did you not discuss it with your client when you knew the thing was wrong? A. Before a week or two after the sale, this case had already been started, and Mr. Heyman—we discussed the matter about the case.

Q. You discussed it with Mr. Heyman then? A. Yes.

Q. And not with your client? A. No, not with Mr. Sann.

By Mr. Townsend:

Q. You have already testified, Mr. Cooper, that you went home with him after the sale? A. Yes.

Q. Did you not discuss it on the way home? A. Oh, we must have discussed it, but I cannot remember it.

Q. It was so unimportant that you cannot remember it? A. I knew that about thirty-two lots were sold.

Q. Did you not discuss the question of a check having been deposited? A. I do not recollect that.

Q. Did you not know how much the check was for? A. He did not know himself how many he bought.

By the Court:

Q. What were you hired for? A. I was over in

New York at the time those contracts—this contract was drawn, and I was standing behind, at the sale, and to close the title.

Q. Do you mean you did not examine these contracts? A. Before he signed them?

Q. No, after he signed the contracts. A. No, I did not see them after he signed them. They went to Major Kennelly afterwards.

Q. Have you been paid anything? A. I have been paid; yes, sir.

Q. By this man? A. By the corporation.

Q. How much have they paid you for your services? A. I do not know offhand, now. I was at the dates of the sale, and I was over in New York the time the contract was drawn. I closed four or five titles since then.

Q. How much have they paid you for that? What did you get for going to the sale? A. I do not remember offhand now. I must have gotten about five or six hundred dollars altogether.

The Court: Five or six hundred dollars altogether, he said!

By Mr. Townsend:

Q. When Sann came up to the auction stand, as you say, when the sales were over and stood there beside you, what, if anything, did he say to Major Kennelly? A. I say he did not say anything to Major Kennelly. I did not hear him speak to Major Kennelly.

Q. How long did he stay there? A. He was only there a minute before Major Kennelly left the grounds.

Q. All the time he was there he did not say anything? A. He did not speak to Major Kennelly.

Q. When did he tell you about having given a

check? A. Right after the sale there, when he came up.

By the Court:

Q. Oh, he did tell you then that he gave you a check? A. Yes.

Q. You said a little while ago that you did not know— A. Oh, yes; he told me, right after the sale.

Q. He did tell you that it was a check? A. It was not a check.

Q. That it was not a check? A. He said, "I signed a blank—not a check."

The Court: Why did you not say that at the outset, Mr. Cooper, because you would have saved a lot of time.

By Mr. Townsend:

Q. Did he tell you how much the check was? A. No, sir.

Q. Did you ask him? A. He did not know.

Q. You knew that he had signed contracts, did you not? A. He told me he had signed the contracts, yes—signed blank. He said it was not—

Q. You were sitting there after the contracts were brought up, after this sale? A. I was standing there. I did not see each contract.

Q. I thought you said you took a record of the sales. A. I did, but not from the contracts. I took that from the sales sheet of Mr. Loftus.

Q. When did you first know that he had signed a contract or contracts? A. I had heard him bidding during the sale. I did not see him sign any of these contracts.

Q. Did you make any inquiries from anyone as

to whether he had signed contracts? A. No, I did not. I knew he had bid on them.

Q. Why did you not make inquiries? A. I did not see him then.

Q. Why did you not inquire whether he signed contracts? A. Well, I did not ask him that. I just did not ask him. I knew he had signed some contracts. When the sale was over he told me he had signed some contracts.

Q. Pardon me? A. He told me he had signed some contracts when the sale was over.

Q. Did you ask him if he had signed contracts? A. I did ask him, and he told me he had signed some.

Q. Did you ask him why he had signed the contracts? A. Did I ask him why he signed the contracts?

Q. Yes. A. I did not think it was necessary to.

Q. But you had said it was a fake bid? A. No, I said no sale; I did not say a fake bid.

Q. Well, whatever you called it, you knew when he signed the contract it was a sale as a matter of law, did you not? A. I do not know that it was, no.

Q. What? A. They had a right to reserve any contracts, and to withdraw property from the sale.

Q. Oh, you did, even after a man makes a contract, after the sale? Is that your understanding of this law?

Mr. Heyman: That is not what he says.

A. He was there for the company.

By Mr. Townsend:

Q. So you never even inspected the contract or asked the amount of it? A. No, I did not even see the contracts.

Q. You did not ask Sann and Sann did not tell you? A. No, sir.

Q. And you say that nothing was said by Sann or anybody at all to Kennelly or anybody else about getting out of those contracts? A. I was there and I did not hear him say any such thing.

Q. If you had known that he had signed contracts, would you not have asked to get him out of them? A. I did not ask to get him out of them.

Q. I say, would you not as a lawyer— A. I do not know whether I would or not at the time.

Q. In other words, you would have let it go? A. Yes, sir.

Q. And trusted that something would happen whereby you would not have to take them; is that correct? A. No, sir; I would not say that.

Q. Well, what would you say? A. I knew that he had a right to bid at the sale.

Q. What would you say? A. I do not know now what I would have said, Mr. Townsend.

Q. You do not even know now? A. No.

Q. You say that no price was discussed? A. No, sir.

Q. Between you or anyone else? A. Well, no price fixed. I say there was no price fixed.

Q. Was there any price discussed? A. I do not remember any being discussed. My arrangement was that I was to stand there behind the block.

Q. You say, according to your story, that you, without knowing anything about the values of Bergen County real estate, were to stand back of the auctioneer's block and say whether the price was approved or not?

Mr. Heyman: Oh, he has not said that he did not know anything about the Bergen County real estate.

The Court: I do not recall that he said that.

Mr. Townsend: I will be glad to refer to the testimony.

Q. You did testify that you were to pass on the price. A. I was to check as to price.

The Court: That is what he testified to a few minutes ago, about that.

Mr. Townsend: Did you not testify that you did not know anything about the values of Bergen County real estate?

A. I did not testify to that, no.

Q. Did you testify that you did know? A. I do not remember testifying to that.

Q. Did you know? A. I knew—

By the Court:

Q. Where is your office? You do not do a real estate business, do you? A. No, titles.

By Mr. Townsend:

Q. Did you know? A. I had an idea of what the property costs.

Q. Yes. A. I knew what it would have to bring.

Q. You knew that from how much it cost? A. Yes, they told me.

Q. How did you fix in your mind as to how much this would have to bring? A. Well, I figure that it cost them about fourteen hundred dollars a lot.

Q. And it would have to get fourteen hundred dollars a lot before you would let it be sold? A. No, I said that is what the cost would be. I did not set any price at all.

Q. How did you determine as you stood there the way you would let them go, whether you would sell the lots or not, or the price it was to bring? A. I did not determine anything.

Q. How did you know whether the property was going to be sold or not, if you did not know the values and they did not determine anything and had not agreed upon anything? A. Well, if we got anywhere near that price we would let it go.

Q. Anywhere near what price? A. Fourteen hundred dollars.

Q. But you say there was no discussion between you and your client, and Kennelly and yourself, about any upset price? A. There was no upset price.

Q. Do you remember this question being asked by Mr. Heyman at the last trial and this answer being given: "How was the price fixed for your guidance, if any? A. There was no price fixed. We figured that if we got around a thousand dollars, we would let some of the lots go."

Was that true or not? A. That is true.

Mr. Townsend: That is all.

Cross examination by Mr. Hollander:

Q. Was the sale of the Thornley lots your first sale or your second sale? A. No, they were not the first or the second.

Q. What sale were they? A. I do not know just what order they were sold in.

Q. Were they the fifth or sixth or seventh sale, or what? A. They were sold—as I recollect, it was about the middle of the sale. I do not know just what number they were.

Q. What took place at the time the lots were

knocked down to Mrs. Thornley? A. When we got the thousand dollar bid, he turned around and told me, "That was a real bid," and asked me whether he should let it go, and I said, "Yes."

Q. Did you see who the bidder was? A. No, there was quite a crowd there.

Q. You did not see? A. No.

Q. Did you hear any conversation take place between Major Kennelly and anyone else? A. No.

Q. In reference to those lots? A. No, I did not.

Q. Was anything said about a ten-dollar deposit? A. Not—the first I heard of the ten-dollar deposit was from Loftus, the cashier.

Q. Who? A. Loftus, the cashier.

Q. The cashier? A. Yes, at the outset. He was the one who spoke to me about a ten-dollar deposit.

Q. Did Kennelly say anything about a ten-dollar deposit? A. No.

Q. Did Major Kennelly say anything to you about it? A. No.

Q. Had anyone else made such an offer of ten dollars? A. Not to my knowledge.

Q. That was the first time during that sale that anyone offered to pay ten dollars as a deposit; is that correct? A. Yes, that is right.

Q. Then what do you mean by saying that you told them not to accept such a deposit before? A. I did not say that.

Mr. Heyman: Before what?

Mr. Hollander: Before this particular deposit.

Mr. Heyman: I object, if your Honor please. There is no testimony to that effect.

Mr. Hollander: I beg your pardon. I call

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the Court's attention to the testimony of Mr. Cooper.

The Court: I will let it stand over your objection.

A. I did not say that at all. I said that Loftus had said that.

By Mr. Hollander:

Q. Who said that? A. The cashier had said that he had told the men not to take ten dollars deposit.

Q. Had anyone made such a bid? A. I suppose he referred to other sales. He said, "They have done that before."

Q. But there was none at that time? A. No, not at that time.

Q. So Major Kennelly did not say anything to you about taking ten dollars and making the rest of the deposit later? A. No, sir; he did not.

Q. Were you in your office in this building on July 7th to close titles? A. No, sir; I was not.

Q. Yet, by the terms of sale of these contracts, that was the time and place fixed, was it not? A. Yes, sir.

Q. Yet you were not present to take care of it? A. No, sir.

Q. Had you been there during the day? I mean during the day of July 7th of last year? A. I was not there during the day until probably late in the afternoon. I think I got down there about five o'clock or something like that.

Q. Your work is searching titles? A. Yes, sir.

Q. But you were not present there to meet any of these bidders or purchasers? A. No, sir; I was not.

Mr. Hollander: That is all.

Cross examination by Mr. Simpson:

Q. You characterized the bids of Sann as illegitimate. A. I said they were not real. I did not say illegitimate. They were not real bids.

Q. A little louder, please. A. They were not real bids.

Q. And you said you saw him go up and sign the contract. A. I said I did not see him sign any contracts.

Q. You did not or you did? A. I did not. I did not.

Q. Did you see him give the check? A. No, sir.

Q. You heard him bid. A. I heard him bid; yes, sir.

Q. You heard the property knocked down to him. A. Yes, sir.

Q. Will you tell me why he did not carry out his bid? A. I do not know why he did not. He was not supposed to, I suppose.

Q. Did you ever make any effort to compel him to carry out his bid? A. No, sir, I did not.

Q. Did he bid for himself individually or for the corporation? A. I do not know what he was bidding for.

Q. You were aware, were you not, that there were forty-two lots to be put up? A. Seventy-four lots to be put up.

Q. I mean at the close of the sale. A. I did not know what—

Q. You knew that there was a possibility at the end of the sale that there were going to be some lots put up. Do you understand that? A. I do not understand the question.

Mr. Simpson: Please repeat that.

(The question was read as above recorded.)

A. I understand that when it was all sold, that there was nothing said about putting anything else up until this was put up.

Q. That was after Mahoney had bid, and after it had been knocked down to him; is that correct? A. Mahoney did not bid. I did not hear any bids by Mahoney. It was not put up any more.

Mr. Simpson: I think that is all.

Redirect examination by Mr. Heyman:

Q. Was Jaffe present with you at the time of the Thornley sale, when you were asked to approve the price?

Mr. Townsend: I object to the question as leading.

The Court: Yes, it is very leading, of course. Is it rebuttal?

Mr. Heyman: This is strictly rebuttal.

The Court: What of?

Mr. Heyman: Of what Mr. Kennelly said.

Mr. Townsend: He has already covered that.

The Court: Wait a minute until I find out. What did Kennelly say?

Mr. Townsend: He said he turned over to Mr. Jaffe or to Mr. Cooper—

Mr. Heyman: What page is it, on redirect?

Mr. Townsend: Page 69.

The Court: Do you find it?

Mr. Heyman: No, that is cross examination.

The Court: I will allow it. Propound the question.

Mr. Townsend: No, that is cross.

The Court: What was the question?

Mr. Townsend: Page 70.

Mr. Heyman: Here it is. That is right, page 70. "Did you report that to Mr. Jaffe?" This is speaking of the ten-dollar deposit and advising them to take it. "This is not a speculator, and I believe she will go ahead with the sale, but all she has is ten dollars."

"And I advised him to go ahead and take it."

"Mr. Heyman: Did you report that to Mr. Jaffe, the fact that she said she would come—"

"Yes."

"What did Jaffe say?"

"Perfectly all right; go through with it."

The Court: That is not the purport of the question.

Mr. Heyman: The purport of the question is to find out whether Jaffe said that to Mr. Cooper.

The Court: I will let him go ahead and answer it.

A. I did not hear any such conversation.

By Mr. Heyman:

Q. Did you hear what was said? A. Jaffe did not have any conversation.

Q. Where were you throughout this entire sale? A. Directly in back and near this selling stand.

Q. How close to Mr. Kennelly were you? A. Not more than three or four feet.

Q. Were you there throughout the whole sale? A. Yes, right from the beginning to the end.

Q. Did you leave that place throughout the whole sale? A. I was one of the last of the men—

Q. No, no. Did you leave that place throughout the whole sale?

The Court: Answer the question. Did you?

A. Not throughout the sale; no, sir.

By Mr. Heyman:

Q. Did you hear every sale that was made? A. Yes, sir.

Q. Did you approve all the sales that were made, as exhibited by the contracts annexed to Exhibit C-6 (1), which I show you herewith?

Mr. Townsend: I object to that on the ground that it calls for a conclusion.

Mr. Heyman: No, no; it does not call for a conclusion.

Mr. Townsend: "Did you approve of the sale?" That is what it says. "Did you approve of the sale?"

Mr. Heyman: I withdraw the question.

By Mr. Heyman:

Q. Did you tell Kennelly? A. Yes.

By the Court:

Q. What did you say? A. I said, "Let them go," and they went and closed the title out.

By Mr. Heyman:

Q. And have you performed every contract with

them except the Thornley contract and the Schlicht contract? A. Yes.

Q. And you are ready to perform the Schlicht contract now? A. Yes.

Mr. Townsend: I do not know anything about that one.

Mr. Heyman: That is one of the purchasers here.

Mr. Townsend: Whether he is ready to perform or not is utterly immaterial.

Mr. Heyman: I think it is very material, if the Court please.

Mr. Townsend: Unless he has a bill for the performance.

Mr. Heyman: He has no bill. Henry A. Schlicht, New York City. That is one of the contracts.

The Court: Is there anything further from this witness?

Mr. Heyman: No, I think that is all.

The Court: Have you anything further, Mr. Townsend?

Mr. Townsend: No, that is all.

The Court: We will take a recess to two o'clock.

(Whereupon at one o'clock P. M. a recess was taken until two o'clock P. M. the same day.)

1 Exchange Place, Jersey City, N. J.,
May 28, 1929, 2 o'clock P. M.

AFTERNOON SESSION.

HARRY JAFFE, called as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct examination by Mr. Heyman:

Q. Mr. Jaffe, did Mr. Kennelly at any time tell you that Mrs. Thornley had only ten dollars to give as a deposit on the purchase of her lots and advise you to accept that deposit? A. No, sir.

Q. Did you at any time tell him that it was all right? A. No, sir.

Q. And that he could accept that deposit? A. No, sir.

Q. Did you remain at that sale until it was concluded, until it was ended? A. Yes, sir.

Q. Did you hear any conversation between Mr. Cooper and Mr. Kennelly? A. Yes, sir; I heard it.

Mr. Townsend: I object to that, if the Court please, on the ground that it is not rebuttal. This is part of his main suit. This witness was on before and testified extensively as to all that took place.

The Court: Of course, the form of the question does not make it rebuttal. If you have been over it, we do not want to go over it again.

Mr. Heyman: I do not remember if he has been all over this in his case, if your Honor please, but if counsel will concede that this witness has told a story entirely

different from Mr. Kennelly, I am perfectly willing to let it go.

Mr. Townsend: Why ask me that? You are trying your case; I am not trying it.

Mr. Heyman: I withdraw the question.

Mr. Townsend: This man was on the stand before, and—

Mr. Heyman: I withdraw the question.

By Mr. Heyman:

Q. Were you up near the auctioneer's stand at the end of the sale? A. Yes, sir.

Q. Did you hear Mr. Sann say to Mr. Kennelly, "Major, I want you to get me out of those lots; I do not want them"? A. No, sir.

Q. Did you hear Mr. Kennelly say, "You bought them for yourself; I understand that you are out of it, and these four men were here to protect you"? A. No, sir.

Q. Did you hear an argument between Mr. Kennelly and Mr. Sann? A. No, sir.

Q. Did Mr. Mahoney at that time offer to buy all of the lots which were left, for nine hundred dollars? A. I did not see him do it.

Mr. Townsend: I object to that as not rebuttal.

The Court: I do not know whether it is.

Mr. Heyman: I will reframe my question.

By Mr. Heyman:

Q. Did you hear Mr. Mahoney say, "I will give you nine hundred dollars for anything you have got left, including the auctioneer's fee"? A. No, sir.

Q. Did he say it? A. No, sir.

Q. Did anybody offer nine hundred and fifty dollars at that time? A. No, sir.

Q. Did Mr. Mahoney offer one thousand dollars? A. No, sir.

Q. Did Mr. Kennelly sell Mr. Mahoney those lots, or anything that was left at that time, for one thousand dollars? A. No, sir.

Mr. Townsend: I object to that on the ground that it calls for a conclusion.

The Court: It is a conclusion, "Did he sell them to him?"

Mr. Heyman: I will withdraw the question.

By Mr. Heyman:

Q. Did you hear—

Mr. Townsend: And the answer, too, I suppose.

Mr. Heyman: There was no answer.

Mr. Townsend: Oh, I thought he answered over my objection.

The Court: Yes, he did.

By Mr. Heyman:

Q. Did you hear Mr. Kennelly say, "I sell you those lots at a thousand dollars apiece"? A. No, sir.

Q. Did you hear Mr. Kennelly say, "Sold at a thousand dollars apiece"? A. No, sir.

Q. Did you see Mr. Mahoney sign any contracts at that time? A. No, sir.

Q. Did he sign any contracts? A. No, sir.

The Court: Is that all?

Mr. Heyman: That is all. No, I have one other question.

By Mr. Heyman:

Q. Did you at any time tell Mr. Kennelly that you wanted an average price of eight hundred and fifty or eight hundred and seventy dollars per lot? A. I did not tell him.

Q. What was the conversation respecting the price of the lots? A. At the time of the sale or at the time of the offer?

Q. When was the conversation had? A. In the office.

Q. In the office, before the day of the sale? A. Before the sale.

Q. Tell us what the conversation was. A. Mr. Kennelly told us that those lots were very valuable, that they were worth from thirteen hundred to two thousand dollars a lot.

Q. Then what else was said? A. Then they came to an agreement, which was signed in the office. That is about all.

Q. Which agreement? A. Between the J. B. & S. and Mr. Kennelly.

Q. Do you mean this agreement, which is marked C-1? A. The original agreement.

Q. Do you mean this agreement? A. Yes, sir.

Mr. Heyman: Cross examine.

Cross examination by Mr. Townsend:

Q. When was that, Mr. Jaffe? A. That was quite some time before the sale. I think it was about three months before the sale, or two and a half months, or about that.

Q. Of course, you are experienced in Bergen County real estate matters, are you not? A. I am a builder in Jersey City.

Q. Will you please answer the question? A. I am familiar with it.

Q. With the real estate values in Bergen County? A. Yes, sir.

Q. You knew what you had paid for that property, did you not? A. I know what I had paid for it?

Q. Yes. A. Yes, sir.

Mr. Heyman: A little louder, please.

Q. Are you slightly deaf? Pardon me. A. Yes.

Q. If I do not talk loud enough, please let me know. A. Yes.

Q. You thought you knew what they were worth, did you not? A. Yes.

Q. How did you come to go to Mr. Kennelly? A. Well, a good many people told us to go to him.

Q. Why? A. Because he is an auctioneer. We wanted an auctioneer.

Q. Why did you want to auction this property off? A. Why, why did we want to auction it off?

Q. Yes. A. Because we wanted to sell it.

Q. Could you not sell it otherwise? A. We did not try.

Q. How long had you owned it? A. What?

Q. How long had you wanted this property? A. We owned it about close to two and a half years.

Q. And all during those two and a half years you had not tried to sell it? A. Well, we sold some of it, yes, but we were not anxious to sell.

Q. You had not tried to sell this particular property? A. No, we did not.

Q. Why? A. It was not necessary.

Q. Why, in the month of May then, or in April, did you decide to sell it, if it was not necessary for you to sell it? A. Well, we made up our minds

to sell it. That is when we went to Kennelly, the auctioneer of sellers.

Q. Why did you want to sell it then? You had not tried to sell it for two and a half years. A. Well, we tried to sell some of them.

Q. Yes, but this property you have just told me you did not try to sell for a period of two and a half years. What was there about the situation that suddenly caused you in the month of April— A. Well, we did try to sell some of it.

Q. Please, please. You do not know what I am going to ask you. Why, in the month of April, did you suddenly decide— A. Couldn't a man make up his mind to sell his property?

Q. Yes, I own some property up there myself, and I know why I should sell it, but why did you decide suddenly along in April to sell it? A. We had property enough, and we decided at that time to sell it.

Q. Yes, but for two and a half years, you say, you had made no effort to sell it, and suddenly in April of 1928 you had decided to sell it. Why did you suddenly decide to sell it then? A. There was no particular reason for it.

Q. No particular reason at all? A. No.

Q. And, having decided to sell it, you also decided to get an auctioneer to sell it, did you not? A. Yes. Yes, sir.

Q. You are sure about that? A. Yes, sir.

Q. There were no other circumstances that suddenly caused you to make up your mind to sell, were there? A. Yes, we made up our minds to sell it.

Q. What was there about the situation that made you make up your minds to sell it? A. There was

nothing special about it. We simply made up our minds to sell.

Q. Why, Mr. Jaffe, you know that your mortgage was past due, do you not? Was that not the fact? A. No, sir.

Q. Was it not? A. My mortgage was not called in at all.

The Court: Do not be evasive. The mortgage was past due, was it not? Answer the question one way or the other.

A. The mortgage was not past due at all, yet.

The Court: Was the mortgage past due? That is the question.

A. Yes, it was.

By Mr. Townsend:

Q. Yes, it was. That is your first mortgage? A. That is right.

Q. Your interest was past due, too, was it not? A. No, sir; we paid the interest in time.

Q. Had you paid the interest up then? A. Yes, sir.

Q. Why did you not pay off the mortgage? A. We did not have to.

Q. That was past due? A. That did not make any difference. We do not have to pay it off. They did not want us to pay it off.

Q. You had a second mortgage, too, did you not? A. Yes, sir.

Q. That was becoming due in August, was it not? A. Yes, sir; that is right.

Q. That all became due, did it not? A. Yes, sir.

Q. Have you paid it? A. I did not have to pay it.

Q. Did you pay it? A. No, we did not.

Q. No. Now, these titles that you did convey—where you did convey property, you agreed in your terms of sale to convey subject to a mortgage, did you not? Did you agree to take back a mortgage?

Mr. Heyman: Wait a moment.

Mr. Townsend: Let us find out.

Mr. Heyman: I want you to get the question right.

By Mr. Townsend:

Q. You agreed to take back thirty per cent., did you not? A. At the time of the sale?

Q. Won't you please answer my question? If you do not listen to my question, you are going to get into a lot of trouble. I am going to trip you in a question.

Mr. Heyman: I object to that.

The Court: Do not threaten the witness.

By Mr. Townsend:

Q. Do not answer until I finish the question, because you might make a wrong answer. You agreed to take back seventy per cent. of the purchase price by executing a mortgage, did you not? A. Yes, sir.

Q. You did not do it, did you?

Mr. Heyman: I object, if the Court please. There is no evidence that he did not do it.

Mr. Townsend: This is cross examination.

The Court: I will allow it as cross examination. It may go to the witness' credibility. It is a perfectly clear question. You did not do it, did you?

By Mr. Townsend:

Q. You did not do it, did you? A. I did not have to do it.

Q. I did not ask you that. I say you did not do it. A. All right, we did not do it.

Q. You made all the people pay all cash?

Mr. Heyman: I object to that.

A. I did not make them. They paid it themselves.

Q. You did not request them to pay all cash? A. As long as they wanted to pay all cash.

Q. Please answer the question, Mr. Jaffe.

The Court: You did not request them to pay all cash?

The Witness: No, I did not.

Q. You did not? A. No.

Q. Oh, they volunteered to pay all cash? A. Yes.

Q. All of them? A. The ones we sold, these individual sales.

Q. So, then, I understand that you wanted an auctioneer, and you went over to Major Kennelly. A. To Major Kennelly?

Q. Yes. A. Yes, we went over to his office.

Q. Did you tell him what the lots were worth? A. He told us himself what they were worth.

Q. Please answer my question. A. Yes.

Q. Did you? A. Yes, sir.

Q. Did you tell him? A. I told him that they were worth at least two thousand dollars a lot, and he agreed with me.

Q. So he agreed with you then, instead of his telling you that they were worth two thousand to twenty-five hundred dollars—

Mr. Heyman: Wait. There is no testimony to that effect.

The Court: It is perfectly all right. The question is perfectly proper. It may affect the credibility of the witness. Put your objection on the record.

Mr. Heyman: I object, because it contains an unwarranted assumption of fact.

The Court: The objection is overruled. Answer the question.

(The question was read as above recorded.)

The Court: You see, it goes right to his credibility. Very well, answer the question. It is a fair question.

By Mr. Townsend:

Q. You having said that they were worth two thousand dollars, he agreed with you? A. He agreed with me.

The Court: I would like you to answer the question. It was a fair question.

(The question was again read as above recorded.)

A. Yes, sir. I told him and he told me at the same time.

Q. What do you mean? What did he say to you? A. He said to me that they were a beautiful property, and they would surely bring two thousand dollars a lot.

Q. Let us get this conversation straight.

By the Court:

Q. Who mentioned the sum of two thousand dollars a lot first? A. Mr. Kennelly.

Q. He told you? A. Yes.

Q. Before you mentioned it to him? A. Yes.

The Court: Very well. Proceed.

By Mr. Townsend:

Q. He had not even seen your property, had he? A. He seen it before.

Q. When? A. He went down himself to see it. He told me that.

Q. Before you even got in touch with him? A. We got in touch with him and he went down to look at the property.

Q. How did you get in touch with him? A. We went up to his office.

Q. What did he say to you when you went up? What did you say to him? A. We wanted to make an auction sale.

Q. Why? A. No special reason.

Q. In order to get an auction sale, you were perfectly willing to put up five or six thousand dollars in advertising costs and give him five per cent.? A. We did not put up any five or six thousand dollars.

Q. That is not what the agreement calls for, is it not? A. Well, I do not know what the agreement is.

Q. Suppose you look at it. A. I cannot read.

The Court: He does not read.

A. I have not got my glasses here.

Mr. Townsend: Oh, you do not read?

The Court: He says he has not got his glasses here.

By Mr. Townsend:

Q. So you went over to Major Kennelly. A. Yes, sir.

Q. I am speaking about the first time. You said to him, "Will you conduct an auction sale for us?" A. Yes, sir.

Q. What else did you say to him? A. Then he went down to look at the property.

Q. Well, wait, please. What else did you say to him? A. We did not say anything else, except we were discussing that we were going to make an auction sale. He was going to look over the property. He wanted to look over the property.

Q. Did you tell him what kind of property it was? A. Yes, I told him what kind of property it was.

Q. Did you tell him how much you had paid for it? A. We told him.

Q. Did you tell him how much you thought it was worth? A. Yes.

Q. What did you tell him? A. About three thousand dollars a lot.

Q. And then what did he say? A. He said it was well worth it, and they should bring three thousand dollars a lot.

Q. He had not even seen it then, had he? A. Well, after he had seen it.

Q. We are confining ourselves for the moment to a conversation you had the first time you saw him. A. We saw him the first time in his office.

Q. Yes. A. And then we sat down and talked, and he said he was going to look over the property and see what it is, and then he made an appointment and we went over to his office, and he was well pleased with the property, said it was a wonderful property.

Q. That was the second time? A. Yes, sir.

Q. Who took him out to the property? A. Who

took him out? He was able to go down there himself.

Q. Oh, he was able to find it without anybody with him? A. Yes, sir; he knows the place.

Q. What was your conversation with him the second time? A. The second time we signed the agreement.

Q. Please. Answer the question. What was the conversation? A. Well, he was to sell the property for us, and he was sure that was the proper price, what we thought it was worth, and then we signed the agreement.

Q. Yes. A. He was sure that was the proper price. Then we signed the agreement.

Q. He said he was sure you were going to get the price that you thought it was worth? A. Yes, sir.

Q. So instead of his telling you what the property was worth, you told him; is that correct? A. I told him and he told me.

Q. And he told you after the second visit? A. Yes, sir.

Q. Did you demand that he get two thousand dollars a lot for this property? A. Yes, sir.

Q. That was before the contract was signed? A. Before, and even on the contract—

Q. Please, please. A. Yes, yes, before.

Mr. Heyman: That is an answer to the question.

By Mr. Townsend:

Q. Why did you not incorporate that in your contract? A. I did not think it was necessary.

Q. When did you see Major Kennelly next after that? A. When? After we signed the agreement?

Q. Yes, after you signed the agreement. A. We seen him at the time of the sale.

Q. Which sale? A. At the auction sale.

Q. The first or the second? A. Seen him at the first and seen him at the second.

Q. What conversation did you have with him at the first sale? A. Didn't have no conversation. Simply, when the time came he went up on the stand.

Q. Did you say anything to him about getting two thousand dollars a lot? A. Never. Didn't have no conversation with him.

Q. Did you have any conversation with him at the second sale? A. No, sir.

Q. You had only five people there at the first slae, did you not? A. That is right.

Q. And he suggested that the matter be put over for two weeks and be readvertised? A. That is right.

Q. This was all the property you had there, was it not? A. That is all.

Q. You agreed to pay his advertising expense, did you not? A. Yes, sir.

Q. And when you sold this property you were completely out of that section, were you not? I mean the J. B. & S. Holding Company. A. Yes.

Mr. Townsend: May I see that exhibit, that map? I thought that was your exhibit.

Mr. Heyman: Here it is (handing a map to counsel.)

Mr. Townsend: Yes, that is it.

By Mr. Townsend:

Q. What did you say when you saw this map which has been marked Exhibit C-2? A. What is that?

Q. This is a notice from your sale, your liquidation auction sale on Saturday, May 19th. A. I have not said anything.

Q. You did not say anything? Why? A. Was it necessary to say anything?

Q. You are the judge. I am not, myself. A. I did not think it was necessary to say anything.

Q. You thought the advertisement was all right, did you not? A. Yes, sir.

Q. So, when only five people showed up the first time, you continued it over to June 9th? A. That was his suggestion.

Q. You agreed to pay for the readvertising, did you not? A. Yes, sir.

Q. And it was readvertised? A. Yes, sir.

Q. You saw it? A. Yes, sir; sure.

Q. That was the same ad as was shown here on Exhibit C-2, wasn't it? A, I think it is the same, yes.

Q. Did you make any objection then? A. No, sir.

Q. Did you discuss with Major Kennelly at any time as to how he was going to make sure of getting two thousand dollars a lot? A. We were discussing all those things in his office. After that we did not discuss any more.

Q. That is, after you signed the contract. All right. What did you discuss as to how he was going to get two thousand dollars a lot? A. Well, I took his word for it. He said it was such a beautiful property, and we took his word for it, that he was going to get that price.

Q. Are you in the habit of taking people's word on statements like that? A. Well, we have got to.

Q. Please, I say are you in the habit of taking people's word on statements like that? A. Yes, sir.

Q. How long have you been in the real estate business? A. I am in the real estate business for the last twenty years.

Q. Have you always done business that way? A. Yes, sir.

Q. Now, when you get up to the day of the sale. You were over in the Major's office on the Friday before the sale, were you not? A. I beg your pardon?

Q. I say, you were over in Major Kennelly's office the day before the second sale? A. The day before the second sale?

Q. Yes. A. I was not there. We sent them a check for it.

Q. You had a conversation. You saw the Major before the sale took place, did you not? A. In the last sale, I did not see him before. I only saw him at the sale.

Q. Did you, or your associates, whoever they were, agree not to bid on this property? A. I beg your pardon.

Q. I say, did you or any of your associates agree not to bid on this property? A. Did we agree not to bid on this property?

Q. Yes. A. Well, I did not agree not to bid.

Q. Did you agree not to bid on any part of this property? A. No, I did not agree.

Q. Was there anything said about it? A. No.

Q. Was there anything said about paying for men to protect it or to bid it up? A. Mr. Kennelly had his own men for protection.

Q. How do you know? A. I seen some of Kennelly's men bidding on it.

Q. How did you know they were Kennelly's men? A. Why, Mr. McDonald told me.

Q. When? A. At the sale.

Q. What did you say? A. I did not say anything.

Q. Did you not say, "I object to that. That is a fraud on the public? A. Didn't I say what?

Q. Did you not say, "I object to that. That is a fraud on the public"? A. I did not say nothing to McDonald at that time.

Q. Did you say anything to anybody? A. No, sir.

Q. Did you say anything to Mr. Cooper? A. No.

Q. Why? A. I thought it was not necessary to say that.

Q. You were perfectly satisfied as long as you sold your property there, were you? A. It was not all sold.

Q. Pardon me? A. It was not all sold.

Q. I say, you were perfectly satisfied as long as you sold your property; is that what you wish to convey to this Court? A. That is right.

Q. It is, is it? A. Yes.

Q. What is your office in this Company? A. What do you say?

Q. What is your office in this Company? A. I am president.

Q. You had no conversation with Mr. Kennelly about hiring anybody to bid this property in? A. No, sir.

Q. You had no conversation with him about you or your people bidding or not bidding? A. No, sir.

Q. None whatever? A. No, sir.

Q. And suddenly you saw somebody at the sale bidding— A. Mr. McDonald told me that.

Q. When? A. I was near the stand.

Q. When? A. At the time of the sale.

Q. What part of the sale did he tell you that?

A. I do not know. Whenever it was. The gentleman said, shall we sell it? And he says, yes, go ahead and the others said it was not an actual legitimate sale.

Q. So you were the one who determined whether it was a legitimate sale or not? A. Yes, sir.

Q. That was all through the sale? A. Yes, sir, all through the sale.

Q. When you saw some people bid on the property, how did you know they were Kennelly's men? A. I was near Mr. McDonald and he used to tell me.

Q. He told you what? What did he say to you? A. He said, whenever there was a bid on it, and it was not legitimate, he would say, "This is not a legitimate sale."

Q. Oh, you told us that, but you said that you saw Kennelly's men bidding. A. Mr. McDonald told me that this is Kennelly's man.

Q. Oh, you saw them? A. Mr. McDonald told me this is Kennelly's man.

Q. What did you say? A. I did not say anything.

Q. Did you not object to it? A. Yes, sir.

Q. Did you object? A. Well, he said, "This is not a legitimate sale," but I did not say yes or no.

Q. Did you say to Mr. McDonald, "This is not right." I know nothing whatever about it. I insist on the auctioneer telling the public that that is not a legitimate bid"? A. I didn't say nothing to Mr. McDonald.

Q. Did you think it? A. No, sir.

Q. Why? A. Because it was not necessary.

Q. Why was it not necessary? A. Mr. Kennelly ought to know his business.

Q. You were president of this company. It was your property being sold. A. Yes.

Q. Did you want the sale of the property to be a fraud on the public? A. We had confidence in Kennelly.

Q. I did not ask you that, sir, and you knew it.

Mr. Heyman: If your Honor please, I think that is an answer.

The Court: Do you press it?

Q. Why did you not object to that? A. I did not think it was necessary.

Q. Were you willing to perpetrate a fraud on the public? A. No, I did not mean to do that.

Q. What did you mean to do? A. I did not mean to do anything.

Q. You meant to sit there and let it go? A. I was sitting there watching the auction, yes, sir.

Q. Did you see Sann bid? A. He was sitting in the back, I believe. I did not know whether he was bidding or not.

Q. What? A. He was sitting in the back of the crowd.

Q. He was not any farther from you than the back of this room, was he? A. No, it was a big tent—quite a distance from the stand.

Q. How far? A. Oh, about fifty or seventy-five feet, I believe.

Q. Did you see him there? A. Yes. I saw him sitting there.

Q. Did you hear him bid? A. No.

Q. At no time? A. No, sir.

Q. Did you hear anybody else bid? A. Some people bid.

Q. Whom did you hear bid? A. Mr. McDonald told me. That is all.

Q. I did not ask you that, sir. I asked you whether you heard anybody bid. A. You do not hear any bids at a sale, because the auctioneer points out with his finger, and the other fellow shakes with his head. Whether that is a bid or not you do not know.

Q. Did you see Major Kennelly point out with his finger to Sann? A. No, I did not see it.

Q. Did you see Sann shake his head? A. No, I did not see it.

Q. Did you know that Sann made a bid? A. He told me after the sale was over.

Q. When? A. After the sale was over.

Q. Where? A. At the time of the sale.

Q. On the stand? A. When Kennelly left the stand.

Q. After Kennelly had left the stand or before? A. After.

Q. After. What did he say to you? A. He said he was bidding on it.

Q. What did you say? A. I did not say anything.

Q. Why not? A. It was not necessary to say anything to him because he said he was bidding at the sale, and Kennelly told him, "That is your business." There is nothing to it.

Q. What is it? A. "That is your business"—was a lot of camouflage.

Q. That it was a lot of camouflage? A. Yes, sir.

Q. That is what Sann told you? A. Yes, sir.

Q. Sann told you that? A. That is what Sann told me that Kennelly told him.

Q. Where did this conversation take place between Sann and Kennelly? A. Well, as I understand, Kennelly did not even give him a chance to

talk to him. He packed up right away his papers and went away.

Q. Oh, now, just a moment, please. A. Yes, sir.

Q. You said that Major Kennelly said— A. I did not say that Major Kennelly said it. I said Mr. Sann told me.

Q. Where did that conversation take place between Sann and Kennelly? A. Well, after, when Mr. Kennelly left the place.

Q. After he left? A. Yes, sir, that is right.

Q. Yes, where? Was it in the tent or was it outside the tent? A. Under the tent.

Q. Do you understand my question? Where did Sann say that the conversation between him and Kennelly took place? A. Right under the tent, when Kennelly left the place.

Q. After he left the place? A. That is right.

Q. But you just told us that Sann told you that just as he left. Which is right? A. I do not know how you are going to term that. I say that when he left the place Mr. Sann told me that.

Q. All right. Where did Mr. Sann tell you? A. When Mr. Kennelly left the place.

Mr. Heyman: Why do you not wait until you are asked a question.

By Mr. Townsend:

Q. Where were Kennelly and Sann when they had this talk? A. Well, there wasn't any much talk about it, because Kennelly left the place as soon as he was done selling it.

Q. Will you please tell me how he was able to tell him that it was a camouflaged sale? A. Sann told me—

Q. Sann is here in the court room, is he not? A. Yes, sir.

Q. He has been in the court room ever since this case started, has he not? A. Yes, sir.

Q. You have not called him as a witness, have you?

Mr. Heyman: I object to that. The witness is not conducting this case. I am. I will call Sann in good time. I object to the question.

The Court: The objection is sustained. It is immaterial.

By Mr. Townsend:

Q. What did Sann say that he said to Major Kennelly when he told him that it was a camouflaged bid? A. Sann was satisfied.

Q. Sann was satisfied? A. That is right.

Q. Did Sann tell you he had given him a check? A. He told me he had given a blank check, yes.

Q. What do you mean by a blank check? A. A piece of paper. That is what he told me.

Q. Signed by him? A. Signed by him, yes.

Q. For how much? A. I do not remember whether it was six hundred or over six hundred.

Q. Did he say he had signed contracts in writing? A. Yes, sir; he did.

Q. What did you say to him when he told you that? A. I didn't say nothing to him.

Q. Why not? A. Because it was not necessary.

Q. You did not ask him whether he was bidding privately or for the company? A. He said he wanted to take out the property from the sale.

Q. He wanted to take the property up from the sale? A. Yes.

Q. Did he say why? A. There was no reason for it.

Q. Did you ask him? A. What is that?

Q. Did you ask him? A. I did not ask him.

Q. Why did you not ask him? A. Because it was not necessary to ask him.

Q. You did not want the property taken out of the sale. You had gone over to Major Kennelly to get him to sell it. A. Yes, sir.

Q. Did you not object to his attitude? A. To whose attitude?

Q. Sann's. A. He said, "It is only a camouflaged bid," so that—

Q. So that—that is what I am asking you. Did you not object to the camouflaged bid, to his taking the property out of the sale? A. I did not object.

Q. Why did you not object? A. I did not think it was necessary.

Q. How much did Mrs. Thornley bid for her property? A. Who?

Q. Mrs. Thornley. A. Mrs. Thornley! I never seen that party.

Q. A thousand dollars, was it not? A. I do not remember.

Q. You say you objected to her having paid only ten dollars. A. Yes, sir.

Q. That was your only objection, was it? A. Yes, sir.

Q. Because she only gave you ten dollars? A. Yes, sir.

Q. You were interested in getting her thousand dollars, were you not? A. I beg your pardon!

Q. You were interested in getting her thousand dollars, were you not? A. Getting from her a thousand dollars?

Q. Yes. A. I was interested to get so much as the agreement calls for, whether it is twenty per cent. or—

Q. But you were interested in the final result,

in getting a thousand dollars that she bid, were you not? A. If that was a legitimate bid, that was all right.

Q. Did you think it was a legitimate bid? A. Not on a ten dollars deposit.

Q. Oh, merely because she offered ten dollars, you did not think it was a legitimate bid? A. No, sir.

Q. If she had given you the thousand dollars there and then, would you have thought it was a legitimate bid? A. She had to give according to the agreement.

Q. Please, please. If she had given you a thousand dollars there, would you have been satisfied? A. Yes, sir.

Q. When that bid was made and she came up there to give a check for ten dollars, or give ten dollars in cash, or whatever it was, what did you say, if anything? A. I did not see that lady at the time when I was near the stand.

Q. When did you find that she had given ten dollars deposit? A. When the sale was over.

Q. Who told you? A. Mr. Cooper.

Q. What did you say? A. I said, "The sale is no sale on ten dollars deposit."

Q. The sale is no sale what? A. The sale is no sale on ten dollars deposit.

Q. Is that all you said? A. That is all.

Q. Was Mr. Kennelly there? A. No, sir.

Q. Was Mr. McDonald there? A. They all went home, the whole bunch.

Q. Where did he tell you this? On the way home? A. Mr. Cooper when the sale was over—

Q. Please, please.

Mr. Heyman: Let him explain.

A. Right under the tent, he told me.

Q. Who was there when he told you that? A. I and Mr. Cooper.

Q. Anybody else? A. No.

Q. Everybody else had left? A. Yes.

Q. Why did you stay there after everybody had left? A. The air was good there, and I thought I would stay there.

Q. Oh, the air was good and that is the reason you stayed. Did you hear this woman make a bid? A. No, sir; I did not hear her.

Q. Did you see her come in to put down her deposit? A. No, sir, I did not see her.

Q. Were you sitting beside Kennelly then, when they reported the sale to him? A. No, near Mr. McDonald.

Q. Did you hear that sale reported? A. Oh, by the way, I was not setting.

Q. Be that as it may, we will not quarrel about that, whether you were sitting or standing, as long as you can talk here. Did you hear that sale reported to McDonald? A. Did I hear that sale?

Q. Reported by the man who came up from the audience? A. Mr. McDonald tells me it is a legitimate sale.

Q. What did you say? A. Well, I said, "Sell it."

Q. Did they then send down a contract for her to sign? A. I did not see her sign it or anything.

Q. Did you see them pick up a book? A. No, sir.

Q. Did you hear the man come back to McDonald and say, "She has only got ten dollars; shall we take it?" A. I did not hear until Mr. Cooper told me about it.

Q. You heard everyone else, except that, did you? A. Well, now, Mr. Cooper told me that.

Q. I did not ask you that, sir. You heard everyone else except that? A. Practically, yes.

Q. Did you give Mr. Cooper any instructions as to how he should act there the day of the sale? A. Repeat that, please.

(The question was read as above recorded.)

A. No, I did not.

Q. You were the president of this company? A. Yes, sir.

Q. You were the active man in charge, were you not? A. Yes, sir.

Q. You said nothing whatever to him as to what he should do? A. No.

Q. Why not? A. It was not necessary. It was all said.

Q. What? A. It was not necessary. I thought—

Q. What else did you say?

(The answer was read as above recorded.)

A. I thought it was all arranged.

Q. Who arranged it? A. It was all arranged before the sale.

Q. Arranged by whom? A. In Kennelly's office.

Q. Oh, this conversation you told us about? A. Yes, I told you before about it.

Q. Did you authorize Mr. Cooper to let anything go for a thousand dollars? A. Any legitimate sale, whether it was a thousand or nine hundred dollars.

Q. Or eight hundred or seven hundred? A. Well, whatever way he should sell it, as long as it was a legitimate sale.

Q. Or seven hundred or six hundred, as long as it was a legitimate sale, it did not make any dif-

ference to you what price it was; is that correct? A. That is right.

Q. You had given him no instructions as to any price he was to get? A. I made up instructions before, about trying to get at least two thousand dollars a lot.

Q. What is that?

(The answer was read as above recorded.)

Q. That was over in Kennelly's office? A. That is right.

Q. But, after that, you never gave Mr. Cooper any instructions whatever? A. No, sir.

Q. When did you first find out that it had been officially announced that Jones Road would be one of the main arteries to the State Highway?

Mr. Heyman: I object to that on the ground that there is no evidence before this Court that it is.

The Court: What was the question?

(The question was read as above recorded.)

The Court: Does not that question lack foundation, Mr. Townsend?

Mr. Townsend: I think your Honor is correct.

The Court: Yes. You see there is no foundation for it.

Mr. Townsend: Yes.

By Mr. Townsend:

Q. Is it not a fact, Mr. Jaffe, that, since this sale, it has been officially announced that Jones Road is to be one of the main arteries to the new bridge? A. I have heard about it.

The Court: What did you say? You did not hear it?

Mr. Townsend: Is that so?

The Witness: What is it?

(The question was read as above recorded.)

A. I have heard about it.

By Mr. Townsend:

Q. When did you hear about it? A. Oh, quite some time ago. I did not—

Q. How long after this sale was it that you heard about it? A. I often heard, even before the sale, that something will go through there.

Q. Yes, but I am talking about an official announcement published in the newspapers.

Mr. Heyman: Oh, if your Honor please, I object to any question of that kind.

The Court: Of course, you cannot characterize it as official.

Mr. Townsend: Oh, well, I think your Honor is familiar with those matters.

The Court: Yes. When did you first find out?

By Mr. Townsend:

Q. When did you first find out that it had been announced in the newspapers?

Mr. Heyman: I object to that.

By the Court:

Q. When did you first see it? A. I did not see it, your Honor.

The Court: He says he did not see it.

Mr. Heyman: I withdraw the objection.

By Mr. Townsend:

Q. Did you hear that it had been published in the newspapers? A. I heard some people talking about it.

Q. When did you first hear about that? A. It has been so long ago, I do not remember.

Q. How long after this sale? A. Well, it must have been about three or four months after the sale.

Q. It was after the sale? A. It was before the sale and after the sale.

The Court: How long after the sale?

Mr. Heyman: Oh, about two weeks or three weeks.

Mr. Townsend: No, about two months after the sale.

Mr. Heyman: Let us get the right dates and be sure about it.

Mr. Hollander: September 18th.

Mr. Townsend: It was issued September 18th.

The Court: Three months. I was wondering what the pertinency of the question was. I wanted to get the drift of what you were getting at.

Mr. Townsend: That is an important part of it.

The Court: Yes. Of course, that is very important, in view of that fact.

By the Court:

Q. So you heard about it about two months after the sale, about the possibilities? A. I heard about it before the sale, too, yes.

Mr. Heyman: July 11th.

Mr. Townsend: The bill was filed?

Mr. Heyman: July 11th, yes.

Mr. Townsend: The subpoena was issued in September.

Mr. Heyman: Oh, no, the subpoena was not issued in September.

Mr. Townsend: I am only taking their word for it.

Mr. Heyman: Oh, no. The subpoena was issued immediately.

Mr. Townsend: No, September 18, 1928.

Mr. Heyman: That is true. The subpoena was served on all the defendants except William Kennelly within five days after the filing of the bill. We had to issue new subpoenas for the defendant. The subpoenas were issued immediately, July 7th.

Mr. Hollander: I think the best way is to get the postal card we got from the clerk.

Mr. Heyman: July 11th. I have got the card right here. Here it is. And the subpoena was issued instantly. You know that we could not serve Kennelly or Ross. Your client was out of town.

Mr. Hollander: Yes, that is right.

Mr. Townsend: I am all through with this witness.

The Court: All right, witness excused.

Mr. Simpson: I would like to ask him a few questions.

Mr. Heyman: Are we trying all three cases now?

The Court: We are trying the case between you and Mr. Townsend.

Mr. Heyman: Very well, then, I object to any further examination.

The Court: Do you wish to ask him any further questions?

Mr. Heyman: Yes.

Mr. Hollander: We are trying to follow the case at the same time.

The Court: Mr. Townsend wanted to complete this case first. The Court will propound a question if you wish, Mr. Hollander. What is the nature of your question?

Mr. Hollander: With reference to this Mrs. Thornley. That is the other case. This case refers to that, the mate to it all the way through.

The Court: What do you say, Mr. Heyman?

Mr. Heyman: Oh, I cannot try his case together with Mr. Townsend's. I am going to try each one separately.

The Court: All right, later on. Withdraw the witness now.

Mr. Heyman: I want to recall Mr. Kennelly for one question, if your Honor please, that I wanted to ask.

The Court: Very well. One question.

Mr. Heyman: Make it two questions.

The Court: One.

Mr. Heyman: Two questions.

(The witness was withdrawn.)

WILLIAM KENNELLY was recalled and testified further as follows:

Direct examination by Mr. Heyman:

Q. Who was the cashier who attended this sale for you? A. Mr. Loftus.

Q. Is he still in your employ? A. Yes, sir.

Q. Is he here today? A. No, he is not here today.

Mr. Heyman: That is all.

The Court: Is that the case?

Mr. Heyman: No, no. There is a lot of rebuttal yet. I want to give Mr. Townsend a chance to pull in his oars now.

(The witness was excused.)

SAMUEL SANN was recalled and testified further as follows:

Direct examination by Mr. Heyman:

Q. You have testified before? A. Yes, sir.

Mr. Heyman: We cannot finish by three-thirty, if your Honor please. Probably I had better withdraw this witness and put on another one.

Mr. Townsend: I would like to hear this man. He is a very important figure in the trial. He has been here for several days.

Mr. Heyman: Oh, he will be here.

The Court: He says he cannot finish him at all.

Mr. Heyman: I could not finish on direct examination.

Mr. Townsend: Suppose you do it as far as you can go.

Mr. Heyman: The Vice Chancellor says he will sit here only until three-thirty. I have an attorney on subpoena here, who will be very short.

The Court: Then you had better call him. I know Mr. Townsend would prefer to have Mr. Sann, but I think Mr. Heyman should have the right to conduct his own case.

(The witness was withdrawn.)

WILLIAM S. STUHR was recalled and testified further as follows:

Direct examination by Mr. Heyman:

Q. Mr. Stuhr, did you ever talk with Mr. Mahoney after this sale? A. Yes.

Q. And where did this take place? A. Outside the tent.

Mr. Simpson: Just a minute. If the Court please, if these cases are to be tried separately, am I presumed to stay here and listen to testimony about Mahoney without saying a word?

The Court: Well, I should say not. I did not know until today that they were to be tried separately, and then Mr. Townsend was so insistent on his right to charge them separately, that it put me in that position that I did not conceive at the outset of the case. My usual practice, as I stated, is to try them together, but Mr. Townsend was particular that he wanted to have this case

tried separately. What will happen is that it will prolong the trial of the issue. What will happen will be that this man will have to come back for further cross examination by you.

Mr. Simpson: I am sorry about that. I want to preserve the rights of my client.

The Court: I do not want you to be deprived of your right of cross examination.

Mr. Heyman: He is not interested in what took place now.

The Court: He is interested in Mahoney.

Mr. Simpson: Mahoney is a defendant.

The Court: I know he is a defendant. He is here in the case. You told me so this morning.

Mr. Simpson: Yes, sir.

The Court: This witness will have to be called back for anything that seems important to you.

Mr. Simpson: Yes, sir.

By Mr. Heyman:

Q. When did this conversation take place? A. Between the tent—outside the tent and between the tent and Jones Road.

Q. Who was present? A. There was present, in addition to myself and Mahoney, a man—I cannot remember his name, but he was from Mr. Day's office, and a real estate dealer by the name of Joseph White.

Q. Is that the man who was in court the last time and testified? A. Yes.

Q. What did Mr. Mahoney say?

Mr. Townsend: I object to that on the

ground that, if the Court please, it is not rebuttal. Mr. Stuhr testified before as to what took place, and whatever Mr. Mahoney may have said is not binding on this defendant.

The Court: It is not binding on you, but I am going to allow him to testify as not binding on you. The question may be answered.

Q. What did he say? A. Well, he showed me three contracts and told me he had purchased ten lots, and asked me what I thought of them. I told him that I thought he had made very good buys, and we talked about buying them from him. Mr. White did—and myself, and a general conversation after that. A doctor came by. I do not know if he attended the sale or not, but Mr. Mahoney knew him. Mr. Mahoney tried to sell the lots to him, but he was not interested. Then, after that, he left. I went with Mr. White and he went with the man from Joseph P. Day's office up to the top of the cliffs, and we had a sandwich there.

Q. You were present when this sale was finally ended, were you not? A. Yes.

Q. Did you at that time hear Mr. William Kennelly offer the forty-two lots or the balance of any lots? A. No.

Mr. Townsend: I make the same objection, if your Honor please.

Mr. Heyman: Do you want me to go through this categorically?

Mr. Townsend: No, I want you to confine yourself to rebuttal.

The Court: This is rebuttal.

By Mr. Heyman:

Q. Did you hear Mr. Sann—you know Mr. Sann, do you not? A. Yes.

Q. Mr. Sthur, did you hear Mr. Sann say to Mr. Kennelly, "Major, I want you to get me out of those lots; I do not want them." A. I did not.

Q. Did you hear the Major say to him, "You bought them for yourself. I understood you were out of it, and these four men were here to protect you"? A. I did not.

Q. Did you hear any argument or hear any argument between Mr. Sann and Mr. Kennelly after that? A. I did not.

Q. Did you hear Mr. Mahoney bid nine hundred dollars for all the lots that were left? A. I did not.

Q. Did you hear anybody else bid nine hundred and fifty dollars for all the lots that were left? A. I did not.

Q. Did you hear Mr. Mahoney bid a thousand dollars for all the lots that were left? A. I did not.

Q. Did you see Mr. Kennelly after the sale was over? A. Well, I did not pay very much attention to the sale. I did not know Mr. Kennelly very well at that time. I went up there just for the purpose of attending the sale. I did not pay very much attention to it.

Q. But you saw him up on the auction block, did you not? A. Yes, I did.

Q. Did you see him after he had closed the sale? A. No, I did not.

Mr. Heyman: You may cross examine.

The Court: You can see that this effects the case of Mr. Simpson's client. He must

have a chance to cross examine at a later date. Proceed.

By Mr. Heyman:

Q. One other question: During the sale, you were either sitting with or standing alongside of Mr. Mahoney; were you not? A. No.

Mr. Townsend: I object to that.

Mr. Heyman: Very well, I withdraw the question.

Mr. Townsend: He said no.

By Mr. Townsend:

Q. Where were you standing with reference to Mr. Mahoney? A. Well, I am really not in a position to answer that. I did not come up there for any particular purpose. One time I was there with Mr. Mahoney, and then after that I was at one end of the tent and at another end of the tent, just seeing different friends of mine.

Q. But toward the end of the sale, at the very end of the sale? A. I could not say exactly where I was at the very end of the sale.

Mr. Heyman: Cross examine.

Cross examination by Mr. Townsend:

Q. You were not paying any attention to the different sales, were you, Mr. Stuhr? A. Not except in a general way.

Q. You do not remember any of the bids that were made, except one or two that were made in the early part of the sale? A. That is right.

Q. And the general conversation you had with Mr. Mahoney was after the sale was over and you

were outside the tent, is that correct? A. Yes, we were the last cars to leave the place.

Q. And he showed you three contracts for ten lots? A. I believe there were ten lots. There may have been nine and there may have been eleven, but I am almost certain there were ten lots.

Q. He did not tell you whether he had bid for any more or bought any more, and so you did not ask him whether he had bought any more; is that correct? A. No, we did not go into that.

Mr. Townsend: That is all.

Mr. Heyman: That is all.

The Witness: Am I excused on the case?

Mr. Heyman: You are excused until after Mr. Simpson, upon reflection, decides to cross examine you. He will probably ask you to step over some day.

ALFRED TROUTMAN, First National Bank of Fairview, New Jersey, being first duly sworn, testified as follows:

Direct examination by Mr. Heyman:

Q. What office do you hold in the First National Bank of Fairview, New Jersey, Mr. Troutman? A. I am assistant cashier.

Q. And you were served with a subpoena to produce the record of the account of Nicholas F. Mahoney? A. That is right.

Q. Have you it with you? A. I have.

Q. Just produce it please. A. (Producing a paper.) That is the account of Nicholas Mahoney.

Q. What is that? A. Nicholas Mahoney, and this is the corporation account.

Q. This is the account of Nicholas Mahoney, is it? A. Yes. You won't need that.

Q. What is that? A. You won't need that.

Q. Do not need this. Is this a true transcript of the original books of your bank, showing the account of Nicholas F. Mahoney? A. Yes, it is.

Mr. Townsend: If the Court please, I object to this testimony on the ground that it is manifestly not rebuttal. I was called here to meet a case presented by Mr. Heyman. I came here prepared to try the case today that was made by Mr. Heyman in Paterson.

The Court: I know, because you told me it would be short.

Mr. Townsend: Yes, but now he is opening the door as to everything he may have produced on his main case. I submit it is utterly unfair.

The Court: If there is any injury brought about by the introduction of new testimony, you could be given ample opportunity to meet it. It comes as a surprise to you, I suppose. I suppose that Mr. Heyman is going to try to prove that there were no active withdrawals. You see, it affects Mr. Simpson's case, too.

Mr. Townsend: As far as my case goes, it may change my whole trial tactics.

The Court: Yes, it may. You do not object to the testimony going in, noting your objection to it and your right to cross examine when you have considered the proposition, do you?

Mr. Townsend: Well, I do not know.

The Court: Or if you want to examine

now. It is not rebuttal, is it? Has Mr. Mahoney been on the stand?

Mr. Townsend: No, sir. Mr. Mahoney has not been on the stand.

The Court: And the only testimony we have is the three or four witnesses who testified that he did purchase at the sale. I do not know. I am only assuming that counsel is probably going to offer testimony showing that there were no withdrawals.

Mr. Townsend: I assume that that is true.

The Court: I imagine it is true; I do not know.

Mr. Townsend: I mean that he is going to attempt to prove that. We should not be called upon to meet that in rebuttal.

The Court: What do you say to that, Mr. Heyman? What is your object?

Mr. Heyman: My object is this: I thought we were trying the three cases at one time.

The Court: I know you did.

Mr. Heyman: That was the stipulation at first.

The Court: At the first hearing.

Mr. Heyman: I was prepared to show today that this man Mahoney never was in a position to buy these lots and never paid for them, and that is the answer to that. Now, if your Honor thinks it is improper at this time, I will have to bring this man back again.

The Court: Unfortunately, if Mr. Townsend objects to it, I will have to sustain the objection.

Mr. Heyman: I do not see how he has a right to object. He went on to try this

case in consolidation with the other two cases under a stipulation to that effect. It seems to me now that he is bound by that. I do not think he ought to have a right at this stage of the game to try his case separately.

The Court: It was at Mr. Townsend's instance that we did it. We changed the record today, do you see? The original program was to try all the cases together. That was decided when I first opened the case. This morning Mr. Townsend strenuously opposed trying Mr. Mahoney's case or Mr. Hollander's case.

Mr. Hollander: Only after I had prepared my rebuttal, if your Honor please.

Mr. Townsend: If your Honor please, may I say this for the justification of my stand in this matter: I assumed that what I was trying was our case, not a cross action against Mr. Heyman of specific performance. I assumed that what I was trying was our case. They have a cross action against Mr. Heyman for specific performance. Why should I be drawn into that? Mr. Heyman, if he had such a stipulation, has no right to gamble on the way his case has gone in or what the defense will be. He had his opportunity to put in all his case before your Honor last Tuesday. He never even called Sann.

The Court: I will let him proceed on the theory that there is a man here out of town. He is just offering a transcript of his account. That is all, is it not?

Mr. Heyman: That is all. There is no

counterclaim or cross action on behalf of this defendant Kennelly.

Mr. Townsend: No, no; not this defendant.

Mr. Heyman: How are you interested in it, then?

Mr. Townsend: I do not want to be drawn into it.

The Court: You are certainly appearing for Mr. Kennelly and protecting his rights.

Mr. Townsend: Yes.

The Court: I can see how the cross currents may affect either one of your interests. Therefore, I think it is proper for you to make the suggestion which you did this morning, which Mr. Heyman very graciously acquiesced in.

Mr. Heyman: Yes.

The Court: Propound your question and put it on the record, and note your objection, Mr. Townsend.

By the Court:

Q. You have got a transcript from your bank, of Mr. Mahoney's account? A. Yes.

Mr. Townsend: Your Honor will hold that this is not binding on us?

The Court: Yes.

Mr. Hollander: And, of course, not binding on the other defendants.

The Court: No.

A. May 1, 1928, to June 30, 1928.

By Mr. Heyman:

Q. Just read the record, please. A. The record reads on May 1, 1928—

Mr. Townsend: A record of what?

A. Of Nicholas F. Mahoney's account.

Mr. Townsend: I object to that as not material. What difference does it make what his account was?

The Court: On what date?

Mr. Heyman: May 1, 1928.

The Court: What are you getting that for? It is not material.

Mr. Heyman: Very well.

The Court: I certainly sustain an objection made by Mr. Simpson to such a question, injecting his personal affairs into this case.

Mr. Heyman: I withdraw the question.

By Mr. Heyman:

Q. Read the record from June 20, 1928, to June 30, 1928. A. What was that?

The Court: Mr. Heyman, may I suggest that this case, for the purpose of rebuttal, is the introduction of a man's private bank account. You can simply offer it for that, and let him look at it.

Mr. Heyman: All right. I offer it.

The Court: That is a fair thing to do. Why should a man's private bank account be ventilated here?

Mr. Heyman: All right.

The Court: You may examine that bank account, gentlemen. Call your next short witness. Have you a nice, short one? I have ruled to let it go in, ruling that it is not rebuttal or anything else. Mr. Heyman has

a well-defined idea of it, and he is going to argue from that account, so you had better examine it, to see what you can find. You would not have put it in the record as mere surplusage, would you, Mr. Heyman?

Mr. Heyman: Hardly.

The Court: Have you another very short witness?

Mr. Townsend: Why not put on Mr. Sann?

The Court: Mr. Heyman states to me that he will take an hour to examine Mr. Sann, and if he takes an hour, then you will take two.

(The account referred to was marked Exhibit H-2.)

Mr. Heyman: I do not want any mistake about it. There is a deposit slip attached to this bank account. That is offered also. There is no question about that?

Mr. Townsend: I do not know what you are offering.

Mr. Heyman: You are not interested?

Mr. Townsend: I am not interested in that. That is not part of my case.

The Court: Mr. Heyman, and gentlemen, how long do you think it will take to try this case? It will take two days again?

Mr. Heyman: I think it will, if your Honor please.

Mr. Hollander: I am not interested in it at all.

Mr. Heyman: This deposit slip is part of that exhibit.

Mr. Townsend: I understand that that is not admitted as against my client.

The Court: Not binding on your client. The only thing is that, if that is offered as rebuttal, it might be rebuttal if your client had said that Mr. Mahoney made any payment.

Mr. Heyman: That is what the testimony is. That testimony I remember very clearly.

Mr. Townsend: If that is so, I will cross examine this witness. I did not understand that this was being admitted as against my client.

The Court: It is certainly offered as rebuttal.

Mr. Townsend: Are you still on your direct examination?

Mr. Heyman: Yes, sir.

Cross examination by Mr. Townsend:

Q. Now, Mr. Troutman, is this the only account that Mr. Mahoney has with your company? A. Personally, yes.

Q. Does he have another account in which he is indirectly interested? A. A corporation account.

Q. What is the name of that? A. Nicholas F. Mahoney, Incorporated.

By the Court:

Q. Have you got that here? A. Yes.

By Mr. Townsend:

Q. Have you that account here? A. Yes.

Q. May I see that account? A. Yes (producing papers and handing them to Mr. Townsend).

Q. I ask that this be marked for identification. This is the account of N. F. Mahoney, Inc., with your bank? A. It is.

Mr. Heyman: I object to that, if your Honor please, to any conference between the witness and counsel.

The Court: Yes, I do not know what it is.

(The account referred to was marked Exhibit T-22 for identification.)

By Mr. Townsend:

Q. What I asked was whether this was the original or a copy? A. Yes, sir; this is a copy.

By the Court:

Q. Is there any other account? A. No, no other account. Those are the only two.

Q. That is the only two? A. Yes.

Mr. Heyman: Is that all?

The Court: That is all.

Redirect examination by Mr. Heyman:

Q. Is Nicholas F. Mahoney an officer of Nicholas F. Mahoney, Inc.? A. Yes, sir, president.

Q. What office does he hold? A. President.

Mr. Heyman: May I see this?

Mr. Townsend: No, not unless you want to offer it.

Mr. Heyman: Yes, I will offer it. I did not want to offer anything I had not seen yet.

The Court: Very well, it is offered. Let it be marked.

(The paper referred to which was formerly marked T-22 in evidence was marked H-3.)

By Mr. Heyman:

Q. Have you got your deposit slips of this ac-

count, previous deposit slip of June 8, 1928? A. Yes, sir.

Q. Will you please produce it? A. Here it is (producing a piece of paper).

Q. Where did the deposit come from? A. From Nicholas F. Mahoney, Incorporated.

Q. Where did the check come from? A. The deposit.

Q. What kind of deposit? Was it cash or check? A. It is a check deposit.

Q. From where? A. From bank number 522.

Q. What bank is that? A. That I could not say offhand.

Q. What bank 522? A. A Jersey bank.

Q. A Jersey bank? A. Yes, sir.

Q. June 11, $1,765.00; where did that deposit come from? A. June 11, $1,765; that is also a bank.

Q. What bank? A. A New York bank.

Q. What is the number? A. 165.

Q. What is the name of that bank? A. Offhand, I could not say.

Q. Deposit of June 13, $158.54; where did it come from? A. A check deposit.

Q. What bank? A. 503.

Q. What is it? Is it a Jersey bank or a New York bank? A. A Jersey bank, Cliffside Park.

Q. Cliffside Park? A. National Bank.

Q. June 15, $7,575.52? A. That is also a check deposit.

Q. From what bank? A. Cliffside Park National Bank.

Q. June 20, $35? A. It is a check deposit.

Q. What bank? A. The U. S. Treasury.

IN CHANCERY OF NEW JERSEY.

Jersey City, N. J., March 26, 1930.

Before—Honorable VIVIAN M. LEWIS,
Vice Chancellor.

APPEARANCES:

BENJAMIN HEYMAN, Esq., appearing for Messrs. HEYMAN & HEYMAN, Solicitors for Complainant.

MATTHEW J. REILLY, Esq., and MARK TOWNSEND, JR., Esq., Solicitors of Defendant WILLIAM KENNELLY, INC.

EDWARD HOLLANDER, Esq., appearing for Messrs. HOLLANDER & LEIGHTER, Solicitors of Defendant CHARLES R. ROSS.

CHARLES E. SIMPSON, Esq., appearing for HOMER TOWNSEND, Esq., Solicitor of Defendant NICHOLAS F. MAHONEY.

Mr. Townsend: Some time ago, or at least, after the last hearing, I gave Mr. Heyman, notice of an application I was going to make this morning to amend my answer. It was drawn by the attorney of record, before I was in the case, and it is paragraph 6. Our answer admits that, and I desire to amend our answer by denying it. The case has been tried on that theory, and I contend that it is a matter of law. I find that our answer admits it, and I want to amend that, and deny it.

The Court: What do you say to that?

Mr. Heyman: I object to that.

The Court: Is this the proper time?

Mr. Townsend: This is the answer of Mr. Kennelly.

The Court: I will entertain it, and hold it. You want to put in your proofs, are you ready?

Mr. Townsend: Do I understand that Mr. Heyman has rested?

The Court: Mr. Heyman has rested and you have rested, and now it is up to Mr. Hollander to produce his witnesses.

Mr. Townsend: If the Court please: If Mr. Heyman has rested his redirect, I have a witness I would like to call.

The Court: He has rested his main case, but not his redirect.

Mr. Townsend: I ask Mr. Heyman to produce the letter from Mr. Kennelly to the J. B. & S. Realty Corporation of June 22, 1928. I would like to put in my surrebuttal.

The Court: I don't think I will entertain your motion; I want Mr. Hollander to go ahead.

Mr. Hollander: If the Court, please: This case involves three defendants.

The Court: I know all about it.

Mr. Hollander: I have the other case, and the fact that we brought out in the main case, and if your Honor will hear that case, I will go on with it.

The Court: I will go on with the case that you say your client, who was a purchaser at this sale, and put down a deposit, and, according to your view, and her view, her rights are being materially withheld.

BEATRICE V. THORNLEY, the complainant in the above-entitled cause, being first duly sworn according to law, testified as follows:

Direct examination by Mr. Hollander:

Q. Mrs. Thornley, you are the complainant in

the case of Thornley *versus* William Kennelly? A. Yes, sir.

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

Q. Did you attend the sale, at Englewood, on July 29th, 1928? A. Yes, sir.

Q. Did you bid at the sale? A. Yes, sir.

Q. What did you bid for? A. Three lots—44, 46 and 48, Block 179.

Q. You bid on these lots, did you? A. Yes, sir.

Q. Were they knocked down to you? A. Yes, sir.

Q. For how much? A. One thousand dollars a lot, plus Mr. Kennelly's fee.

Q. Did you pay a deposit? A. Yes, sir.

Q. What deposit did you pay? A. Ten dollars, on the ground that day.

Q. Will you tell the Court just what happened when you paid the deposit that day; what was said, and by whom? A. When it was knocked down to me, a man came up to me with a paper, and you were to pay down so much on that day, and I was just out for a ride, and I—

Mr. Townsend: I object to that.

Q. What did you do at the sale? A. I just had the ten dollars with me.

By the Court:

Q. Did you pay it? A. I paid ten dollars.

Q. How many lots did you buy? A. Three lots.

Q. Who did you pay it to? A. The man who was there with Mr. Kennelly, the auctioneer.

By Mr. Hollander:

Q. Do you know who you paid it to? A. Mr.

MacDonald, who was there on the ground with Mr. Kennelly.

Q. What did you do? A. Mr. MacDonald went back to Mr. Kennelly, and he said she only had ten dollars with her; what will we do with this, and he reached over to Mr. Cooper, who was the lawyer for the estate, and he said: "It looks O. K.; it looks like a cash sale," and he wrote: "O. K." on the corner, and they came back with the paper for me to sign.

Q. Is this your signature here? A. Yes, sir.

Q. And was this memorandum on here when you signed it? A. Yes, sir.

Mr. Hollander: I offer it in evidence.

Mr. Heyman: That is the original; that is in evidence.

Mr. Hollander: Have you any objection to the copy being in evidence?

Q. Is this the one that you signed? A. This is a carbon copy, this is the one I signed.

(Contract marked Exhibit D-1, as of this date.)

Q. Subsequently, did you pay any further moneys to Major Kennelly? A. Yes, sir.

Q. Did you pay it by check? A. I paid it by certified check on the bank.

Q. Is that the check you sent him? A. Yes, sir.

Q. How much is it? A. Three hundred and sixty-five dollars.

Mr. Hollander: I offer the check in evidence.

(Check marked Exhibit D-2, as of this date.)

Q. This check is dated June 27th, 1928, and is for three hundred and sixty-five dollars and was cashed on June 30th, 1928? A. Yes, sir.

Q. Subsequently, did you present this at the office of Mr. Cooper, the attorney for the J. B. & S. Realty Corporation, and ask for a deed? A. On the day the check was paid; that included the ten dollars and made it three hundred and seventy-five dollars, and it was to be paid on Thursday, before twelve o'clock.

Q. What date? A. The date is on the check; I think it was the 27th.

Q. Did you come down to the office of Mr. Cooper? A. My lawyer came down.

Q. Were you with him? A. No, sir.

Mr. Townsend: I move that it be stricken out.

Mr. Hollander: Yes.

Q. Who was your lawyer? A. Mr. O'Toole.

Q. And you sent him down for the deed? A. Yes, sir.

Q. Did he get the deed? A. No, sir.

Mr. Hollander: That is all.

Cross examination by Mr. Heyman:

Q. Now, just tell us again, Mrs. Thornley, please, what occurred at the time you bought these lots; where were you sitting at the time of this sale? A. In the tent.

Q. How far back from the auctioneer's block? A. No further than Mr. Hollander is now.

Q. Tell us exactly what occurred? A. I have told; I don't know anything else about it.

Q. Tell us again what occurred that day? A. About the payment?

Q. Everything that occurred that day. A. I don't know what you want me to tell you.

Q. Don't you know what occurred that day? A. Yes; I certainly do.

Q. Tell us. A. Just what I told Mr. Hollander.

By the Court:

Q. Just tell him what happened; you went to the sale? A. Yes, sir.

Q. Who did you see? A. Who did I see?

Q. Yes; I don't mean all the people, but who, particularly? A. Mr. Kennelly, Mr. Cooper, and the three men that owned the property, with another man, and the stout man at the end.

By Mr. Heyman:

Q. Go on. A. And they were knocked down to me, these three lots and I said I only had ten dollars with me.

Q. Who did you say that to? A. To Mr. MacDonald.

Q. Where was he when you said that? A. Right alongside of me.

Q. And you spoke it low, so nobody could hear you? A. Yes; anybody near me could hear me.

Q. Then what happened? A. He went back to the block, where Mr. Kennelly was, and he said, "She only has ten dollars; what about this?"

Q. And you heard that? A. Yes, sir; it was only a small tent; they were only about ten feet from me, and Mr. Kennelly bent over—

Q. Bent over? A. Yes, sir, he did.

Q. Over the front? A. Yes, sir; and Mr. Cooper was right in front of the block.

Q. Go ahead. A. And he reached over and said, "It looks like a cash sale; O. K.," and the man

came back and took my ten dollars, and handed me a paper to sign, and I signed it, and he wrote on the corner—

Q. Who wrote? A. This man's secretary.

Q. Who is it? A. This man's initials; it was the man on the floor; I don't know whose initials they are—if you can make them out.

Q. Don't you know, Mrs. Thornley, who it was? A. The man who came to me was Mr. MacDonald.

Q. How do you know it was Mr. MacDonald? A. Only that I heard the men call him by name.

Q. You saw him there, and you heard him called by name? A. Yes, sir.

Q. And that is the reason why you say it was Mr. MacDonald? A. Only what I saw and heard that day.

Q. You don't know it was Mr. MacDonald? A. I would say it was Mr. MacDonald.

Q. Did you know him before that day? A. No, sir.

Q. Did you know him before that time? A. No, sir.

Q. They called him Mr. MacDonald? A. Yes, sir.

Q. Who was the man who took your ten dollars? A. I don't know.

Q. You know Mr. Kennelly, Mr. Cooper, and the other three men? A. If the man walked in I would tell you who he was.

By the Court:

Q. Do you know who wrote that? A. The man who took my ten dollars.

By Mr. Heyman:

Q. You don't see him in court? A. No, sir; he hasn't been in court since the case came up.

Q. He disappeared? A. He hasn't been here since the case came up.

Q. Now, was this note written before you signed the contract, or after? A. I gave him the ten dollars, and I signed this.

Mr. Heyman: I ask that the witness be directed to answer.

The Court: Give her a chance.

Q. Was this note written on the paper before you signed it, or after you signed it? A. After I signed it; it all happened at the same time. He gave me the paper and I signed, and he wrote with the same pencil, at the same place, and at the same time.

Q. Did you sign this paper before it was written on, or after it was written on; can you tell us? A. I don't remember.

Q. Did you read that note that was written on this paper? A. Yes, sir.

By the Court:

Q. Then it was written before you signed it, wasn't it? A. Yes, sir.

By Mr. Heyman:

Q. Now, Mrs. Thornley, you paid them the ten dollars, and you were supposed to pay twenty-five per cent. of three thousand dollars and that would be how much?

Mr. Hollander: I object to the question.

The Court: I will allow it.

Mr. Heyman: I withdraw the question.

Q. How much were you supposed to pay when you bought this property, at the time of the knock-

down? A. I don't remember; when I paid the balance they were to be mine.

Q. How much were you supposed to pay, at the time you bought in the property, at the time of the sale? A. What it says on the contract, because I read it.

Q. Did you hear the terms read? A. Yes, sir.

Q. Did you hear the auctioneeer say that ten per cent. will be required at the time of the sale, and the auctioneer will require a fee of twenty-five dollars, at the time of the sale? A. Yes, sir.

Q. You knew you didn't have money enough to buy that property with you at the time? A. Yes, sir.

Q. You knew it required more than ten dollars; is that right? A. Yes, sir.

Q. And after you got this paper, and signed the paper, which has been marked in evidence, when did you next see anybody about this property? A. I didn't.

Q. Did you go to Mr. Kennelly's office, and offer to pay him the balance of the ten per cent.? A. No, sir.

Q. Did you ever go to the office of Mr. Cooper? A. No, sir.

Q. Did you ever do anything more than send this check for three hundred and sixty-five dollars, with your lawyer? A. I lived up to my agreement, and I did that before twelve o'clock on that stated date.

Q. Now, Mrs. Thornley, please look at this contract. The seller agrees to sell and the purchaser agrees to purchase these lots, and pay ten per cent. of the purchase price in cash, and the auctioneer's fee of twenty-five dollars; twenty-five per cent. on

July 9th, at the office of Harry Cooper, before twelve o'clock, and seventy per cent. on a bond and mortgage to be in the usual form? A. Yes, sir.

Q. And the conditions and restrictions of the property? A. Yes, sir.

Q. Title is to close on July 9th, and all adjustments as of July 9th? A. Yes, sir.

Q. And then the receipt? A. Yes, sir.

Q. And the price was one thousand dollars apiece? A. Yes, sir.

Q. You read the contract? A. Yes, sir.

Q. You knew the contract at the time you paid them the ten dollars? A. I read it, before I gave them the ten dollars.

Q. Before you gave them the ten dollars? A. Yes, sir; then I signed it.

Q. And you read this before you signed it? A. I read it before I gave him my ten dollars.

Q. Received ten dollars on the above contract, and you read that before you paid the ten dollars? A. Yes, sir.

Mr. Heyman: That is all.

Redirect examination by Mr. Hollander:

Q. Mrs. Thornley, did you read the advertisement of sale, before you went to the sale? A. Only what they handed out there that day, at the place.

Q. That the kind of notice that you read at the time? A. Yes, sir; that is what I read and that is where I found the lots that I wanted, on the map, inside there.

Mr. Hollander: That is all.

JOHN F. O'TOOLE, a witness produced on behalf of the complainant, being first duly sworn according to law, testified as follows:

Direct examination by Mr. Hollander:

Q. Mr. O'Toole, where do you live? A. I live in Cliffside Park, Bergen County.

Q. Are you a member of the bar of the State of New Jersey? A. I am.

Q. Did you act as attorney for Mrs. Thornley for the purpose of getting a deed? A. I did.

Q. Did you visit the office of Mr. Cooper on July 9th, 1928? A. I did.

Q. Will you tell the Court what took place?

Mr. Heyman: I object to anything that took place on July 9th, 1928, until this complainant shows that she has complied with the terms and conditions of her contract.

The Court: I am unable to pass intelligently on it now. I will note your objection and pass on it later.

A. I went to the office of Mr. Cooper, and I couldn't find Mr. Cooper. I made diligent inquiry where he was, and I was told that he had not been down at his office that day, or the previous day, and I asked where he was, and they said he might be at the court house, searching, and I went there and found him and made a legal tender of the money.

By the Court:

Q. In cash? A. Yes, sir.

Q. How much? A. I think it was three hundred and sixty-five dollars.

Q. Who gave you that money? A. Mrs. Thornley.

New Jersey State Library

By Mr. Hollander:

Q. What did Mr. Cooper say to you? A. He said they weren't going through with the deal, because Mrs. Thornley hadn't paid sufficient money as a deposit, at the time of the sale.

By the Court:

Q. What else was said? A. There was nothing else said that I recall.

Mr. Hollander: That is all.

No Cross Examination.

COMPLAINANT RESTS.

Mr. Heyman: I went to the trouble to serve all the defendants with notice to produce all their records, and Mr. Mahoney's records are the most important records in the case, and he is not here.

The Court: Can't you proceed anyway?

Mr. Hollander: I might proceed with the Ross case.

The Court: All right.

NICHOLAS F. MAHONEY, a witness produced on behalf of defendants, being first duly sworn according to law, testified as follows:

Direct examination by Mr. Hollander:

By the Court:

Q. Did you attend this sale? A. Yes, sir.

Q. But any lots? A. Yes, sir.

Q. How many? A. Fifty-two.

Q. Pay any deposit down? A. Yes, sir.

New Jersey State Library

Q. How much? A. Ten per cent.

Q. Five hundred and twenty dollars? A. More; the checks are here.

Q. Whom did you pay it to? A. Different parts of the sale, there were different men.

Q. Who was the man in charge of the sale? A. Mr. Kennelly was on the scene.

Q. And he had representatives there? A. Yes, sir; a couple of them.

By Mr. Hollander:

Q. What did you purchase first at the sale? A. There were ten lots, and there was one batch of four and two batches of three and that was the first part of the sale, but that has nothing to do with this, at all.

Q. Those ten lots, were not those that you sold to Mr. Ross? A. No, sir.

Q. Was Mr. Kennelly there? A. Yes, sir.

Q. Did you know him before the sale? A. No, sir.

Q. Did you have any transaction with him, before this auction sale? A. Maybe I had through his office, but not with him personally.

Q. Is this one of the checks that you gave? A. Yes, sir; that is one of them; it is June 9th.

Q. In what name was the check made?

Mr. Heyman: The check speaks for itself.

Q. The check was duly paid, was it? A. Yes, sir.

Mr. Hollander: I offer the check in evidence.

(Check marked Exhibit D-R-3, as of this date.)

Q. And are there any other checks that you gave to Major Kennelly? A. Yes; there were other checks on other parcels.

Mr. Hollander: I offer in evidence a check dated June 13th, for $4,095.

(Check marked Exhibit D-R-4, as of this date.)

Mr. Hollander: I offer in evidence another check dated June 18th, 1928, for $1,050.

(Check marked Exhibit D-R-5, as of this date.)

Q. How many blocks were there the contracts for, which you assigned to Mr. Ross? A. Forty-two.

Q. Did you buy the lots at the auction sale of June 9th? A. Yes; Saturday, June 9th; I think that was the date.

Q. 1928? A. Yes, sir.

Q. I show you a number of contracts; are those the contracts that you got for the purchase of the forty-two lots? A. Yes; these are the contracts. These are the ones I signed over in the Title Company to Mr. Ross.

Mr. Hollander: I offer the contracts in evidence.

Mr. Heyman: I object to them on the ground that they are not the original contracts.

The Court: Where are the originals?

Mr. Heyman: They are all in evidence.

Mr. Hollander: They are in evidence and marked Exhibit D-6.

Q. And are those the contracts that you assigned

to Mr. Ross? A. These are the ones I assigned? I never saw those.

The Court: Are they the same?

Mr. Heyman: They are duplicate originals; but those have something on them that are not on the originals.

The Court: The objection is sustained.

Q. These signatures on the duplicate contracts, did you sign your name to them? A. Yes, sir; that is it.

Q. And did you assign—when did you first meet Mr. Ross, with relation to these contracts? A. Why, it was through a gentlemen named Leo Montando.

Q. Mr. Mahoney, did you give William Kennelly, Incorporated, any other checks, besides those three? A. There were more than the three; I think there were about ten, because there was a check for the ten lots before; that has nothing to do with this transaction.

Q. I show you a memorandum from your bank—

Mr. Heyman: I object to that.

The Court: Objection sustained.

Q. Did you pay William Kennelly, Incorporated, five hundred dollars additional? A. Yes, sir.

Mr. Hollander: I offer in evidence check dated June 15th, 1928, for five hundred dollars.

Mr. Heyman: I object to it; this isn't a check.

Q. Where is the check represented by that

memorandum? A. I think you must have the check now.

Mr. Hollander: I withdraw the previous question, then.

By the Court:

Q. Where is your check? A. I think I gave Mr. Hollander all the checks.

Q. Did you give a check? A. Yes, sir; a five hundred dollar check.

By Mr. Hollander:

Q. You haven't that check in court today? A. No; I haven't it, unless you have it.

Q. Mr. Mahoney, when did you first meet Mr. Ross, with reference to the sale of the lots to him; where did you meet him? A. At the Title Company, about two days after the sale, through this broker, Leo Montando.

By the Court:

Q. And you made the agreement? A. Yes, sir.

Q. Did you put it in writing? A. Yes, sir.

By Mr. Hollander:

Q. I show you a paper writing; is that the paper that you signed? A. Yes, sir.

By the Court:

Q. How long after the sale? A. The sale was on Saturday, and this was about Tuesday.

Q. Were you to profit on the price at the date of the sale, and when you sold it to Mr. Ross? A. Yes, sir.

Mr. Hollander: I offer the agreement in evidence.

(Agreement marked Exhibit D-R-6, as of this date.)

By Mr. Hollander:

Q. How many lots did you sell to Mr. Ross? A. Forty-two.

Q. Now, that contract was signed on June 15th, 1928; is that right? A. I think so.

By the Court:

Q. You assigned to Mr. Ross two days after the sale? A. Four days after the sale.

By Mr. Hollander:

Q. How much profit were you to make on the transaction? A. There was another broker; I think it was about five thousand dollars.

Q. How much money did you get from Mr. Ross?

Mr. Heyman: The contract speaks for itself.

Q. Did you get this check from Mr. Ross on that date? A. Yes, sir; ten thousand dollars.

Q. Did you put it through your bank?

Mr. Heyman: I object to the question.

The Court: The objection is sustained.

Mr. Hollander: I withdraw it.

The Court: The check shows for itself, if it went through or not.

Mr. Hollander: I offer the check in evidence.

(Check marked Exhibit D-R-7, as of this date.)

Mr. Hollander: That is all.

Cross examination by Mr. Heyman:

Q. How much did you pay for the first ten lots that you bought?

Mr. Hollander: I object to it; the contract speaks for itself.

The Court: I will allow it.

A. Between six and seven thousand dollars.

Q. You don't know exactly, do you? A. I will figure it out, if you want me to.

Q. Go ahead and figure it out. A. Around a thousand dollars apiece, plus auctioneer's fees.

Q. How much was it? A. Around six thousand five hundred dollars, or a little less.

Q. For the ten lots? A. For the ten lots—probably a little more.

Q. Don't you know? A. It is two years ago, and I am trying to recall the best I can.

Q. And it was for the ten lots? A. I bought four lots first, in one corner—no; it is between six and seven thousand dollars.

By the Court:

Q. For ten lots? A. Yes, sir.

Q. That is what you paid? A. Yes, sir.

Q. What did you unload them for? A. I unloaded them the next day for one thousand dollars.

Mr. Townsend: This is not binding on Kennelly.

Mr. Heyman: Why not?

The Court: This is all evidential, because it relates to what occurred at this sale, and the transactions.

Mr. Townsend: I said at the outset, that

as far as our case was concerned, I did not consent to try them all together.

The Court: Yes; but we are trying them together.

By Mr. Heyman:

Q. How much did you agree to pay for the first ten lots? A. About six thousand five hundred dollars; I have been mixed up with a lot of lots since, and it is hard to recall.

Q. You have figured it out, haven't you? A. Pretty near.

Q. For the first four, you were to pay four thousand dollars? A. Yes, sir.

Q. And the second lot of three, eleven hundred dollars each? A. Yes, sir.

Q. And the second batch of three, two thousand, eight hundred and fifty dollars; is that correct? A. Yes, sir; it must be.

Q. Now, figure it out, please? A. Thirty-three and four and twenty-eight hundred and fifty, plus auctioneer's fees—that is miles away.

Q. You just figured up ten thousand one hundred and fifty dollars was what you were supposed to pay? A. Yes, sir.

Q. And that is miles away? A. Yes, sir; I said ten lots at a thousand dollars apiece would be ten thousand dollars.

Q. How much were you supposed to pay for the forty-two lots? A. I can tell that—you want to know in round figures?

Q. Yes. A. Around forty-two thousand dollars, plus auctioneer's fees, I think it was.

Q. Let me see Mr. Mahoney; don't you know exactly? A. No; two years I can't remember.

Q. You don't remember? A. No; get the contracts and I will check them off right away.

Q. Don't you recall this transaction clearly? A. Yes, sir.

Q. Can you tell us how much you were supposed to pay? A. Supposed to pay—about a thousand dollars a lot.

Q. I don't want any abouts; can you tell us to the penny how much you paid for the purchase price for these lots?

The Court: Isn't it all in the contracts?

Mr. Townsend: Yes, sir.

Mr. Heyman: I want to test his credibility; I am charging connivance and fraud.

The Court: You mean in all the transactions.

Mr. Heyman: No; in the Ross case, which is now before the court.

The Court: I will have to allow you considerable latitude then.

Q. You picked out Exhibits 3, 4 and 5, at the time you bought these first ten lots? A. I haven't them there.

Q. You haven't any of the checks for the ten lots? A. No, sir.

Q. Have you your check book with you here today? A. No, sir.

Q. You were served with this paper, weren't you, Mr. Mahoney? A. Yes, sir.

Q. That you produce all records of the moneys you had received and the checks that you paid to William Kennelly? A. Yes, sir.

The Court: That doesn't call for his check book.

Q. Have you a check book? A. Yes, sir.

Q. Have you a bank deposit book? A. Yes, sir.

By the Court:

Q. Where do you bank? A. Fairview Bank.

Q. What business are you in? A. Real estate business.

By Mr. Heyman:

Q. Have you got a check book? A. Not with me.

Q. Have you got that here today? A. No, sir.

Q. Now, which of these checks did you give to the auctioneer, at the time of the purchase of the forty-two lots? A. I think there was another check there, too. There was a couple more—there is one blank one somewhere.

Q. Have you got that with you? A. Mr. Hollander asked me for all the checks right after the transaction, and I gave them all to him.

The Court: Have you any more checks, Mr. Hollander?

Mr. Hollander: No, sir; all I have are here.

Q. Just show us the check that you gave to the auctioneer, at the time you purchased the lots in the tent? A. I gave them all to him.

Q. In the tent? A. Yes, sir.

Q. And you dated them all different dates? A. I think so.

Q. Those are Exhibits D-R-3, 4 and 5, of this date? A. Yes, sir.

Q. Now, how much money did you have in the bank, on June 9th? A. I don't recall.

Q. Have you any way of telling us?

Mr. Hollander: I object to the question.

The Court: The objection is overruled; he is trying to test this man's credibility.

Q. Can you tell us that, Mr. Mahony? A. No, sir; I cannot tell you.

Q. Did you have in the First National at Fairview, on June 9th, seven hundred and sixty-five dollars? A. I don't know.

Q. Now, I show you Exhibit P-22, May 28th, 1929, H-3 of the same date, which appears to be a statement of the First National Bank of Fairview, which shows that you had, on June 8th, $203.83, balance on hand. A. In the corporate account, yes, sir.

Q. This check, Exhibit D-R-3, is a corporation check, isn't it? A. Yes, sir.

Q. On June 9th, 1928, when you gave this check, Exhibit D-R-3, you didn't have seven hundred and sixty-five dollars in the bank to meet that check, did you? A. I see that now, but I had other moneys to take care of it though.

Q. Where did you receive $7,572.50 which you deposited in this bank on June 15th? A. I don't recall now whether I got that from the wife or not.

Q. You cashed this check, didn't you, this check of ten thousand dollars which Mr. Ross gave you, you cashed this check, didn't you? A. Let me see it, and I might recall it then. I recall, yes; I cashed it. The broker cashed it without even depositing this; he cashed it.

Q. What did you do with the money? A. I think I gave it back to my wife.

Q. Don't you know? A. I gave it back to my wife, for the money she loaned me.

Q. You don't know what you did with this ten thousand dollars? A. Yes, sir; now I do.

Q. What did you do with it? A. This ten thousand dollars I endorsed over to Leo Montando; and he was the other broker in the case. He cashed it.

By the Court:

Q. You didn't cash it? A. No; we were there together. Now I recall. Ross wasn't my client, at all.

By Mr. Heyman:

Q. Then you cashed the check and what did you do with the cash,—the ten thousand dollars? A. The cash I gave back to my wife.

Q. The ten thousand dollars? A. No; there was a commission out of this, and he had a commission out of it.

Q. Who was the broker? A. Leo Montando.

Q. Where did he come in? A. He got Ross, and he got a share, and we split fifty-fifty, and he got this cashed and gave me the difference.

Q. How much did Montando get? A. I think around twenty-four hundred dollars.

Q. Don't you know how much he got? A. I said about twenty-four hundred dollars.

Q. Don't you know exactly how much? A. No.

Q. Do your books show it? A. I suppose the books would show.

By the Court:

Q. They will show exactly what he did get? A. I imagine they will.

By Mr. Heyman:

Q. And you gave the balance of seven thousand

five hundred dollars to your wife? A. I gave her seven thousand dollars anyway.

By the Court:

Q. Didn't you keep any yourself? A. No; it was all her money.

By Mr. Heyman:

Q. All her money? A. Most of it.

Q. Don't you know? A. Yes; I think around seven thousand dollars, to make up the difference.

Q. What difference? A. To make up the cash to buy these lots.

Q. How much did you need? A. I think five or six thousand dollars.

Q. On these forty-two lots? A. No; I bought the ten other lots, too.

Q. How much were the others? A. The other lots were around ten thousand and some odd thousand dollars.

Q. How much of that did you need in cash? A. I think it was around thirty per cent.

Q. How much did you need for these lots? A. These were around—let me see—my memory is that these were around five thousand dollars.

Q. You needed three thousand dollars for ten lots and you needed five thousand dollars for forty-two lots; is that right? A. No; we didn't need that much money. Now, I figured it out. It is a little over a thousand dollars plus auctioneer's fees, around twenty-five dollars a lot—in round figures, around thirteen hundred dollars.

Q. For the ten lots? A. For the ten lots.

Q. And how much did you need for the forty-two lots? A. It would be forty-two hundred dollars, auctioneer's fees—this is the way I figure it

out roughly, is the ten lots, thirteen hundred dollars, including auctioneer's fees, and on the forty-two lots, it would be forty-two hundred dollars, for the ten per cent. and auctioneer's fees—the way I figure it out it would be all around about sixty-two hundred dollars.

Q. All right. Now, you took these contracts—these are your signatures, aren't they? A. Yes, sir.

Q. All of them? A. Yes, sir.

Q. Exhibit C-6-2; these contracts were signed by you in the tent, weren't they? A. Yes, sir.

Q. On Saturday, June 9th? A. Yes, sir.

Q. At the time of the public auction sale? A. Yes, sir.

Q. No question about that? A. No question about that.

Q. And Exhibit C-6-1, three contracts for the ten lots, were also signed by you at the time of the sale in the tent? A. Yes, sir; that is my signature.

Q. They were signed by you at the same time in the tent? A. Now, look at these contracts; ten per cent. of the purchase price at the time and place of sale, and twenty-five dollars for auctioneer's fees, and ten per cent. on June 19th. Now, how much would you require for the purchase—thirty per cent., isn't it? A. After thirty days.

Q. Now, from June 9th to June 19th, is thirty days? A. We came down to your office.

Q. Now, I want you to look at these contracts, Exhibit C-6-2, which all bear your signature, ten per cent. of the purchase price in cash at the time and place of sale, for which the auctioneer's receipt will be given, and an auctioneer's fee of twenty-five dollars; that is so? A. Yes, sir.

Q. And ten per cent. in cash, on June 19th, 1928,

at the office of Harry Cooper; is that correct? A. Yes, sir.

Mr. Hollander: I object to all this; the contracts speak for themselves.

The Court: I overrule the objection.

By the Court:

Q. Down in Harry Cooper's on the 19th of June? A. Yes, sir.

By Mr. Heyman:

Q. I show you 1, 2, 3, 4, 5, 6, 7, 8, 9 contracts; all of these contracts bear your signature. Now, these are the contracts which you say you signed when you purchased the forty-two lots? A. Yes, sir.

Q. Are they? A. Yes, sir.

Q. Now, I ask you how much you paid Mr. Kennelly, when you signed these contracts? A. Ten per cent.

Q. How much? A. I told you how much for the first ten lots.

Q. How much did you pay Mr. Kennelly, when you signed these nine contracts for the forty-two lots? A. About fifty-two hundred dollars.

Q. Fifty-two hundred? A. Yes, sir.

Q. Is that correct? A. That is what I recall.

Q. Tell us which of these checks, which you have produced here today, that you delivered to Mr. Kennelly, at the time you purchased these lots? A. All of these, and I think there were a couple more checks, too.

Q. You think you delivered to Mr. Kennelly's agent, these three checks, Exhibits D-R-3, 4 and

5, and one other check that you gave Mr. Kennelly at the time? A. Yes, sir.

Q. And how much was the other check, do you remember? A. No; I don't recall just what it was.

Q. Well, now, where were you sitting when you bought the first ten lots? A. Why, I think I was sitting about the center, near the rear, at the outside.

Q. And where were you when you bought the other lots? A. Right near there.

Q. You bought them all at the same time? A. No; I bought the ten lots and then I bought the forty-two lots.

Q. You bought the forty-two lots all at one time? A. Yes, sir.

Q. Where were you then; in the rear? A. Yes; I was in the rear, and I was at the front too.

Q. How far away from the block were you? A. About from here to the wall.

Q. That was toward the end of the sale?

Mr. Hollander: I object to this line of examination.

The Court: It goes toward his credibility, and I will allow it.

Q. This was toward the end of the sale, was it? A. What was toward the end of the sale?

Q. When you made the bid for the forty-two lots? A. Yes, sir.

Q. Was there anybody else there, at the time? A. Yes, sir.

Q. How many were there? A. I was sitting with a man by the name of Godfrey Bearsford, and we were sitting alone at the time.

Q. How many people were there at the time?

A. About five more, or ten more, or fifteen more than there are here today.

Q. Thirty or forty people? A. Yes, sir.

Q. And you made the only bid for the forty-two lots, at so much a lot? A. That is the way it developed.

Q. How much was your bid; you bid so much a lot? A. I bid nine hundred dollars for the first.

Q. Yes. A. And then somebody bid, I think it was nine hundred and fifty dollars, and then I bid one thousand dollars.

Q. Yes. A. And it was upon an average and we finally got together at about a thousand dollars a lot.

Q. You bid nine hundred dollars? A. For the balance of the lots that were left, I bid nine hundred dollars.

Q. And somebody bid nine hundred and fifty dollars? A. Yes, sir.

Q. And then you bid a thousand dollars? A. Yes, sir.

Q. And that was straight, all the way through? A. That is what I bid at the time.

Q. At the time; did you make any other bids? A. No other bids.

Q. That was the only bid? A. Absolutely.

Q. First you bid nine hundred dollars, and then somebody bid nine hundred and fifty dollars and then you bid a thousand dollars? A. Yes, sir.

Q. And that was done at the time? A. Yes, sir.

Q. Toward the end of the sale? A. Yes, sir.

Q. And you were sitting near the end of the tent, with Bearsford? A. Yes, sir.

Q. And the auctioneer was up on the block? A. Yes, sir.

Q. Now, then, what happened after you bid the thousand dollars? A. Well, I will explain this.

Q. What did you do?

Mr. Townsend: I submit, the Court please—

The Court: I think the witness has a right to recall without making a reference.

Mr. Heyman: I withdraw the question.

The Court: Do you allege, or do you think, that the witness himself was not present at the sale?

Mr. Heyman: No; the witness was present.

The Court: Then why go so much in detail?

Mr. Heyman: This particular part of the testimony is very important to show that these contracts were never signed.

The Court: You say the contracts were never signed?

Mr. Heyman: Never signed at that sale.

The Court: I see; subsequently signed?

Mr. Heyman: Yes, sir.

Q. What did you do after the property was knocked down to you? A. I walked up to the stand, and there was a man there, who it developed was MacDonald, and another man was there.

Q. Was Mr. Kennelly there? A. Yes, sir; and we got together at a thousand dollars.

Q. What do you mean you got together at a thousand dollars a lot? A. I bid a thousand dollars a lot.

Q. That was your bid? A. Yes, sir.

Q. When you bid a thousand dollars for these lots, when you sat in the rear of the tent, were

the lots knocked down to you by the auctioneer? A. Yes, sir.

Q. After that occurred, you got up and you walked up toward the auctioneer's block? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. What did you do? A. We sat down.

Q. Who sat down? A. I sat down, and as I say, this fellow, MacDonald, and the cashier, and another man, and we got together, and we started to sign the contracts,—each of these lots were sold in three parcels, and I intended to sell them off separate.

By the Court:

Q. What did you do? A. I said to them—

Mr. Heyman: I object to what he said; I want to know what he did.

Mr. Townsend: I submit that is a perfectly proper answer.

The Court: Yes.

(Witness continuing.) I said: "Make these contracts out separate," and some of the lots were bad, and some were good, and I knew that, and I said: "Make some of them nine hundred dollars, and some of them eleven hundred dollars, and some of them were in the swamp and some of them in the street, and we finally made an average of a thousand dollars a lot.

By Mr. Heyman:

Q. How long did that take? A. Maybe ten minutes or fifteen minutes.

Q. And all these people were around? A. No; the sale was over and Mr. Kennelly struck me

on the back and said to MacDonald "Take care of it."

Q. So, Mr. Kennelly wasn't there then? A. No; he walked out.

Q. Was he there when they were sold at a thousand dollars? A. Yes, sir.

Q. He said he was going to beat it? A. Yes, sir.

Q. And he beat it? A. Right.

Q. He wasn't there when you split it up in three lots? A. Oh, yes, he was there.

Q. What did you say to him? A. I said I want these divided up in three lots.

By the Court:

Q. Did you tell them you were going to sell them over? A. Sure; they knew I was a broker.

Q. You didn't tell Kennelly? A. Sure; he knew I was a broker.

By Mr. Heyman:

Q. He knew you were a broker, didn't he? A. He didn't know I was a broker, until the end.

Q. Until after the sale was over? A. No; I can explain that, too—it was while the sale was going on.

By the Court:

Q. The question was, you didn't meet Major Kennelly until after? A. That is right.

Q. After the whole thing? A. Yes, sir.

Q. After you had had this talk about the papers and things, and the lots? A. Yes, sir.

By Mr. Heyman:

Q. Well, now, did you know Mr. Kennelly, before this sale? A. No, sir.

Q. Had you ever seen him before this sale? A. Yes, sir; I seen him before, and I knew of his transaction.

Q. Well, now, did you know Major Kennelly before the sale was over, or after the sale was over? A. I knew him by reputation.

Q. Only by reputation, and he didn't know you were a broker until after the sale was over? A. He knew I was a broker before the sale was over, and I can tell you why.

Q. Now, you are sure, are you, that you were sitting in the back of the tent at the time that you bid the thousand dollars? A. On the forty-two lots?

Q. Yes. A. At the center and rear of the tent.

Q. And you are sure that all these people were present—twenty-five or thirty people? A. Yes, sir.

Q. And immediately after you bid that, Kennelly slapped you on the back and said: "I am goilng to beat it"? A. Right after; yes, sir.

Q. And then MacDonald and the cashier, and the other man made out the contracts? A. Yes, sir.

Q. And you signed them? A. Yes, sir.

Q. And you gave these three checks? A. Yes, sir.

Q. And you think there was another check? A. Yes, sir.

Q. And do you know how much it was? A. Yes, sir; five hundred dollars more. Mr. Hollander showed me another check.

Q. And you now know it was five hundred dollars? A. Yes, sir.

Q. And do you now know how much money you were to deposit at that time?

Mr. Hollander: He has answered that.
The Court: I don't recall it.

By the Court:

Q. Do you know how much money you were to deposit at the time? A. Of course, I knew; I was told.

Q. Who told you? A. We figured it out.

Q. Who? A. I think it was MacDonald, because he was the man I did all the business with there that day.

By Mr. Heyman:

Q. He was Mr. Kennelly's right-hand man, wasn't he?

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

Q. He was the man who was doing all the business, walking around the tent, among all the people? A. He was one of them.

Q. He was one of them? A. Yes, sir.

Q. And he was going around all the time throughout the entire sale? A. He seemed to be pretty active.

Q. And he was going around with contracts, too, wasn't he? A. No; I think it was when I got up to the stand that I did business with him, and I think it was a different man that I did business with on the barrel for the ten lots.

Q. Are you sure that MacDonald didn't come down the aisle to where you were sitting, for the purpose of having you sign the contracts? A. I cannot recall whether it was MacDonald at the time or not.

Q. When you bought the forty-two lots, quite

a lot of them came down to you? A. It seemed to be two or three.

Q. What did they do? A. They came down, and sat around, like they usually do when you bid, and then we went up and settled it up.

Q. They didn't offer you a contract right where you were sitting? A. Not for the forty-two; but they did on the ten.

Q. Did they have them all written out at the time? A. No; we had to straighten them out and we had to sign all these contracts.

Q. Did they offer you the contracts when you bid a thousand dollars? A. Yes.

Q. This batch of contracts? A. Yes, sir.

Q. They offered you a batch of contracts, immediately? A. Yes, sir.

Q. How many did they offer you, four or five or ten? A. I can tell you in a minute.

Q. You were sitting in the back of the tent? A. Yes, sir.

Q. And you bid a thousand dollars? A. Yes, sir.

Q. And these men came to you with a batch of contracts? A. Not offhand; this was after the sale, we got to get together on this sale.

Q. You were sitting in the back of the tent? A. Yes, sir.

Q. And you bid the thousand dollars, and these men came to you with these papers? A. I don't mean they came to me; only came down.

Q. And only came from the side? A. I don't know that they came from the side.

Mr. Townsend: It is manifestly unfair for Mr. Heyman to interrupt the witness.

The Court: It is hard.

By the Court:

Q. How many were there? A. My impression was that there were four or five.

Q. Four or five men came toward you? A. No; four or five men standing up in the aisle, like they do.

By Mr. Heyman:

Q. Now, Mr. Mahoney, won't you tell us how many men came to you with contracts, after the property was knocked down to you? A. I recall one man.

Q. Did he have anything with him? A. Contracts.

Q. How many? A. I don't know; I can tell you in a minute.

Q. Did he hand you the contracts for your signature? A. No; he didn't hand them to me.

Q. What did he do? A. He said: "It is a thousand a lot," and I said: 'I am going to peddle these lots, and I don't want them all at a thousand dollars; I want the good ones at a higher price."

Q. Who was that? A. This MacDonald, I am pretty sure, came down with the contracts, and another aisle man came down, and we walked up to the little table at the auction block, and settled it up.

Q. So, nobody offered you the contracts while you were sitting in the tent? A. They had contracts in their hands.

Q. And they came to you and asked you to sign certain contracts? A. Surely.

Q. While you were sitting in the back of the tent? A. While I was sitting in the back of the tent.

Q. Did you say you thought that man was MacDonald? A. I think so.

Q. And you said to MacDonald, "I don't want these contracts for a thousand dollars straight; some are good and some are bad?" A. Yes, sir.

Q. And then you all walked up? A. I wouldn't say they all walked up.

Q. You and MacDonald, and another aisle man walked up? A. Yes, sir.

Q. Then what happened? A. We sat down and signed the contracts.

Q. Now, what was the first thing you did when you walked up toward the stand, or toward the table, or whatever it was? A. I think Kennelly must have said something, but I don't know whether I explained to Kennelly that I wanted to split them up, or whether MacDonald did, but he said "all right."

Q. And then what else? A. Then we sat down and we had to do a little figuring, to divide them up.

By the Court:

Q. Did you sign them? A. Sure.

By Mr. Heyman:

Q. Will you tell me which lots were swampy? A. If you give me a map, I will tell you.

By the Court:

Q. You knew the property? A. I had gone around it.

Q. How many lots were there? A. About seventy-two.

Q. Then you bought them all, practically? A. There was nobody else there to buy.

By Mr. Heyman:

Q. Here is Exhibit C-2, and will you just pick out on Exhibit C-2, which blocks are swampy? A. The creek runs right down through here, like that (indicating from Linden to Maple Avenues).

Q. Just answer my question.

By the Court:

Q. If you can. He wants to know what lots are swampy; do you know? A. Right through here there is a little creek that runs right through here.

By Mr. Heyman:

Q. Now, you think the lots through which you have drawn this line are swampy? A. I think so.

Q. And because these lots were swampy, you wanted to mark them at a lower price, and sell them at a cheaper price; is that correct? A. That is one of the reasons.

Q. Have you got another reason too; give us the other reason? A. Linden Avenue was all improved, and Jones Road had gas, water and sewer in, to my recollection, and had nice homes in it, and Maple Avenue was rough.

Q. How much do you figure the lots on Linden Avenue were worth, in comparison with the lots on the other avenues?

Mr. Hollander: I object to that.

The Court: What is the reason of that?

Mr. Heyman: Because, I claim that that is not the reason.

The Court: You say the contracts were not signed in the tent?

Mr. Heyman: No, sir; not until after. He says he bought these lots for a thousand

dollars, and the contracts are for different prices and he said the reason is that some of the land was marshy, and he couldn't get as much for that as he did for the good ground, and he said he thought Linden Avenue was worth more, and I want to know how much he thought they were worth.

The Court: Objection sustained.

Q. You thought the lots on Linden Avenue were worth more?

Mr. Hollander: I object to the question.

Q. And lots 40, 42 and 44, face Linden Avenue, don't they? A. Yes, sir.

Q. Now, look at the contract, thirty-eight, forty and forty-two, in Block one hundred and seventy-nine, Linden Avenue. You thought these lots were worth less than other lots, didn't you; only nine hundred dollars a piece?

Mr. Townsend: What other lots?

Mr. Heyman: The other lots.

Mr. Townsend: I object to it.

The Court: I will allow it.

A. Will you repeat it again, please?

Q. Lots 38, 40 and 42, all of which face on Linden Avenue, you placed less than the others? A. I do; and I thought they were swampy.

Q. Although they face on Linden Avenue? A. Yes, sir.

The Court: We will take a recess until two o'clock.

AFTER RECESS.

NICHOLAS F. MAHONEY, a witness having already been called and sworn on behalf of the defendant, is recalled, and further testified as follows:

Cross examination (continued) by Mr. Heyman:

Q. Now, Mr. Mahoney, out of the proceeds of this ten thousand dollar check, how much did you give your wife? A. I think it was about seven thousand dollars.

Q. And twenty-five hundred to Montando? A. Twenty-four hundred, I think.

Mr. Hollander: I object to this line of testimony, because it is not proper cross examination and has all been covered.

The Court: By what, cross examination?

Mr. Hollander: Yes; by cross examination.

Mr. Heyman: This is a basis for another line of cross examination.

The Court: I will note the objection; all right.

Q. Now, will you please explain to the Court where you received the money to pay the checks which you gave to Kennelly as deposits on this property?

Mr. Hollander: I object to it.

The Court: I will allow it.

A. I don't know that I can account for the entire amount, but I can account for part of it. The bulk of it I got from my wife.

Q. How much did you get from your wife? A.

It was around seven thousand, or seventy-five hundred.

Q. What was it, in cash? A. It wasn't her money.

Q. Did she give it to you in cash? A. Yes, sir.

Q. Did she have it in a savings account? A. No, sir.

Q. Did she ever have a savings account? A. Yes, sir.

Q. Where? A. I don't know; it was in New York.

Q. How long have you been married?

Mr. Hollander: I object to it.

The Court: I will allow it.

Q. How long have you been married? A. June, 1925.

Q. Does your wife go to business? A. No, sir.

Q. Has she worked since you married her? A. No, sir.

Q. Did you support her? A. On and off; when I couldn't support her, she supported herself.

Q. How did she support herself? A. Her father and mother happen to have money.

Q. And they contributed to the support of your wife and yourself, when you weren't earning enough money? A. If it was necessary; yes, sir.

Q. That is, your wife's father and mother? A. Yes, sir; on and off. Not at all times, but later, if we needed it, we could get it.

Q. Did you, at that time, 1928, earn enough money to support your wife? A. Yes, sir.

Q. Have you any family? A. Yes, sir; one girl, three years and four months, about.

Q. How old? A. Three years and four months, about.

Q. And in June, 1928, you were earning enough money to support your wife and family? A. Yes, sir.

Q. Then it isn't likely that your wife's folks would contribute to the support of your wife? A. No, sir.

Q. You don't know where she got this money? A. Yes, sir.

Q. Where did she get it? A. From her aunt, Briget Folley, where she can get any amount she wants.

Q. And how much did she get? A. Either seven thousand or seventy-five hundred.

Q. And she went out and borrowed that money and gave it all to you in cash? A. I think it was all in cash; it was two years ago.

Q. And when did she give it to you, do you know? A. The auction sale was on Saturday, and she gave it to me on Monday.

Q. She gave it to you on Monday, did she? A. I think so.

Q. It might have been on Tuesday? A. It might have been on Tuesday.

Q. The sale was on Saturday, the 9th? A. Yes, sir.

Q. And Sunday was the tenth? A. Yes, sir.

Q. And Monday, the 11th? A. Yes, sir.

Q. And Tuesday, the 12th? A. Yes, sir.

Q. And you think you had the money not later than Tuesday, the 12th? A. Not later than Tuesday, the 12th.

Q. Do you know what you did with the money? A. I think I deposited in the corporate account; let me have the records and I will tell you.

Q. Can you tell without the records? A. Not to be sure; no.

Q. All right; I will show you the record. This is Exhibit T-2, 5/28/29. A. I think it was around that time.

Q. Around that time? A. Monday—maybe Tuesday, but I think it was on a Monday, because we negotiated it on Monday.

Q. And you got the seven thousand dollars in cash? A. I don't know that it was seven thousand dollars.

Q. Seven thousand or seventy-five hundred? A. It might have been six thousand five hundred.

Q. Was it less than six thousand five hundred? A. I don't think so, no.

Q. You got that on Monday; that would be the 11th of June? A. Yes, sir.

Q. And you put it in the bank, did you? A. I don't know whether I put it in this account or not.

Q. Have you any other account? A. I have an individual account; yes, sir.

Q. All right; I will give you your individual account. I show you Exhibit H-2, which is your individual account? A. In this particular bank.

Q. What other bank did you have an account in? A. Cliffside Title Guarantee & Trust Company.

Q. Do you think you put it in that account—The First National Bank of Cliffside? A. I don't recall now, it is two years ago, and I know I had to put it in there to cover up these checks which I dated ahead.

Q. So you carried it around from then until the 15th? A. No.

Q. You got this check for ten thousand dollars, on the day of the date? A. Yes, sir.

Q. And you cashed that? A. Yes, sir.

Q. And you gave your co-broker about twenty-four hundred dollars? A. Something like that.

Q. And that gave you—you made five thousand dollars profit on the deal, didn't you? A. About.

Q. And you took your share, plus the deposit, and put it in the bank; isn't that what happened? A. No; I don't know whether I put this money in or not; I forget.

Q. You forget? A. I mean I am not sure; I know I had another account, and we had a partnership account.

By the Court:

Q. You don't know what you did with the money? A. I know we eventually got it in there. We were carrying about four accounts, at the time.

Q. Did you deposit it among the four accounts? A. I don't remember.

Q. You didn't examine your account? A. They are very low, now.

Q. I mean, at that time? A. No, sir.

By Mr. Heyman:

Q. Are you certain about anything today? A. I can recall some of them.

Q. This was a pretty big transaction, ten thousand dollars? A. Sure.

Q. You don't have transactions like that every day? A. No, sir.

Q. You don't have these large transactions very often? A. It only took about three days, and it was all over.

Q. How soon after the sale were you at Kennelly's office? A. I don't recall.

Q. The sale took place on Saturday, the ninth;

were you there on a Monday, Tuesday or Wednesday? A. I don't know.

Mr. Townsend: I object to this.

The Court: It is cross examination.

Mr. Townsend: Counsel has no right to assume things that are not in evidence.

The Court: I think it is a proper question, and I will allow it.

Mr. Townsend: I note an objection.

A. I wasn't there on any of those dates; I wasn't there so soon.

Q. When were you there? A. I was there before the thirty days were up, not for these, but for the other ten lots.

Q. What other ten lots? A. The ten lots I came down to your office to get a deed for them.

Q. You assigned that contract? A. Yes; and I came down with him, to your office, to get the title.

Q. Did you get the title? A. No; we had to pay all cash.

Q. Were you there? A. Not at the final closing; we looked for Mr. Cooper and he wasn't there.

Q. When were you over to Mr. Kennelly's office, after the sale on the 9th? A. It was between the thirty days; I think it was about two weeks—about the middle of it.

Q. What did you go there for? A. What did I go there for—let me see; what did I go there for; I think it was the checks—I had dated them ahead.

Q. What did you go there for? A. I didn't see Kennelly, I went to see MacDonald.

Q. What did you go there for? A. It was something about this transaction.

Q. What? A. I am trying to recall; MacDonald

was there, and the head cashier was there; I don't recall.

Q. What is that? A. I think it was about a check that was dated ahead. Isn't one dated about two weeks ahead? Let me see the checks, and I will recall. This is the one I must have been over there for; the sale was on the 9th, and one check is on June 13th, and one the 18th, and I think I must have been over there to tell them to deposit the checks, because, I was to let them know.

Q. What were you to let them know? A. I dated these checks ahead, and I didn't have the cash in the bank at the time, but I was going to put it in, and I went there to tell them to put them in.

Q. Which one of these checks, did you give them first; they are marked 3, 4 and 5? A. The first check was for the ten lots.

Q. You haven't got that check, have you? A. I don't know; maybe you have; maybe this is the one.

Q. Look and see and tell us? A. I think there was about two more checks.

Q. Two more checks—one or two? A. Yes, sir.

Q. And they were the first checks that you gave, the ones that are missing now? A. I think so; I am not sure.

Q. And the checks you have here today are for the forty-two lots? A. I think so; I am not sure. I have these Exhibits D-R-4 and D-R-5.

Q. And one is dated June 13th and one is dated June 18th, is that right? A. Yes, sir.

Q. And at the time you bought the lots you gave them these checks, and told them you would let them know when to put them through? A. No; I told them to put them through on these dates,

but there was one check that was put through right away, but I don't know where it is.

Q. At the time you bought these forty-two lots, you gave them the check and told them to put them through the day they were dated? A. Yes, sir.

Q. And you went back to Kennelly's office about two weeks later and told them to put them through? A. That is what I think I did; yes.

Q. Now, who wrote the material which is contained in these contracts which are Exhibit C-6-2; who wrote what is written here in pen and ink? A. I don't know; I think it was MacDonald, or whoever was in the aisle that day.

Q. You didn't write it? A. No, sir.

Q. But you signed it right under the tent? A. Yes, sir.

Q. Don't you know these contracts were signed in Kennelly's office? A. No; they were signed in the tent.

Q. They weren't signed in Kennelly's office at all? A. No.

Q. What sort of a pen did you use when you signed Exhibits 4 and 5? A. I don't know.

Q. Where did you get the pen from to sign these checks? A. I don't know whether it was my pen, or Godfrey Bearsford's pen, or my own pen.

Q. Whose pen did you use when you signed Exhibit 3? A. I don't know; they generally go around with a pen and say, sign.

Q. Oh! they do; did they go around with a pen and ink—I thought it was a pencil. A. No; a pencil.

Q. Do they go around with a pen and ink at auction sales?

Mr. Townsend: I object to it.
The Court: Objection sustained.

Q. Did they go around with a pen and ink? A. No pen and ink—a fountain pen.

Q. Did they go around with a pen and ink, or fountain pen, at this auction sale? A. I don't know.

Q. Now, look at Exhibit C-1—? A. That was signed with a pencil, I recall that.

Q. Here are nine contracts of which are yours, all signed with an indelible lead pencil; did you see that? A. Yes, sir; that was probably the first of the sale.

Q. And is that what they used at that sale? A. That is probably what they used at the sale.

Q. And I show all yours for the forty-two lots, and I ask you to show me one that is signed with pencil? A. No; they were all signed up on the desk, and they were signed up on a little platform, and it took more time.

By the Court:

Q. The first you signed with pencil? A. They were the ten lots and the forty-two lots I signed in ink.

By Mr. Heyman:

Q. Do you recall Mrs. Thornley making her purchase? A. I know she bought some lots there; I know she bought some lots there.

Q. I call your attention to the fact that her contract was signed with indelible pencil; does that recall anything to your mind? A. I think that was signed up by one of the aisle boys that go around.

Q. Do you know what pen you used when you signed the contracts? A. No.

Q. For the forty-two lots? A. No.

Q. You had your own pen, didn't you? A. I generally have a pen along, but I don't know which one.

Q. You don't recall what pen you used when you signed those contracts, do you? A. No, I don't know whether it was my own, or Bearsford, or MacDonald's; I don't know whose it was.

Q. Now, this check Exhibit D-R-3, you delivered in the tent, didn't you? A. Yes, sir.

By the Court:

Q. How big is this tent? A. About three times as big as this room.

By Mr. Heyman:

Q. Now, you sold this contract for the ten lots? A. Yes, sir.

Q. How much profit did you make on that? A. I think it was a thousand dollars.

Q. Did you have a broker in that deal? A. No broker.

Q. Made the sale direct to Belbran? A. Yes, sir.

Q. So you would have received from Belbran, about two thousand dollars? A. I think he gave me two checks at different times. He gave me one check and gave me a check a couple of days later.

Q. Now, let me call your attention to Exhibit D-2, and I show you a deposit on June 11th of $1,765. Isn't that deposit the proceeds of the sale to Belbran? A. I don't know; I am not sure. It might be and it might not.

Q. Where did you get the $1,765? A. I don't recall now.

Mr. Hollander: This has been gone over time and time again, and I object to it.

The Court: I will have to overrule you.

A. I don't know; I don't think that was one check. It may be two or three checks; I don't know.

Q. You are a speculator, aren't you? A. Yes, sir.

Q. You were speculating in these lots for the purpose of making money? A. Yes, sir.

Q. If I should tell you that on June 11th, 1928, you deposited in the First National Bank of Fairview, you deposited a check for $1,765, drawn on the First National Bank of New York City, would that help you any? A. Yes, sir.

Q. Then, where did you get it? A. Have you got it there?

Q. If I tell you that you deposited it, on that date,—the check for $1,765, would that recall anything to your mind?

Mr. Townsend: There is no evidence of that fact that I know of.

Mr. Heyman: That is the testimony of the teller from the First National Bank.

The Court: I remember now that the teller was here and testified. Strike out the bank's name, if you want to.

Mr. Heyman: I will reframe the question.

Q. If I tell you now that the deposit that you made on June 11th of $1,765 was on a New York bank, would that help your recollection? A. I don't know; maybe from my wife, or maybe from Veldran.

Q. Now, can you tell us, Mr. Mahoney, where

you got that $7,572.50, which you deposited in this account, Exhibit P-22, that you deposited?

Mr. Hollander: That question has been asked a dozen times.

The Court: I am going to allow the question.

A. I don't know whether I put the wife's money in then. In the first place, I didn't know whether I was going to keep these lots or not, until I conferred with my wife.

Q. And you had conferred with your wife, about taking these lots over? A. Yes, sir.

Q. How much had you reported to your wife? A. The ten per cent. We had talked it over on Sunday, to get the money on Monday.

Q. How much more did you require? A. At the end of the thirty days?

Q. I don't know; how much would you require? A. Thirty per cent. in thirty days and the mortgage for two years.

Q. Were you ready with the thirty per cent.? A. No.

Q. Were you ever ready? A. No.

Q. Did you, on June 19th, call at the office of Harry Cooper? A. June 19th?

Q. Yes. A. No, sir.

Q. Did you at any time call at the office of Harry Cooper; I will read the contract: Ten per cent. cash at the time of sale, and twenty per cent. in cash on June 19th—

Mr. Hollander: On the back of the contract where the signature is, is the date of closing.

Mr. Heyman: I will read to your Honor

Exhibit C-6-1. These are the contracts which we allege are genuine contracts, made at the sale.

The Court: Who were these with?

Mr. Heyman: To all these purchasers to whom we have delivered title.

Mr. Townsend: Show them how they are interlined.

Mr. Heyman: These contracts which we say are fraudulent contracts have the same dates on them, and on the back in different ink—these are the ones signed in the tent, and there is Mrs. Thornley's contract.

The Court: Then the fraudulent attack is just on this man?

Mr. Heyman: That is right.

Q. Now, did you on June 19th attend at Mr. Cooper's office? A. No, sir.

Q. Did you, on June 19th, or any time before that, offer to pay twenty per cent. additional on these contracts? A. No, sir.

Mr. Heyman: That is all.

Cross examination by Mr. Townsend:

Q. Now, you told Mr. Heyman that you went down there on June 9th, and they refused to convey you the lots, unless you paid all cash? A. I didn't say that. I didn't get the title that time. Later, we had to pay all cash.

Q. Did they demand all cash on July 9th? A. No, sir.

Q. What did they say? A. Mr. Cooper wasn't there on July 9th.

Q. Did you go there later, when the title was passed? A. I don't know whether I was there or not.

Q. You made the statement to Mr. Heyman that they demanded all cash? A. Certainly.

Q. Why did they demand all cash?

Mr. Heyman: Who demanded all cash?

Q. Why did they demand all cash?

Mr. Heyman: I object to it; it calls for a conclusion.

The Court: I think it does.

Q. What did they say when they demanded the cash?

Mr. Heyman: I object to it.

By the Court:

Q. Who did you talk to? A. Just a girl—two girls.

By Mr. Townsend:

Q. What did they say?

Mr. Heyman: I object.

Q. What did they say when they demanded the cash?

Mr. Heyman: I object to it.

By the Court:

Q. What did the young ladies say when they demanded the cash? A. Nothing said about that on July 9th.

By Mr. Townsend:

Q. You said to Mr. Heyman, that you couldn't get the title because they demanded the cash? A. That was later.

Q. What was said, and when was it? A. It seemed to be about in thirty days.

By the Court:

Q. Over in August? A. Yes; or later yet.

By Mr. Townsend:

Q. What did the J. B. & S. Realty Company say?

Mr. Heyman: Aren't we entitled to know who it was he was talking to?

By the Court:

Q. Is the party you were talking to here in the room? A. Yes; I see them—three of them.

Q. Who are they? A. There is Mr. Jaffe and Mr. Sann in the middle and Mr. Baer.

By Mr. Townsend:

Q. Did you talk to that man in the center? A. No; I didn't talk to him or any of them. Mr. Veldran was there.

Q. Who did he talk to? A. All three of them.

Q. That was Mr. Jaffe, Mr. Sann and Mr. Baer? A. Yes, sir.

Q. Now, at the conversation that you have just referred to— A. Yes.

Q. What did they say about demanding all cash, and what did they say? A. I don't know why they demanded all cash.

Q. What did they say? A. My impression—as I recall it, they said they wanted all cash.

By the Court:

Q. And that is all? A. That is all.

By Mr. Townsend:

Q. That the entire conversation? A. Practically; yes.

Q. Did you talk to them? A. No.

Q. Did Veldran talk to them? A. Yes, sir.

Q. What did they say? A. He said he was only to pay thirty per cent. They were all talking together; there were conversations in different places, and finally they agreed to pay all cash.

Q. Was this in their office? A. No; it was in Mr. Heyman's office. They took a discount and paid all cash.

Q. How much of a discount? A. I think it was five per cent.

Q. Who handled the cash, you? A. No; Mr. Veldran. I don't know whether I was there when they finally handed it all over, or not.

Q. Did you see the cash paid over? A. No.

Q. I refer you to an exhibit marked F-20 for Identification, 5-28-29, and refer you to the front page, and ask you if you saw that, or a similar one, before? A. I saw a similar one before, it is a postponed sale.

Q. May 19th? A. Yes, sir.

Q. I refer you to Exhibit C-2; did you see that before? A. That is the one I saw in the office a couple of weeks before.

Q. Before the sale? A. Before the sale; it was a postponed sale.

Q. Did you see this at the postponed sale, or similar to the Exhibit C-1? A. Yes.

Q. Did they hand you one before the sale took place? A. Yes; I don't know whether it was before the sale, or during the sale, but I had one there on the lots.

Q. Now, at the time of the start of the sale, did you hear Major Kennelly announce that this was a liquidation sale, to close out the holdings of the J. B. & S. Company? A. Yes, sir.

Q. At that time, did you hear any of the officers of the J. B. & S. Realty Company or Mr. Cooper, get up and make an announcement? A. No.

Q. Nobody got up and said that was not true? A. No.

Q. And was it after Major Kennelly made that announcement that the sale was begun? A. Yes, sir.

Q. On cross examination, by Mr. Heyman, you told him that you could tell him why Major Kennelly knew you were a broker, but he didn't ask you; can you tell us how? A. Yes, sir; Godfrey Beresford is a broker, and he knows Mr. Kennelly, and as I bid on the lots, he wrote on a card, but I can't tell you what he wrote. He said, "I will get hell for this".

Mr. Heyman: I don't know how this is material.

(Witness continuing.) On the back of his card, "I will get hell for this, bringing this broker here".

The Court: I don't know how that answers it.

Mr. Townsend: I consent that it be stricken out.

By the Court:

Q. Did you ever tell Kennelly that you were a broker? A. No, sir.

Q. You never discussed your profit until today? A. I don't know.

Q. Did you tell Kennelly? A. Yes, I think I told him how much I made.

Q. How much did you tell Mr. Kennelly, what your profits were? A. Yes, I think I did.

By Mr. Townsend:

Q. When and where did you tell him that? A. I couldn't tell you that.

Q. When was it? A. Maybe it was the last court case, or maybe before; it was one of the times we were in the court room.

Q. I see. Now, do you remember seeing Mr. Loffus there? A. Yes, sir; I remember seeing him there.

Q. Was Mr. Loffus one of the gentlemen who prepared the contracts for you after you bid it in? A. He was one of the gentlemen arond the table there.

Q. Isn't it a fact that you did have these other ten lots? A. Yes, sir.

Q. And isn't it a fact, that you did—for the purpose of selling these lots, you had requested Major Kennelly's organization to make these contracts in these different amounts? A. Yes, sir.

Q. And in response to your request it was done there that day; isn't that a fact? A. Yes, sir.

Q. Now, isn't it a fact that when Major Kennelly —I withdraw that. Did you see Sann at the close, or near the close of the sale, go up to Major Kennelly? A. I just recall those faces vaguely at the sale; I didn't know them until later on.

Q. Isn't it a fact, that at the time the forty-two lots were put up, at the conclusion of the sale—

Mr. Heyman: I object to that.

The Court: Yes.

Q. Near the end of the sale, isn't it a fact that you said you would bid nine hundred dollars a lot average to include the auctioneer's fee? A. The first bid of nine hundred dollars included the auctioneer's fee.

Q. Then somebody bid nine hundred and fifty? A. Yes, sir.

Q. And then you bid a thousand dollars to include the auctioneer's fees? A. Yes, sir.

Q. The auctioneer's fee was twenty-five dollars a lot, was it not? A. Yes, sir; twenty-five dollars a lot.

Q. Now, were there banks in addition to the First National Bank of Cliffside, did you have moneys in? A. The Cliffside National Bank, and as I said before, the Cliffside Guaranty Mortgage and Trust Company.

Q. Any others? A. No.

Q. How long had you been in the real estate business? A. I went in in 1922.

Q. What business had you been in before that? A. Printer and newspaper.

Q. And you were in the real estate business in Bergen County from 1922 until 1928? A. Yes, sir.

Q. Both as an operator and as a broker? A. Yes, sir.

Q. Was Veldran in partnership with you on these ten lots? A. No, sir.

Q. Was Veldran there at the sale? A. No, sir.

Q. Do you recall—this was on a Saturday; do you know when you saw Veldran after that? A. On a Sunday.

Q. Does he live in Cliffside? A. Yes, sir.

Q. Do you recall when you made this assignment to him? A. I think it was on a Monday.

Mr. Townsend: That is all.

By Mr. Heyman:

Q. On the following you made the assignment? A. I think so; I am not sure.

Q. You are not sure about anything? A. It was two years ago.

Q. Look at this paper; November 16th, 1928. A. What has this got to do with it?

Q. Look at it and see. A. This here was something they wanted after—the Cliffside Guaranty & Trust Company wanted that after.

By Mr. Townsend:

Q. Was there any contract with Veldran? A. Yes; there is another set of those contracts with Veldran, as they were assigned to him. I know we made an assignment on each contract.

By Mr. Heyman:

Q. Did I understand you to say, in answer to Mr. Townsend's question that Beresford was connected with Joseph P. Day? A. He was connected with him.

Mr. Heyman: That is all.

By Mr. Townsend:

Q. I notice that this assignment that Mr. Heyman has called to your attention is acknowledged, and it was typewritten for the acknowledgment to be taken?

The Court: The witness says there was another one, and this was a mere formal assignment which he was asked to sign.

Q. Now, referring to my question, this assignment was taken for the purpose—

Mr. Heyman: I object to it.

The Court: I will allow it.

A. I think this came from Mr. Heyman's office, and they asked me to sign it.

Mr. Townsend: I want to call the attention of the Court to the fact that the acknowledgment is typed in the County of Hudson, and it is later taken in Bergen County.

Mr. Hollander: I want to register an objection because this has nothing to do with the case.

The Court: Mr. Heyman claims that all the transactions are fraudulent.

Mr. Heyman: Not the ten lots.

The Court: I will let it go in as relating to the transaction.

By Mr. Heyman:

Q. Did you ever see me before this case came up? A. Yes, sir.

Q. Where? A. In some of the courts, in Hudson County.

Mr. Heyman: That is all.

By Mr. Hollander:

Q. I offer that paper in evidence.

(Paper marked Exhibit C-30, as of this date.)

CHARLES B. ROSS, the defendant in the above-entitled cause, being first duly sworn according to law, testified as follows:

Direct examination by Mr. Hollander:

By the Court:

Q. You live, where? A. In Grantwood.

Q. And you are the assignee of Mr. Mahoney? A. Yes, sir.

Q. Of the forty-two lots? A. Yes, sir.

By Mr. Hollander:

Q. Were you at the sale, on June 19th? A. No, sir.

Q. Did you have any transaction with Mr. Mahoney, prior to this transaction? A. No, sir.

Q. Did you know William Kennelly, before this sale? A. No, sir.

Q. Did you ever meet him, prior to this transaction? A. No, sir.

Q. When did the assignment of this contract take place, between you and Mr. Mahoney; where did it take place? A. At the Cliffside Park Guarantee Trust Company.

Q. Who was present? A. Joseph Preston, attorney, Mr. Hollander, attorney, Mr. Mahoney, who just testified, and a Mr. Montando, and myself.

Q. Who was Mr. Montando? A. He was the party who first brought the attention of these lots to me.

Q. Was he the broker in the transaction? A. He was one of them; he was the one that brought the attention of the lots to me; yes, sir.

Q. And at the Trust Company's office, was there

an assignment drawn and signed by you? A. Yes, sir.

Q. I show you Exhibit D-R-6, and ask you if that is the one that was signed by you? A. Yes, sir.

Q. And signed by Mr. Mahoney, too? A. Yes, sir.

Q. How much did you pay Mr. Mahoney at the time? A. Ten thousand dollars.

Q. Is that the check? A. Yes, sir.

Q. What happened before this was signed up? A. There was some negotiations there as to whether I should pay cash, or a deposit, I believe, until we got title, and you called up Mr. Cooper's office, and spoke to Mr. Cooper, I believe it was, and he wasn't in, and then you called up Mr. Kennelly's office, and talked to Mr. Kennelly, and told him this transaction was taking place, and he said it was all right.

Mr. Heyman: I object to it.

Q. You didn't hear his voice? A. I heard his voice; I could hear him talking and I could hear you talking.

Q. You heard me talking? A. Yes, sir.

Q. And after that conversation, did we close the transaction? A. We did.

Q. And you paid the money? A. Yes, sir.

Q. After you paid the money, did you order a search to be made? A. I did, by the Cliffside Park Title Guarantee Company.

Q. And did they render you a report? A. Yes, sir.

Q. Is this the report that you received from the Cliffside Park Title Guarantee & Trust Company, covering these lots? A. Yes, sir.

Mr. Hollander: I offer it in evidence.

Mr. Heyman: I object to it; I don't think it has any bearing on the case.

The Court: I don't think it has, but I will allow it.

(Report marked Exhibit D-R-8, as of this date.)

Q. On July 9th, 1928, did you present yourself at the office of Mr. Cooper, No. 1 Exchange Pl., Jersey City? A. Yes, sir.

Q. Ready to make a tender of the money? A. Yes, sir.

By the Court:

Q. Did you make a tender? A. Yes, sir.

Q. Did you have the cash? A. Yes, sir.

Q. What did Mr. Cooper say? A. I talked to Mr. Heyman:

By Mr. Hollander:

Q. What did Mr. Heyman say? A. He said that I couldn't get it.

Q. Wouldn't deliver title to you? A. That is it, and I started an argument and you told me to come on and go out, we couldn't get any satisfaction there.

Q. And you haven't gotten the title yet? A. No, sir.

Q. And you still want title? A. Yes, sir.

Mr. Hollander: That is all.

Cross examination by Mr. Heyman:

Q. When did this assignment take place, Mr. Ross? A. I don't remember.

Q. Look at the papers? A. On the 15th of June, 1928.

Q. It was on that date, wasn't it? A. Yes, sir; that is what it says here.

Q. And there was some question as to whether or not you should pay this ten thousand dollars in cash, or pay only a small deposit until the title was closed? A. Yes, sir.

Q. You said on your direct examination that Montando was one of the brokers? A. Yes, sir.

Q. Who was the other or others? A. Mr. Mahoney—he brought me in touch with Mr. Mahoney at the closing.

Q. Mr. Mahoney brought you in touch— A. No; Mr. Montando brought me to Mr. Mahoney at the time of the sale.

Q. And you met Mr. Mahoney for the first time on June 15th? A. Yes; I knew him in the neighborhood, by sight.

Q. You had no transactions with him? A. Never.

Q. There were no other brokers besides Montando and Mahoney? A. No.

Q. Mahoney didn't tell you that he owned the property? A. No; he didn't.

Q. Did he tell you he had a contract to buy? A. That he had an assignment to dispose of sixteen lots.

Q. Montando told you that Mahoney had an assignment to dispose of these lots? A. Right.

Q. Did he tell you from whom he had the assignment? A. From Mr. Kennelly.

Q. Did he have the assignments in his pocket at the time? A. Mr. Mahoney did.

Q. At the Title Company Mr. Mahoney had the contracts in his pocket, did he? A. Yes, sir.

Q. These contracts which had been marked

C-6-2—contracts like this? A. I don't know whether they are the same ones.

Q. No; like this? A. They were contracts from Mr. Kennelly to Mr. Mahoney.

Q. Did you read the contracts? A. Yes, sir.

Q. All of them? A. Yes, sir.

Q. And then you gave him ten thousand dollars? A. Yes, sir.

Q. You heard Mr. Hollander call Mr. Cooper on the telephone before? A. He called him, but he didn't get him.

Q. And then he called Mr. Kennelly's office? A. Yes, sir.

Q. And you heard him speak to somebody over there? A. Yes, sir.

Q. And then he assigned you these contracts, and you gave him your check, did you? A. Yes, sir.

Mr. Heyman: That is all.

Cross examination by Mr. Townsend:

Q. Did you notify the J. B. & S. Realty Company or its attorney— A. I did not; I didn't know them at the time.

Q. Did you know whether Mr. Hollander notified them that you had taken the assignment? A. He didn't notify them up to the time that I took the assignment. He tried to get in touch with them, but he couldn't.

Q. Did you notify them after you took the assignment? A. No, sir.

Q. Did you instruct Mr. Hollander to notify them?

Mr. Hollander: I object to the question.

The Court: Objection sustained.

Q. How soon before June 15th was it that you started negotiating for the purchase of these lots or these assignments? A. Why, one day before, I believe it was—no more than two days before I took the assignments.

Mr. Townsend: That is all.

Redirect examination by Mr. Hollander:

Q. Did you visit the property before that? A. I did; yes, sir.

Q. And did you see these contracts made by Kennelly and Mahoney? A. Yes, sir; I presume they are the ones.

Q. And did you see this typewriting put on the contracts at the time you took the contracts and signed by Mahoney? A. There was a transfer of the assignment; yes, sir.

Mr. Hollander: I offer these in evidence.

(Assignments marked Exhibit D-R-9, as of this date.)

Q. Do you know whether or not Mr. Hollander, as your attorney, notified the J. B. & S. Realty Company that the assignments had been made to you? A. I don't know that.

Mr. Hollander: That is all.

Mr. Heyman: I object to these papers being marked in evidence. They are not true copies, and I want to examine them before they are offered in evidence.

The Court: He don't know anything about them. He only testified to seeing the typewriting put on them.

The objection is sustained; they are marked for identification.

(Assignments previously marked Exhibit D-R-9 are now marked D-R-9 for identification, as of this date.)

Mr. Hollander: That is all.

BEATRICE V. THORNLEY, a complainant in one of the above-entitled causes, having already been called and sworn, is recalled and further testified as follows:

Direct examination by Mr. Hollander:

Q. Mrs. Thornley, the memorandum on your contracts says that the balance is to be paid on June 11th, 1928. Why wasn't it paid on that date?

Mr. Heyman: I object to the question.

The Court: On what ground?

Mr. Heyman: Unless the defendant did anything to prevent it, I object to it.

By the Court:

Q. Why wasn't it closed on that date? A. Mr. MacDonald telephoned to me just before June 11th—

Mr. Heyman: I object to it.

Mr. Hollander: He was the agent of the selling agent.

The Court: I sustain the objection, at present.

Mr. Hollander: That is all.

(No Cross Examination.)

The Court: We will now take an adjournment and I will fix a date later.

Paterson, N. J., May 8th, 1930.

(The hearing in the above-entitled causes is continued on this 8th day of May, 1930.)

PRESENT:

Same solicitors as heretofore.

NICHOLAS F. MAHONEY, one of the defendants in the above-entitled cause, having already been called and sworn, is recalled and further testified as follows:

Cross examination (continued) by Mr. Heyman:

Q. Mr. Mahoney, you were served yesterday to produce the books, papers, checks, accounts, check pass books, and any and all books of records you may have between you and William Kennelly, Inc.; also between you and Charles B. Ross; were you served with that yesterday? A. Yes, sir.

Q. Have you produced them? A. I have all the papers that I had before; I just had them in my hand.

Q. Now, I ask you if you have any books, papers, writings, or anything relating to the transactions between you and William Kennelly and Charles B. Ross, affecting the lands and premises, in this case? A. Everything I have is here.

Mr. Heyman: That is all.

(Mr. Hollander Rests.)

Mr. Townsend: Other than the motion to amend our answer, defendants rest.

The Court: To conform with the proof?

Mr. Townsend: Yes, sir; and to conform with the law, and I also wish to deny paragraph 6.

The Court: All right.

TESTIMONY CLOSED.

Exhibit C-1.

Established 1847
WILLIAM KENNELLY, INC.
REAL ESTATE AUCTION SPECIALISTS
149 Broadway

(Singer Building)

Telephone Hanover 1020

New York, January 24th, 1928.

We, the J. B. & S. Realty Corporation, hereby authorized WILLIAM KENNELLY, INC., to offer at public auction on the premises on May 19th, 1928, at 2 P. M., the following property which is owned by us

Title of Sale:

PUBLIC AUCTION SALE

Location of Property:

74 lots on Jones Road, Maple Street and Linden Ave., Englewood, N. J.

Size:

AS PER DIAGRAM SUBMITTED

Terms: Cash 10% day of sale—20% cash in 30 days—70% on mortgage 1, 2 or 3 years at 6%.
5% discount for all cash in 30 days.

Attorney:

And We hereby agree to pay WILLIAM KENNELLY, INC., for advertising the aforesaid property at auction, a sum not to exceed Five thousand ($5000.)

Dollars payable $1000. on the 16th day of April and $1500. 10 days before the day of sale.

If the bids be unsatisfactory to us, we reserve the right to withdraw the property from the sale and in such an event no commission is to be paid.

If $50,000. or more in actual bonafide sales are made, then the said J. B. & S. Realty Corporation agrees to pay to said William Kennelly, Inc., a further sum of $2500. as and for the advertising of the aforesaid property at auction. If less than $50,000. worth of property is actually sold, then the said J. B. & S. Realty Corporation agrees to pay a sum equal to 5% of the total sales so made as and for advertising expense of said sale and in the event that less than $50,000. worth of property is sold, no commission is to be paid to said William Kennelly, Inc., for the effecting or making sale of any of said property. If $50,000. or more is sold then the said J. B. & S. Realty Corporation agrees to pay in addition to the said $2500. additional advertising expense, a sum equal to 5% of the total actual bonafide sales.

J. B. & S. Realty Corporation agrees not to sell any of said land unless same be sold through William Kennelly, Inc. as broker.

William Kennelly Inc. will furnish the itemized statement showing at least $5000. disbursements, advertising and conducting of sale.

William Kennelly Inc., agrees to turn over to the J. B. & S. Realty Corporation, all deposits paid at the sale, less commission or advertising expense not later than five days after the sale.

The attorney for the seller agrees to furnish the Terms of Sale for this sale.



Another of the beautiful homes on adjoining land



One of the beautiful and attractive homes on Woodland Street, adjoining the property

ENGLEWOOD is attracting a multitude of homeseekers because it participates in all the remarkable advantages of the most picturesque section of the Western slope of the Palisades and because it is endowed with excellent climate the year-round, clear air and sunshine, cleanliness and good home environment.

This Premier City of New Jersey, (within the Metropolitan Zone), on the threshold of a new and unprecedented development, is anticipating the completion of the new Hudson River Bridge with hundreds of new homes being erected. Realty values have risen above expectations in the past year, and as a result a general trend of development has been of the better class houses.

Less than 30 minutes from the heart of New York City NOW —upon completion of the Bridge will be closer to Manhattan than either the Bronx or Brooklyn. Served by the Erie Railroad with 60 trains daily to and from New York and DeLuxe Passenger Bus system terminating directly in the Greater City's shopping center and theatrical district.

Englewood enjoys a fine school system, with private, grade and high schools, perfectly paved streets, ample supply of pure fresh water. Attractive parks, theatres, clubs, fraternal orders and the far-famed Englewood golf course provide a delightful recreation and social atmosphere.

Englewood has modern transportation and city improvements and all the conveniences of New York City with the peace and quiet so much desired by the busy business man.



Homes on Woodland Street, a fine residential thoroughfare adjoining the property



The Englewood Erie R. R. Station. First express stop on the Erie system. About ten minutes from the property



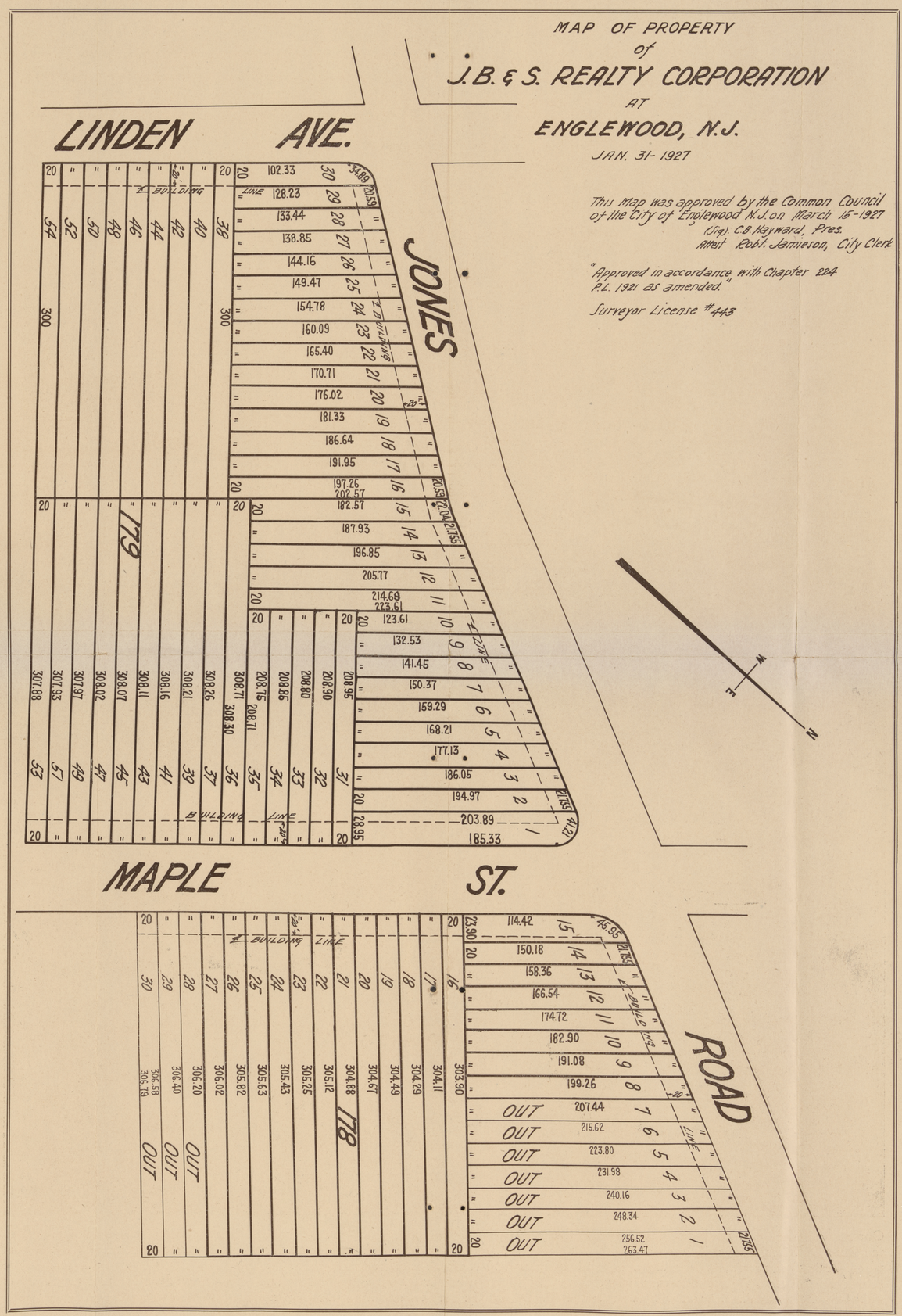
Palisade Avenue, the business center of the City of Englewood. Located conveniently to the property

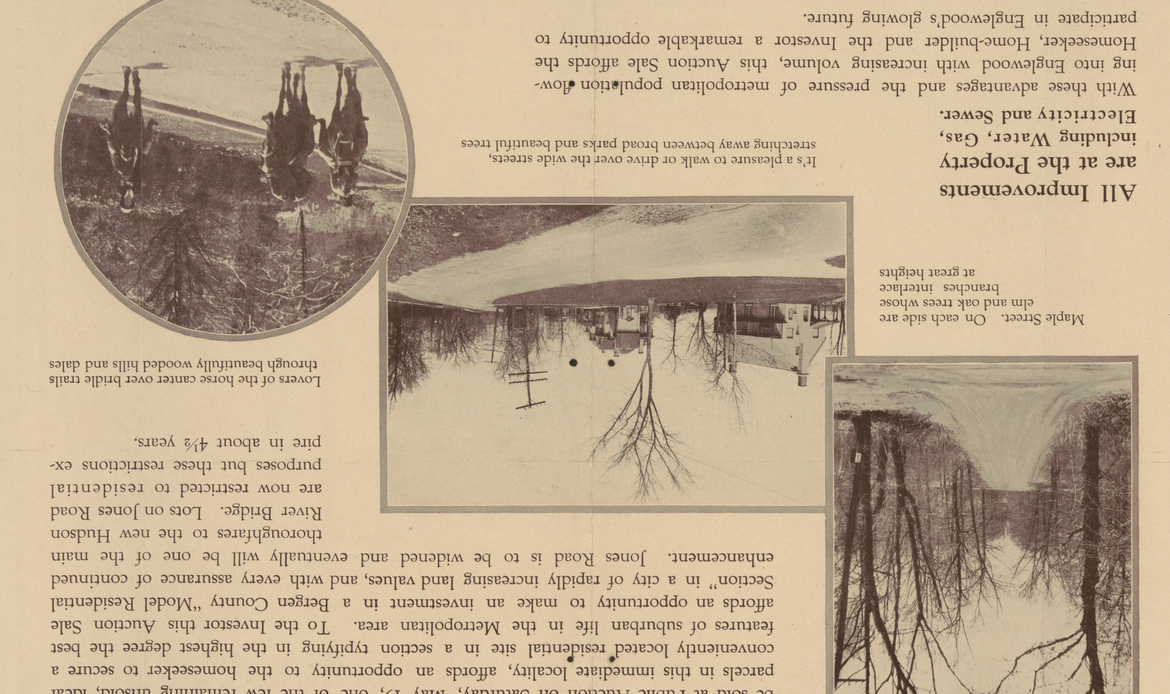
WILLIAM KENNELLY
INCORPORATED
Real Estate Auctioneers

149 Broadway
N. Y. City

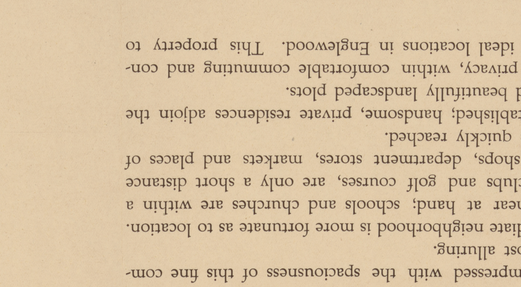
Telephone :
Hanover 1020

These **74 Superb Residential Lots, *Extraordinary in Size,* from 20x114 to 20x308 feet,** command a location of great convenience, with no city congestion, in a healthy, quiet atmosphere you will prefer





Our Artists' conception of the surroundings and the property to be sold, in a setting of charm and beauty; showing its close proximity to the Hudson River Bridge, its easy accessibility to the Business Center, the best Transit Facilities which make it possible for the man whose business takes him to Manhattan to travel in speed and complete comfort to and from his home. When you visit this property be sure to inspect the neighborhood thoroughly. The City of Englewood has long been noted as one of the most desirable residence locations in the Metropolitan Area. You will find many of Englewood's best homes adjoining this property.



Palisade Avenue and Jones Road

How to Reach the Property

Via Ferry from New York: Dyckman Street Ferry to Palisade Avenue, Englewood, straight through on Palisade Avenue to Jones Road; turn left on Jones Road direct to the property.

Via Auto from New York: Holland Vehicular Tunnel to Hudson Boulevard to Grand Avenue; right on Palisade Avenue to Jones Road; turn right on Jones Road direct to the property.

Via Train from New York: Erie Railroad to the Englewood Station. Walk East on Palisade Avenue to Jones Road; turn right on Jones Road direct to property.

Terms of Sale

10% of the purchase price and the Auctioneer's fee at time and place of sale.

20% of the purchase price in 30 days.

70% of the purchase price may remain on mortgage for 1, 2 or 3 years at 6%.

5% Discount for all cash in 30 days.

All facts governing the sale will be included in the printed terms of sale to be read at the time and place of sale.

HARRY COOPER, Esq., Attorney, 1 Exchange Place, Jersey City, N. J.

LIQUIDATION AUCTION

To Close Out the Holdings of the J. B. & S. Realty Corp.

Superb

74 Residential Lots 74

Located in the Heart of one of the Most Beautiful Residential Sections of

Englewood

(BERGEN COUNTY, N. J.)

With Frontages on Jones Road, Linden Avenue and on Maple Street

2 Blocks from Palisade Avenue

SATURDAY, MAY 19, 1928

At 2 o'Clock P. M.

Under Tent on Property, Rain or Shine

All Improvements at Property

70% on mortgage



WILLIAM KENNELLY
INCORPORATED
Real Estate Auctioneers
149 Broadway, N. Y. City
Phone: Hanover 1020

YOU WHO YEARN FOR THE PEACE AND CHARM OF SUBURBAN LIFE WILL FIND AN IRRESISTIBLE APPEAL IN THIS SUPERB RESIDENTIAL PROPERTY



Another residence at Linden Avenue and Jones Road, opposite the property



Residence at Maple Street and Jones Road, opposite the property

OPPORTUNITY

Opportunity appreciate truly outstanding residential attractiveness one must visit this property. Located in the heart of a most beautiful section of Englewood, New Jersey, in a wholesome environment and delightfully elevated, you will instantly become impressed with the spaciousness of this fine community. The natural charm of the property is most alluring.

No available land for residential sites in the immediate neighborhood is more fortunate as to location. Every requisite and convenience for comfort of the home is near at hand; schools and churches are within a few minutes walk. Every form of outdoor recreation, tennis clubs and golf courses, are only a short distance away. Englewood's business center with its many excellent shops, department stores, markets and places of amusement and the main Englewood Erie R.R. Station may be quickly reached.

The character of the neighborhood is thoroughly established; handsome, private residences adjoin the property on every side, distinguished by their liberally sized and beautifully landscaped plots.

An increasing demand for homes of character and privacy, within comfortable commuting and convenient motoring distance from New York is rapidly absorbing ideal locations in Englewood. This property to be sold at Public Auction on Saturday, May 19, one of the few remaining unsold, ideal parcels in this immediate locality, affords an opportunity to the homeseeker to secure a conveniently located residential site in a section typifying in the highest degree the best features of suburban life in the Metropolitan area. To the Investor this Auction Sale affords an opportunity to make an investment in a Bergen County "Model Residential Section" in a city of rapidly increasing land values, and with every assurance of continued enhancement. Jones Road is to be widened and eventually will be one of the main thoroughfares to the new Hudson River Bridge. Lots on Jones Road are now restricted to residential purposes but these restrictions expire in about 4½ years.

Maple Street. On each side are elm and oak trees whose branches interlace at great heights

It's a pleasure to walk or drive over the wide streets, stretching away between broad parks and beautiful trees

Lovers of the horse canter over bridle trails through beautifully wooded hills and dales

All Improvements are at the Property including Water, Gas, Electricity and Sewer.

With these advantages and the pressure of metropolitan population flowing into Englewood with increasing volume, this Auction Sale affords the Homeseeker, Home-builder and the Investor a remarkable opportunity to participate in Englewood's glowing future.

REAL ESTATE POSSIBILITIES IN ENGLEWOOD AFFORD A FERTILE FIELD FOR INVESTMENT—THE TIME TO BUY FAVORED ENGLEWOOD PROPERTY IS ON MAY 19

Witness our hand and seal this 24th day of January 1928

J. B. & S. Realty Corporation
Harry Jaffe Jacob Baer
President. Sect'y Owners

William Kennelly, Inc.
William Kennelly
President

Samuel Sann
Treasurer

Exhibit C-2.

(See circular and map following.)

Exhibit C-3 for Identification.

Copied from Sales List of
WILLIAM KENNELLY INC.

Immediately after close of Sale on the Grounds
June 9, 1928 H C

Lots			
44–46–48	~~3~~	Bl 179	$1000 each
1–2–3	~~6~~	Bl 179	1100
4–5–6	~~9~~	179	950
19–20–21	~~12~~	179	825
50–52–54		" 179	1000
12–13–14–15		" 178	1000
8–9–10–11		178	1000
43–45–47		178	950
37–39–41		178	885
34–35–36		178	860
			Total 30710
			10% 3071.

32 sold

New Jersey State Library

Exhibit C-4.

SALES AS MADE BY MAJ. KENNELLY

June 9, 1928

	S	1	Lots 15, 14, 13, 12	Bl 178	at	$1000 Sale ~~1500~~ each		(~~N~~ S)
	S	2	8, 9, 10, 11	Bl 178	@	$1000 Sale ~~1175~~		(~~N~~ S)
	x	3	16, 17, 18	Bl 178	@	1100		(N S)
		4	19, 20, 21	Bl 178	@	900		(N S)
		5	22, 23, 24	Bl 178	@	825		(N S)
			25, 26, 27	Bl 178		Same		
		6	30, 29, 28	Bl 179	@	$1000		(N S)
			27, 26, 25					
		7	38, 40, 42	Bl 179	@	1050		(N S)
	S	8	44, 46, 48	Bl 179	@	$1000	(g)	
	S	9	50, 52, 54	Bl 179	@	1000	(g)	
	S	10	1, 2, 3	Bl 179	@	$1100	(g)	
	S	11	4, 5, 6	Bl 179	@	950	(g)	
		12	7, 8, 9	Bl 179	@	900	Same	(N S)
		13	10, 11, 12	Bl 179	@	900	Same	(N S)
		14	13, 14, 15	Bl 179	@	875	Same	(N S)
			16, 17, 18	Bl 179	@			
		15	31, 32, 33	Bl 179	@	1000		(N S)
		16	22, 23, 24	Bl 179	@	800		(N S)
	S		19, 20, 21	Bl 179	@	825		Sold
	S		43, 45, 47	Bl 179	@	950		Sold
	S		37, 39, 41	Bl 179	@	$885		Sold
	S		34, 35, 36	Bl 179	@	$860		Sold

Exhibit C-5.

LETTERHEAD OF
WILLIAM KENNELLY
INCORPORATED
NEW YORK

June 14th, 1928.

J. B. & S. Realty Corp.,
Mr. Harry Cooper, Atty.
1 Exchange Place,
Jersey City, N. J.

Gentlemen:

We are enclosing herewith list of purchasers and summary of auction sale of your lots at Englewood, N. J. on June 9th, along with signed terms of sale.

There are still four checks, totaling $6410., on deposit for special collection and on which we have received no report.

Yours very truly,

WILLIAM KENNELLY, INC.
By W. L. LOFTUS
Cashier.

WLL:MK
Enc.

Complainant's Exhibits.

STATEMENT OF SALE HELD AT
ENGLEWOOD, N. J.
JUNE 9, 1928

Purchasers	Block No.	Lot Nos.	Price	Deposit
A. B. Hunter, 115 Jones Road, Englewood, N. J.	178	8–9–10–11	$4000.	$400.
Nicholas F. Mahoney, 706 Anderson Ave., Grantwood, N. J.	178	12–13–14–15 Mahoney Veldran	$4000.	$400. O.K.
Nicholas F. Mahoney, 706 Anderson Ave., Grantwood, N. J.	178	16–17–18	$2700.	$270.
Nicholas F. Mahoney, 706 Anderson Ave., Grantwood, N. J.	178	19–20–21	$2850.	$285.
Nicholas F. Mahoney, 706 Anderson Ave., Grantwood, N. J.	178	22–23–24	$2850.	$285.
Nicholas F. Mahoney, 706 Anderson Ave., Grantwood, N. J.	178	25–26–27	$2850.	$285.
Nicholas F. Mahoney, 706 Anderson Ave., Grantwood, N. J.	179	1–2–3 Mahoney Veldran	$3300.	$330. O.K.
Nicholas F. Mahoney, 706 Anderson Ave., Grantwood, N. J.	179	4–5–6 Mahoney Veldran	$2850.	$285. O.K.

Complainant's Exhibits.

Purchasers	Block No.	Lot Nos.	Price	Deposit
Nicholas F. Mahoney, 706 Anderson Ave., Grantwood, N. J.	179	7–8–9	$2850.	$285.
Nicholas F. Mahoney, 706 Anderson Ave., Grantwood, N. J.	179	10–11–12	$3000.	$300.
Nicholas F. Mahoney, 706 Anderson Ave., Grantwood, N. J.	179	13–14–15 16–17–18	$6000.	$600.
Thos. J. Shields, 11 Water St., New York City	179	19–20–21	$2475.	$247.50
Nicholas F. Mahoney, 706 Anderson Ave., Grantwood, N. J.	179	22–23–24 25–26–27	$6000.	$600.
Nicholas F. Mahoney, 706 Anderson Ave., Grantwood, N. J.	179	28–29–30	$3450.	$345.
Nicholas F. Mahoney, 706 Anderson Ave., Grantwood, N. J.	179	31–32–33	$2700.	$270.
Henry A. Schlitt, 306 Willis Ave., New York City	179	34–35–36	$2580.	$258.
Thomas J. Shields, 11 Water St., New York City	179	37–39–41	$2655.	$265.50
Nicholas F. Mahoney, 706 Anderson Ave., Grantwood, N. J.	179	38–40–42	$2700.	$270.
Thomas J. Shields, 11 Water St., New York City	179	43–45–47	$2850.	$285.

Purchasers	Block No.	Lot Nos.	Price	Deposit
Beatrice V. Thornley, 260 Sherman Ave., Teaneck, N. J.	179	44–46–48	$3000.	$.10. (Balance due $365.)
Nicholas F. Mahoney, 706 Anderson Ave., Grantwood, N. J.	179	49–51–53	$3000.	$300.
J. O'Connor, 34 West 13th St., New York City.	179	50–52–54	$3000.	$300.
			$71,660.	

WILLIAM KENNELLY, Inc.,
149 Broadway,
N. Y. City.

Exhibit C-6X.

Delivered by Leon Behr
June 16, 1928

June 16th, 1928.

William Kennelly, Inc.
149 Broadway,
New York City.

Gentlemen:

The J. B. & S. Realty Corporation has handed to us your letter of June 14th and the enclosures, and also the original contract made between you and them on January 24th, 1928.

We are advised by our client that the statement of the sales of all the lots listed on your slip enclosed with your letter is not a true statement of the result of the sale held at Englewood on June 9th, 1928.

We are advised that except for the sale of the 29 lots the remaining sales are fictitious and your listing them on the statement as bona-fide sales at this time is a deliberate fraud upon the J. B. & S. Realty Corporation.

We are further advised that Mr. Cooper checked up with your Sales Manager and Bookkeeper at the sale, and that as each fictitious sale was made you were advised that the sale was not a bona-fide sale, that at the conclusion of the sale it was found that there had actually been sold 32 lots for a total of $30,710.00, and that included in these 32 lots were three lots, which your Auctioneer sold without authority and that you received only $10.00 deposit.

In view of these facts, and on behalf of the said corporation, we hereby repudiate the alleged sales which you caused to be made other than those of the 29 lots, and hereby demand that you turn over to this corporation the full deposit for the 29 lots, together with any and all moneys which you have in your possession belonging to this corporation.

We beg herewith to notify you that the corporation will refuse to carry out the agreements alleged to have been made and which you now enclose in your letter of June 14th for the sale of the lots which the corporation denies you sold, and that we shall take steps to institute the proper proceedings for a rescission thereof, that unless we receive from you your check for the moneys which are due to the corporation, we shall institute suit against you at once for the recovery thereof.

Yours very truly,

HEYMAN & HEYMAN
Per

BH:MK

Exhibit C-6-1.

SUMMARY OF AUCTION SALE OF LOTS
at ENGLEWOOD, N. J.
June 9, 1928

74 lots sold for $71,660.00			
10% of lots sold			$7166.
Less: Deposit due on lots 44-46-48, block 179	$300.00		
Bal. of auction fees on lots 46-44-48, block 179	65.00		
Advertising due per terms in signed auction agreement	2500.00		
Comm. at 5% on $71,660 ...	3583.00		6448.
Balance due J. B. & S. Rlty Corp.			$718.

Complainant's Exhibits.

Exhibit C-6-1A.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot 8-9-10-11, Block 178, on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the

auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on ~~June 19~~, 1928 at 12:00 noon at the office July 9 of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from ~~June 19th~~, 1928. July 9

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon

said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June 19~~ July 9, 1928, at 12 o'clock noon. All adjustments to be as of ~~June 19~~ July 9, 1928.

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

Memorandum of Purchase.

4 lots 1000 each

June 9,

Englewood, N. J., ~~May~~ 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 8-9-10-11 in Block No. 178, on Map mentioned in the foregoing Terms of Sale for the sum of 4000 Dollars, and I do hereby promise and agree

to comply with the above terms and conditions of sale.

WITNESS. .....
(L. S.)

Address A. B. HUNTER
115 Jones Road
Englewood N. J.

Received from .....
the sum of 400 dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total $500 00 dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.
By H C ANDERSON

Exhibit C-6-1B.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., May 19, 1928

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood,

County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on June 19, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from June 19th, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and

sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be

used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June 19~~ July 9, 1928, at 12 o'clock noon. All adjustments to be as of ~~June 19~~ July 9, 1928.

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and

bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

4 lots 1000. each

Memorandum of Purchase.

June 9,
Englewood, N. J., ~~May~~ ~~19~~, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 12-13-14-15 in Block No. 178, on Map mentioned in the foregoing Terms of Sale for the sum of 4,000 Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

Witness. Nicholas F. Mahoney
(L. S.)
Address 706 Anderson Ave
Grantwood, N. J.

Received from .....
the sum of 400 dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total 500 00 dollars.

William Kennelly, Inc., Auctioneer,
as agent for Owner.
By J Beakes

Exhibit C-6-1C.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., May 19, 1928

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot 1-2-3, Block 179, on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10% per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required

to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on June 19, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from June 19th, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon

said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

3 lots 1100 each

Memorandum of Purchase.

Englewood, N. J., May 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 1-2-3 in Block No. 179, on Map mentioned in the foregoing Terms of Sale for the sum of 3300 Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

Witness. Nicholas F Mahoney
(L. S.)

Address 706 Anderson Ave
Grantwood, N. J.

Received from .....
the sum of 330 00 dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total 405 00 dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.
By N E STANTON

Exhibit C-6-1D.

WILLIAM KENNELLY, Auctioneer

WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May 19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot 4-5-6, Block 179, on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on

March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on ~~June 19~~ July 9, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from ~~June 19th~~ July 9, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June 19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June 19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

Complainant's Exhibits.

MEMORANDUM OF PURCHASE.

3 lots 950. each

Englewood, N. J., ~~May~~ ~~19~~, 1928.
June 9,

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 4-5-6- in Block No. 179-, on Map mentioned in the foregoing Terms of Sale for the sum of 2850 00 Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

WITNESS. NICHOLAS F MAHONEY
(L. S.)
Address 706 Anderson Ave
Grantwood, N. J.

Received from .....
the sum of 285 00 dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total 360 00 dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.

By H E STANTON

Exhibit C-6-1E.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the

auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on ~~June~~ ~~19~~, 1928 at 12:00 noon at the office July 9 of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from ~~June~~ ~~19th~~, 1928. July 9

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon

said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

3 lots. 825 each

Memorandum of Purchase.

June 9,

Englewood, N. J., ~~May~~ 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 19-20-21 in Block No. 179, on Map mentioned in the foregoing Terms of Sale for the sum of 2,475 Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

Witness. Thomas J. Shields

(L. S.)

Address 11 Water St.,

N. Y. C.

Received from .....
the sum of 247 50 dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total 322 50 dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.
By N E STANTON

Exhibit C-6-1F.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., May 19, 1928

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in

accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on June 19, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from June 19th, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments in the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

3 lots 860 00 each

Memorandum of Purchase.

Englewood, N. J., May 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 34-35-36. in Block No. 179., on Map mentioned

in the foregoing Terms of Sale for the sum of 2580 00 Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

WITNESS. HENRY A SCHLITT (L. S.)
Address 306 Willis Av. N. Y. C.
N. Y. C.

Received from .....
the sum of 258 00 dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total 333 00 dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.
By J BEAKES

Exhibit C-6-1G.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of

land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on ~~June 19~~ July 9, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from ~~June 19th~~ July 9th, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual

New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said prem-

ises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June 10, 1928~~, at 12 o'clock July 9, 1928 noon. All adjustments to be as of ~~June 10~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid

to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

3 lots. 885 00

Memorandum of Purchase.

Englewood, N. J., ~~May~~ ~~19~~, 1928.
June 9

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 37-39-41 in Block No. 179., on Map mentioned in the foregoing Terms of Sale for the sum of 2655 Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

Witness. Thomas J. Shields,
(L. S.)
Address 11 Water St.,
N. Y. C.

Received from .....
the sum of 265 50 dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total 340.50 dollars.

William Kennelly, Inc., Auctioneer,
as agent for Owner.

By N E Stanton

Exhibit C-6-1H.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9th

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required

to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on ~~June 19~~ July 9th, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from ~~June 19th~~ July 9th, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon

said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June 19, 1928~~ July 9, 1928, at 12 o'clock noon. All adjustments to be as of ~~June 19~~ July 9, 1928.

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

3 lots. $950.00 each

Memorandum of Purchase.

June 9,
Englewood, N. J., ~~May~~ ~~19~~, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 43-45-47 in Block No. 179, on Map mentioned in the foregoing Terms of Sale for the sum of 2,850. Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

Witness. Thomas J. Shields,
(L. S.)
Address 11 Water St.,
N. Y.

Received from .....
the sum of 285 00 dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total 360 00 dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.

By N E STANTON

Exhibit C-6-1I.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk,

Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on ~~June 19~~ July 9, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from ~~June 19th~~ July 9, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost

and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of

any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

3 lots. 1000 00 each

MEMORANDUM OF PURCHASE.

June 9,
Englewood, N. J., ~~May~~ 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 44-46-48. in Block No. 179., on Map mentioned in the foregoing Terms of Sale for the sum of 3,000 Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

WITNESS. BEATRICE V THORNLEY
(L. S.)
Address 260 Sherman Ave
Teaneck, N. J.

(Writing in pencil across back of reecipt.)

Recd $10— part payment of original deposit the balance to be paid Monday June 11, 1928. The balance due 6/11/28 will be $365 00/xx.

JB
WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.
By J BEAKES

Complainant's Exhibits.

Exhibit C-6-1J.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will

be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on ~~June 19~~ July 9, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from ~~June 19th~~ July 9, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon

said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

3 lots. 1000 00 each

Memorandum of Purchase.

June 9

Englewood, N. J., ~~May~~ 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 50-52-54 in Block No. 179., on Map mentioned in the foregoing Terms of Sale for the sum of 3,000 Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

Witness. Joseph O'Connor.

(L. S.)

Address 34 W 13 St NYC.

Received from .....
the sum of 300 dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total 375 dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.
By N E STANTON

Make deed to Joseph OConnor and Anna OConnor his wife

JOSEPH OCONNOR.

Feb 1/29

Exhibit C-6-2A.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood,

County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on June 19, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from June 19th, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and

sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

3 lots $950 ea.

MEMORANDUM OF PURCHASE.

June 9,

Englewood, N. J., ~~May~~ 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 25-26-27 in Block No. 178, on Map mentioned in the foregoing Terms of Sale for the sum of $2850. Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

WITNESS. NICHOLAS F MAHONEY
(L. S.)
Address 706 Anderson Ave
Grantwood, N. J.

Received from .....
the sum of $285. dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total $360. dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.

By N E STANTON

Exhibit C-6-2B.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the

auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on June 19, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from June 19th, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June 19~~, July 9 1928, at 12 o'clock noon. All adjustments to be as of ~~June 19~~, July 9 1928.

The bidding will be kept open after the property

is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

3 lots $900 ea.

Memorandum of Purchase.

June 8,

Englewood, N. J., ~~May~~ ~~19~~, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 16-17-18 in Block No. 178, on Map mentioned in the foregoing Terms of Sale for the sum of $2700. Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

Witness. Nicholas F Mahoney

(L. S.)

Address 706 Anderson Ave.

Grantwood, N. J.

Received from .....
the sum of $270. dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total $345. dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.
By N E STANTON

Exhibit C-6-2C.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May 19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in

accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on ~~June~~ ~~19~~, 1928 at 12:00 noon at the office July 9 of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from ~~June~~ ~~19th~~, 1928. July 9

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following **restrictions:**

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

3 lots $950. each

MEMORANDUM OF PURCHASE.

June 9,

Englewood, N. J., ~~May~~ 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 19-20-21 in Block No. 178, on Map mentioned in the foregoing Terms of Sale for the sum of $2850 Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

WITNESS. NICHOLAS F MAHONEY
(L. S.)
Address 706 Anderson Ave
Grantwood, N. J.

Received from .....
the sum of $285. dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25. each lot. Total $360. dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.
By N E STANTON

Exhibit C-6-2D.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the

auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on June 19, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from June 19th, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property

is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

3 lots $950. ea

Memorandum of Purchase.

June 9,
Englewood, N. J., ~~May~~ 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 22-23-24 in Block No. 178, on Map mentioned in the foregoing Terms of Sale for the sum of $2850. Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

Witness. Nicholas F Mahoney
(L. S.)
Address 706 Anderson Ave.
Grantwood, N. J.

Received from .....
the sum of $285. dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total $360 dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.

By N E STANTON

Exhibit C-6-2E.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Ham-

mond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on June 19, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from June 19th, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost

and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the

laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

3 lots $950. each

MEMORANDUM OF PURCHASE.

June 9,

Englewood, N. J., ~~May~~ ~~19~~, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 7-8-9 in Block No. 179, on Map mentioned in the foregoing Terms of Sale for the sum of $2850. Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

WITNESS. NICHOLAS F MAHONEY (L. S.)

Address 706 Anderson Ave.
Grantwood, N. J.

Received from .....
the sum of $285. dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total $360. dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.
By N E STANTON

Exhibit C-6-2F.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the

auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on June 19, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from June 19th, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

3 lots $1000. each

Memorandum of Purchase.

June 9,

Englewood, N. J., ~~May~~ ~~19~~, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 10-11-12 in Block No. 179, on Map mentioned in the foregoing Terms of Sale for the sum of $3000. Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

Witness. Nicholas F. Mahoney

(L. S.)

Address 706 Anderson Ave

Grantwood, N. J.

Received from .....
the sum of $300. dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total $375. dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.
By N E STANTON

Exhibit C-6-2G.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agree to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk,

Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on June 19, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from June 19th, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

6 lots $1000 each

MEMORANDUM OF PURCHASE.

June 9,
Englewood, N. J., ~~May~~ 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 13-14-15-16-17-18 in Block No. 179, on Map mentioned in the foregoing Terms of Sale for the sum of $6000. Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

WITNESS. NICHOLAS F. MAHONEY
(L. S.)
Address 706 Anderson Ave.
Grantwood, N. J.

Received from .....
the sum of $600. dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25. each lot. Total $750. dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.

By N E STANTON

Complainant's Exhibits.

Exhibit C-6-2H.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required

to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on June 19, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from June 19th, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

6 lots $1000.

Memorandum of Purchase.

June 9,

Englewood, N. J., ~~May~~ 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 22-23-24-25-26-27 in Block No. 179, on Map mentioned in the foregoing Terms of Sale for the sum of $6000. Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

Witness. Nicholas F Mahoney

(L. S.)

Address 706 Anderson Ave.
Grantwood, N. J.

Received from .....
the sum of $600. dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25. each lot. Total $750. dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.
By N E STANTON

Exhibit C-6-2I.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk,

Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on June 19, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from June 19th, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

3 lots $1150 ea

MEMORANDUM OF PURCHASE.

June 9,
Englewood, N. J., ~~May~~ ~~19~~, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 28-29-30 in Block No. 179, on Map mentioned in the foregoing Terms of Sale for the sum of $3450 Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

WITNESS. NICHOLAS F MAHONEY
(L. S.)
Address 706 Anderson Ave
Grantwood, N. J.

Received from .....
the sum of $345. dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total $420 dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.

By N E STANTON

Exhibit C-6-2J.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the

auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on June 19, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from June 19th, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

3 lots $900 ea

Memorandum of Purchase.

June 9

Englewood, N. J., ~~May~~ ~~19~~, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 31-32-33 in Block No. 179, on Map mentioned in the foregoing Terms of Sale for the sum of $2700. Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

Witness. Nicholas F Mahoney

(L. S.)

Address 706 Anderson Ave.
Grantwood, N. J.

Received from .....
the sum of $270. dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25. each lot. Total $345. dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.
By N E STANTON

Exhibit C-6-2K.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Coun-

cil of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on June 19, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from June 19th, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost

and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of

any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June 19~~, 1928, at 12 o'clock July 9, noon. All adjustments to be as of ~~June 19~~, 1928. July 9,

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

3 lots $900. each

MEMORANDUM OF PURCHASE.

June 9,
Englewood, N. J., ~~May~~ 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 38-40-42 in Block No. 179, on Map mentioned in the foregoing Terms of Sale for the sum of $2700. Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

WITNESS. NICHOLAS F. MAHONEY
(L. S.)
Address 706 Anderson Ave
Grantwood, N. J.

Received from .....
the sum of $270. dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25. each lot. Total $345. dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.
By N E STANTON

Complainant's Exhibits.

Exhibit C-6-2L.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required

to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on June 19, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from June 19th, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property

is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

3 lots $1000.

Memorandum of Purchase.

June 9,
Englewood, N. J., ~~May~~ 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 49-51-53 in Block No. 179, on Map mentioned in the foregoing Terms of Sale for the sum of $3000. Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

Witness. Nicholas F Mahoney
(L. S.)
Address 706 Anderson Av
Grantwood, N. J.

Received from .....
the sum of $300. dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total $375. dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.
By N E STANTON

Exhibit C-7.

LETTERHEAD OF
WILLIAM KENNELLY
INCORPORATED
NEW YORK

June 22, 1928.

J. B. & S. Realty Corporation,
167 Van Nostrand Avenue,
Jersey City, New Jersey.

Dear Sirs:—

I beg to acknowledge receipt of a letter dated June 16th from Messrs. Heyman & Heyman, and agreeable to my conversation, after the receipt of said letter, with Mr. Cooper of the firm of Heyman & Heyman, and also Samuel Sann, the Treasurer of the J. B. & S. Realty Corporation, I wish to state that at the sale Mr. Samuel Sann, the Treasurer of the J. B. & S. Realty Corporation, purchased for his own account Lots Nos. 7 to 18, Nos. 22 to 30, Nos. 38-40-42, 31-32-33, 49-51-53, Nos. 16 to 27, for $39,180.

At the time of this purchase Mr. Sann signed Terms of Sale in his own name, delivering his personal check as a deposit on account of the ten percents. Towards the end of the sale Mr. Sann stated to me, much to my surprise, that he was not buying for his own account, but was bidding in the lots, this despite the fact that yours was a liquidation sale to close out the holdings of the J. B. & S. Realty Corporation, and also despite the fact that Mr. Sann signed the Terms of Sale as an individual for the purchase of said lots, and gave his personal check on account.

Although we earned our commission on the sale of these lots to Mr. Sann, at his request we put up said lots again. They were sold to Mr. Nicholas F. Mahoney, who signed the Terms of Sale then and there for $40,950, an average of $975 per lot, which was more than the upset you had given us at the time, and also more than that which Mr. Sann had paid as an individual purchaser.

In view of the circumstances we are entitled to commissions from your Company on all of the property sold, including that which Mr. Sann bought in as an individual, and we are also entitled to a commission from Mr. Sann individually on the lots which we resold for his account to Mr. Mahoney. Of course we have no thought in mind of pressing our claim against Mr. Sann as an individual for the commissions which we earned reselling for his account.

Mr. Mahoney states to us, and I really believe this to be the case, that if you allow him a reasonable discount he will pay all cash. His checks for the ten percents have all been paid, and I cannot understand your attitude in this matter.

With reference to the balance shown on the enclosed statement as due to your Company, we beg to advise you that we have been served by the John H. Lewis Contracting & Development Company, to the effect that they claim a lien against this money, and warning us not to pay the same over to you at our peril, and we are therefore withholding the same for the time being.

In view of the fact that the lots were all sold at a price in excess of the upset price which you placed upon the same, we cannot understand your attitude in refusing to acknowledge the validity of the contracts entered into with Mr. Mahoney, who was at the sale and who did buy the lots in question with other lots, and has paid the ten percent deposits in full, and in view of the further fact that we are entitled to our commissions on such sales, and that your company is laying itself open to suits, which Mr. Mahoney, will, undoubtedly, institute to enforce his valid contract.

I am sending copies of this letter to:

Messrs. Heyman & Heyman.
Mr. Harry Jaffe, President J. B. & S. Realty Corporation.
Mr. Jacob Baer, Secretary J. B. & S. Realty Corporation.
Mr. Samuel Sann, Treasurer J. B. & S. Realty Corporation.

Very truly yours,

WILLIAM KENNELLY, INC.

By WILLIAM KENNELLY,
President.

WK/C.

Defendant Kennelly's Exhibits.

Exhibit T-2.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required

to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on ~~June 19~~ July 9, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from ~~June 19th~~ July 9, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon

said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place,

Jersey City, N. J. on ~~June~~ July 9 ~~19~~, 1928, at 12 o'clock noon. All adjustments to be as of ~~June~~ July 9 ~~19~~, 1928.

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

Memorandum of Purchase.

3 lots√ 900 each

Englewood, N. J., May 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 7-8-9- in Block No. 179, on Map mentioned in the foregoing Terms of Sale for the sum of 2700 Dollars, and I do hereby promise and agree

to comply with the above terms and conditions of sale.

WITNESS. .....

(L. S.)

Address SAMUEL SANN
25 Clinton Ave
Jersey City.

4/24/29
T-2 ~~Idn~~
W. N. B.

Received from .....
the sum of 270 00 dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total 345 00 dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.

By J. BEAKES

6/9 19 8 No.....

CORN EXCHANGE BK.
42 St. Branch

Pay to the
order of Wm. Kennelly Inc $690 00/xx
Six Hundred Ninety .....Dollars

SAMUEL SANN

6/9 1928 No. .....

Defendant Kennelly's Exhibits.

Exhibit T-3.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May 19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required

to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on ~~June 19~~ July 9, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from ~~June 19th~~ July 9, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon

said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

WILLIAM KENNELLY, Auctioneer
William Kennelly, Inc.
149 Broadway (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood,

County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on ~~June~~ ~~19~~, 1928 at 12:00 noon at the office July 9 of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from ~~June~~ ~~19th~~, 1928. July 9

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and

sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June 19~~ July 9, 1928, at 12 o'clock noon. All adjustments to be as of June 19, 1928.

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

New Jersey State Library

Defendant Kennelly's Exhibits.

MEMORANDUM OF PURCHASE.

3 lots. 900 each

Englewood, N. J., May 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 10-11-12- in Block No....., on Map mentioned in the foregoing Terms of Sale for the sum of 2700. Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

WITNESS. .....

(L. S.)

Address SAMUEL SANN
2

4/24/29
T-3 Idn
W. N. B.

Received from .....
the sum of 2700 dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total 345 00 dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.
By BEAKES

Pay to the
order of Wm. Kennelly Inc $750 00/xx
Seven Hundred Fifty .....Dollars

.....

Exhibit T-5.

MEMORANDUM OF PURCHASE.

6 lots 1000 00 each

June 9,
Englewood, N. J., ~~May~~ 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 28-29-30-26-27-25 in Block No. 179, on Map mentioned in the foregoing Terms of Sale for the sum of 6000 00 Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

WITNESS. SAMUEL SANN
(L. S.)

Address .....

.....

4/24/29
T-5-Idn
W. N. B.

Received from .....
the sum of $600 00 dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total 750 00 dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.

By J. WARNER

Exhibit T-7.

is same as Exhibit C-2 printed on page 312 of this record.

Defendant Kennelly's Exhibits.

Exhibit T-21A

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ 19, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the

auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on ~~June~~ ~~19~~, 1928 at 12:00 noon at the office July 9 of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from ~~June~~ ~~19th~~, 1928. July 9

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on June 19, 1928, at 12 o'clock noon. All adjustments to be as of June 19, 1928.

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to

comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

Memorandum of Purchase.

6 lots ($800. ea)

Englewood, N. J., May 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 22-23-24-25-26-27 in Block No. 178, on Map mentioned in the foregoing Terms of Sale for the sum of 4,800. Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

Witness. Samuel Sann

(L. S.)

Address .....

.....

4/24/29
T-6 Idn
W. N. B.

Received from .....
the sum of 480. dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25. each lot. Total $555. dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.

By.....

Exhibit T-21B.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on ~~June 19~~ July 9, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from ~~June 19th~~ July 9, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide

for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

Defendant Kennelly's Exhibits.

MEMORANDUM OF PURCHASE.

6 lots 875

June 9,

Englewood, N. J., ~~May~~ ~~19~~, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 13-14-15 in Block No. 179, on Map mentioned in the foregoing Terms of Sale for the sum of 5250 00 Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

WITNESS. .....

(L. S.)

Address SAMUEL SANN

.....

4/24/29
9-4 Idn
W. N. B.

Received from .....
the sum of 525 dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total $675 00 dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.

By J. BEAKES

Defendant Kennelly's Exhibits.

Exhibit T-21C.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS

Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required

to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on ~~June 19~~ July 9, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from ~~June 19th~~ July 9, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon

said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

Memorandum of Purchase.

3 lots ($1050. ea)

Englewood, N. J., May 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 38-40-42 in Block No. 179, on Map mentioned in the foregoing Terms of Sale for the sum of 3,150. Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

Witness. .....

(L. S.)

Address .....

.....

Received from .....
the sum of 315. dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25. each lot. Total $390. dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.

By.....

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk,

Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on ~~June 19~~ July 9, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from ~~June 19th~~ July 9, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June 19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June 19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

Defendant Kennelly's Exhibits.

MEMORANDUM OF PURCHASE.

3 lots 875. ea

Englewood, N. J., May 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 16-17-18 in Block No. 179, on Map mentioned in the foregoing Terms of Sale for the sum of 2,625. Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

WITNESS. .....
(L. S.)

Address .....

.....

Received from .....
the sum of 262.50 dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25. each lot. Total $337.50 dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.

By.....

Defendant Kennelly's Exhibits.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on ~~June 19~~ July 9, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from ~~June 19th~~ July 9, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such pur-

chaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. REALTY CORPORATION, Owner.

should be

3 lots. 800 ~~850 00~~

MEMORANDUM OF PURCHASE.

June 9,

Englewood, N. J., ~~May~~ ~~19~~, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 22-23-24 in Block 179, on Map mentioned in the foregoing Terms of Sale for the sum of 2400 Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

WITNESS. .....

(L. S.)

Address .....

.....

Received from .....
the sum of 240 dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total ..... dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.

By.....

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May 19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk,

Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on ~~June 19~~ July 9, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from ~~June 19th~~ July 9, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser

shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following **restrictions:**

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of

any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

Defendant Kennelly's Exhibits.

MEMORANDUM OF PURCHASE.

3 lots (850. ea)

Englewood, N. J., May 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 49-51-53 in Block No. 179, on Map mentioned in the foregoing Terms of Sale for the sum of 2,550. Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

WITNESS. .....
(L. S.)

Address .....

.....

Received from .....
the sum of 255. dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total $330. dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.

By.....

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., May 19, 1928

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price

in cash on June 19, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from June 19th, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any

house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such pur-

chaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

Memorandum of Purchase.

3 lots (850. ea)

Englewood, N. J., May 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 16-17-18 in Block No. 178, on Map mentioned in the foregoing Terms of Sale for the sum of 2,550. Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

Witness. .....

(L. S.)

Address.....

.....

Received from .....

the sum of 255 dollars being ten (10%) per cent. of the purchase price paid by the above named

purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25 each lot. Total $330. dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.

By .....

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ ~~19~~, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and

place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on ~~June 19~~ July 9, 1928 at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from ~~June 19th~~ July 9, 1928.

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 o'clock July 9 noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

2-21
Enc

Defendant Kennelly's Exhibits.

MEMORANDUM OF PURCHASE.

5/28/29 ($900. ea)

Englewood, N. J., May 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 19-20-21 in Block No. 178, on Map mentioned in the foregoing Terms of Sale for the sum of 2,700. Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

WITNESS. .....
(L. S.)

Address .....

.....

Received from .....
the sum of 270. dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25. each lot. Total $345. dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.

By.....

Defendant Kennelly's Exhibits.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ 19, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the

auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on ~~June~~ ~~19~~, 1928 at 12:00 noon at the July 9 office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from ~~June~~ ~~19th~~, 1928. July 9

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

New Jersey State Library

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ 19, 1928, at 12 July 9 o'clock noon. All adjustments to be as of ~~June~~ 19, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

Memorandum of Purchase.

3 lots ($900. ea)

Englewood, N. J., May 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 31-32-33 in Block No. 179, on Map mentioned in the foregoing Terms of Sale for the sum of 2,700. Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

Witness. .....

(L. S.)

Address .....

.....

Received from .....
the sum of 270. dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25. each lot. Total 345. dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.

By.....

Exhibit D-1.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ 19, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot , Block , on a "Map of Property of J. B. & S. Realty Corp," at Englewood, N. J., approved by the Common Coun-

cil of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

Twenty (20%) per cent. of the purchase price in cash on ~~June~~ ~~19~~, 1928 at 12:00 noon at the July 9
office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

Seventy (70%) per cent. of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from ~~June~~ ~~19th~~, 1928.
July 9

Five (5%) per cent. discount for all cash in 30 days.

Said bond and mortgage shall be in the usual New Jersey form contain the usual covenants and warranties and contain thirty day interest and sixty day tax default clauses, and shall provide for interest at the rate of six (6%) per cent. per annum, payable in quarter-annual installments.

Said bond and mortgage shall be drawn by Harry Cooper, attorney for the Seller, at the cost and expense of the Purchaser, and the Purchaser shall pay fees for recording said mortgage.

Said premises are to be sold subject to the following restrictions:

(1) There shall not be placed or erected on said premises or any part thereof any building adapted, designated or constructed for, or to be used for any purpose except for dwelling purposes. This restriction shall not apply, however, to private garages.

(2) There shall not be placed or erected upon said premises any out-house, barn, pigeon or chicken-coop, privy or coal or wood-shed.

(3) All buildings shall be set back at least twenty (20) feet from the front line of the lots.

(4) No garage shall be erected underneath any house to be erected on said premises and any garage which may be erected on said premises shall be used only for the storing of pleasure cars.

(5) Not more than one building (exclusive of garage) shall occupy any three adjoining lots, as shown on said map.

(6) No store, shop, stand, warehouse, or factory building, or any building, of any kind whatsoever intended for business, storage or manufacturing purposes shall be placed or erected on said premises; nor shall any building on said premises be used or occupied for business, storage or factory purposes.

Said restrictions shall run with the land for a period of five years from October 1, 1927.

The premises shall also be sold subject to the laws, ordinances, requirements and regulations of any departments of the City of Englewood or the State of New Jersey.

The seller is not responsible for any interest on deposit of purchase price under these terms of sale.

The seller agrees to convey the premises by the usual Short Form New Jersey Warranty deed, subject to the exceptions and restrictions herein mentioned. Closing of title and delivery of deed shall be at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J. on ~~June~~ ~~19~~, 1928, at 12 July 9 o'clock noon. All adjustments to be as of ~~June~~ ~~19~~, 1928. July 9

The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser, may at the option of the seller, be sold under the same terms of sale and said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for any and all expenses of such resale.

The auctioneer is acting as agent for the owner, J. B. & S. Realty Corporation and all moneys paid to him by way of deposit are for the account of said owner who shall be liable for same.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

J. B. & S. Realty Corporation, Owner.

Memorandum of Purchase.

3 lots. 1000 00 each

June 9,
Englewood, N. J., ~~May~~ 19, 1928.

This is to certify that I have this day purchased at public auction the premises described as lots Nos. 44-46-48 in Block No. 179, on Map mentioned in the foregoing Terms of Sale for the sum of 3,000 Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

Witness. Beatrice V. Thornley
(L. S.)

Address 260 Sherman Ave
Teaneck, N. J.

MacDonald
Hanover 1020

Recd $10.—part payment of original deposit the balance to be paid Monday June 11, 1928. The balance due 6/11/28 will be $365 00/xx.

J B

William Kennelly, Inc., Auctioneer,
as agent for Owner.
By J Beakes

Exhibit D-2.

(TREASURERS CHECK)

WOODCLIFF TRUST COMPANY

No. 4024 North Bergen, N. J. Jun 27 '28

Pay to the
order of BEATRICE V. THORNLEY $365.00
Three Hundred Sixty Five Dollars.....Dollars
Woodcliff Trust Co.

HOWARD V. MEEKS
President

LESLIE KING
Secretary

(Endorsements on back of check.)

Pay to the order of
William Kennelly Inc
Beatrice V. Thornley.

—Pay to—
American Trust Company
or order
William Kennelly, Inc.

Pay Any Bank, Banker or Trust Co.
or order
Prior Endorsements Guaranteed
Jun 29 1928
The American Trust Company
1-307 New York 1-307
J. L. Obermayer, Treasurer.

Pay Any Bank
Banker, or Trust Co.
or order
Prior Endorsements
2 Guaranteed B
Jun 29 1928
Federal Reserve Bank
of New York
1-120

Pay to the Order of
Federal Reserve Bank of New York
Prior Endorsements Guaranteed
1-307 American Trust Company 1-307
New York
J. L. Obermayer, Treasurer
Jun 29 1928
Received Payment Through The
New York Clearing House
Prior Endorsements Guaranteed
Federal Reserve Bank of New York

(Perforation through check.)

PAID
6 30 28
55522

Exhibit D-R-3.

Fairview, N. J. June 9th 1928 No. 76691

THE FIRST NAT'L BANK OF FAIRVIEW N. J.
Anderson Avenue

Pay to the order of Wm Kennelly Inc. $765.00
Seven Hundred and Sixty-five - - - - 00/100 Dollars

N. F. MAHONEY, INC.
NICHOLAS F. MAHONEY
Pres.

984051

(Perforation through check):

PAID
6 14 28

(Endorsements on back of check):

Pay to
AMERICAN TRUST COMPANY
or order
WILLIAM KENNELLY, INC.

Pay any Bank, Banker or Trust Co.
or order
Prior Endorsements Guaranteed
JUN 12 1928
THE AMERICAN TRUST COMPANY
1-307 NEW YORK 1-307
J. L. OBERMAYER, Treasurer

Pay to the Order of
Any Bank or Trust Co.
Prior Endorsements Guaranteed
JUN 13 1928
FEDERAL RESERVE BANK
OF NEW YORK
Country Collection Division

Exhibit D-R-4.

THE FIRST NATIONAL BANK

No.....

FAIRVIEW, N. J. June 18 1928←OK NFM

Pay to the
order of William Kennelly, Inc $1050 00/xx
One Thousand and Fifty ---------- Dollars

N. F. MAHONEY INC.
NICHOLAS F MAHONEY
Pres.

Collectible at Par Through the
Federal Reserve Bank of New York

(Perforation through check):

PAID
6 20 28

(Endorsements on back of check):

Pay to
AMERICAN TRUST COMPANY
or order
WILLIAM KENNELLY, INC.

(In pencil): *wire fate*

Pay Any Bank, Banker or Trust Co.
or order
Prior Endorsements Guaranteed
JUN 16 1928
THE AMERICAN TRUST COMPANY
1-307 NEW YORK 1-307
J. L. OBERMAYER, Treasurer

Pay to the Order of
Any Bank or Trust Co.
Prior Endorsements Guaranteed
JUN 19 1928
FEDERAL RESERVE BANK
OF NEW YORK
Country Collection Division

Exhibit D-R-5.

THE FIRST NATIONAL BANK

No..... FAIRVIEW, N. J. June 13 1928

Pay to the
order of William Kennelly Inc. $4095.00/xx
Four Thousand and Ninety-five and xx/ Dollars

N. F. MAHONEY INC.
NICHOLAS F MAHONEY
Pres.

Collectible at Par Through the
Federal Reserve Bank of New York

(Perforation through check):

PAID
6 15 28

(Endorsements on back of check):

Pay to
AMERICAN TRUST COMPANY
or order
WILLIAM KENNELLY, INC.

Pay Any Bank, Banker or Trust Co.
or order
Prior Endorsements Guaranteed
JUN 14 1928
THE AMERICAN TRUST COMPANY
1-307 NEW YORK 1-307
J. L. OBERMAYER, Treasurer

Pay Any Bank, Banker or Trust Co.
or order
Prior Endorsements Guaranteed
JUN 15 1928
FEDERAL RESERVE BANK
OF NEW YORK
1-120
2 B

Exhibit D-R-6.

THIS AGREEMENT made this 15th day of June 1928 by and between NICHOLAS F. MAHONEY of the Borough of Cliffside Park in the County of Bergen and State of New Jersey, Party of the first part and CHARLES B. ROSS of the Borough of Cliffside Park in the County of Bergen and State of New Jersey, Party of the second part,

WITNESSETH WHEREAS the said Mahoney has heretofore and on the 9th day of June 1928 purchased at the Auction Sale conducted by William Kennelly property situated at Englewood Bergen County, New Jersey and more particularly described as follows: All those certain lots, tracts or parcels of land and premises situate, lying and being in the City of Englewood, Bergen County and State of New Jersey known and designated on a certain map entitled, "Map of Property of J. B. & S. Realty Corp. at Englewood, N. J., approved by the Common Council of the City of Englewood, New Jersey by C. B. Hammond, President and filed with the City Clerk Roth Jamison on March 15th, 1927", approved in accordance with Chapter 224 P. L. 1921 as amended, as lots numbered Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19), Twenty (20), Twenty-one (21), Twenty-two (22), Twenty-three (23), Twenty-four (24), Twenty-five (25), Twenty-six (26), Twenty-seven (27) in block numbered One Hundred Seventy-eight (178) and Lots numbered Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), Eighteen (18), Twenty-two (22), Twenty-three (23), Twenty-four (24), Twenty-five (25), Twenty-six (26), Twenty-

seven (27), Twenty-eight (28), Twenty-nine (29), Thirty (30), Thirty-one (31), Thirty-two (32), Thirty-three (33), Thirty-eight (38), Forty (40), Forty-two (42), Forty-nine (49), Fifty-one (51), Fifty-three (53) in block numbered One Hundred Seventy-nine (179), and

WHEREAS the said Mahoney has paid on account of the purchase price thereof the sum of Four Thousand Ninety-five ($4,095.00) Dollars and has further paid the sum of One Thousand Fifty ($1,050.00) Dollars as auctioneer's knock-down fees making a total of Five Thousand One Hundred Forty-five ($5,145.00) Dollars, and

WHEREAS there is due the balance of the purchase price on said contract the amount of Thirty-six Thousand Eight Hundred Fifty-five ($36,855.00) Dollars, and

WHEREAS the said Mahoney has agreed to assign, transfer and set over unto the said Ross the several contracts for the purchase of the afore mentioned land and premises for the sum of Four Thousand Eight Hundred Fifty-five ($4,855.00) Dollars over and above and in addition to the afore mentioned sums.

NOW THEREFORE for and in consideration of the sum of Ten Thousand ($10,000.00) Dollars paid to the party of the first part by the party of the second part, the receipt whereof by the party of the first part is hereby acknowledged, the said party of the first part has assigned, transfered and set over and hereby does assign, transfer and set over unto the party of the second part, his executors, administrators and assigns all his right, title and interest in and to the afore mentioned contracts for the purchase of the Forty-two (42) lots above described.

The party of the first part covenants and agrees to and with the party of the second part that in the event the title to the aforementioned premises is unmarketable and the party of the second part is unable to acquire title according to the terms of the several contracts purchased, that then and in that event the party of the first part will reimburse and return the aforesaid sum of Ten Thousand ($10,000.00) Dollars to the party of the second part and the party of the second part will re-assign to the party of the first part the aforementioned contracts.

IN WITNESS WHEREOF, the said parties of the first and second part have hereunto set their hands and seals the day and year first above written.

NICHOLAS F. MAHONEY (L. S.)
CHARLES B. ROSS (L. S.)

Signed, Sealed and delivered
in the presence of
JOSEPH A. PRESTON

State of New Jersey, }
County of Bergen, } ss.:

BE IT REMEMBERED, That on this 15th day of June in the year one thousand nine hundred and twenty-eight before me, the Subscriber an attorney at Law of N. J. personally appeared, NICHOLAS F. MAHONEY who, I am satisfied, is the grantor in the within Indenture named, and I having first made known to him the contents thereof, he did thereupon duly acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

JOSEPH A. PRESTON
Attorney at Law of N. J.

Exhibit D-R-7.

THE CLIFFSIDE PARK NATIONAL BANK

Cliffside, N. J. June 15 1928 No.....

Pay to the
order of Nicholas F. Mahoney $10,000.#
Ten Thousand and no/100 ---------- Dollars

CHARLES B. ROSS

Member
Federal Reserve
System

(Perforation through check):

PAID
6 15 28

(Endorsements on back of check):

Nicholas F. Mahoney
Leo J. Montondo

Defendant Ross' Exhibits.

Exhibit D-R-8.

CLIFFSIDE PARK
TITLE GUARANTEE AND TRUST COMPANY
GRANTWOOD, N. J.

Application No. T-2611

Dated, July 9th, 1928 9:00 A. M.

CLIFFSIDE PARK TITLE GUARANTEE AND TRUST COMPANY, hereby certifies to the applicant for guaranty under above application and under the provisions thereof that it has examined the title to land in City of Englewood, Bergen County, New Jersey, hereinafter described for a deed about to be made by J. B. & S. Realty Corporation to Charles B. Ross and finds title vests in J. B. & S. Realty Corporation.

The Premises are subject to the following encumbrances and defects which will be excepted in the Policy unless removed:

This report is not binding upon the Company unless its examination fee has been paid in full.

1. Terms of Contract of Sale, between J. B. & S. Realty Corporation to Charles B. Ross.

2. Existing tenancies, if any.

3. State and Municipal regulations and Ordinances relating to the use of the land or use or construction of buildings thereon.

4. Mechanics' Liens for materials furnished or labor performed for the erection and construction of buildings or additions where such Mechanics' Liens have not been filed at the date of this report. If there is any uncompleted building or buildings located on premises or if any labor has been per-

formed or material furnished for erection, additions, alterations, or repairs of any building on said premises within four months last past from date of delivery of instrument passing title to be guaranteed we shall require documentary evidence satisfactory to this Company of release of right of Mechanics' Lien.

5. Such objections to title as may result from facts which a survey and inspection may disclose, same having been waived.

6. Taxes and Assessments: Official tax report not received.

This report will be supplemented upon receipt of the official tax report from the Collector of Taxes of the City of Englewood.

7. Mortgage $15,000.00, Palisade Land and Improvement Co. to Brooklyn Trust Company, Charles M. Englis, Executors and Trustees under the Last Will and Testament of John Englis, deceased, dated August 10, 1925, interest 6% per annum, payable semi-annually; due August 10, 1928, recorded in book 769 page 466 of Mortgages. Assigned to Morris G. Fredman by Assignment dated May 24, 1927, recorded in book 159 page 639 of Assignments of Mortgages.

Mortgage $42,500.00, J. B. & S. Realty Corporation to William S. Stuhr, dated January 15, 1926, recorded in book 810 page 206, payable as follows: $10,000. on account of principal on January 15, 1927 and balance of $32,500.00 on January 15, 1928 with interest at the rate of 6% per annum, and to be paid quarterly. Assigned to George W. Steneck by Assignment dated February 1, 1926, recorded in book 141 page 450 of Assignments of Mortgages.

8. Subject to restrictions contained in Petition of J. B. and S. Realty Corporation and City of Englewood, recorded in book 1478 page 279.

That no building hereafter to be erected on any part of the land as shown on said map to be placed or erected nearer to the line or side of the Street or highway, that as indicated by the "Building line" drawn and shown on said map nor shall any house or residence be built on any plot of less than 60 feet in width nor shall there be sold less than 3 lots of 20 feet each to any one purchaser. Said property to be used for residential purposes only. Such latter restrictions to continue for 5 years. This petition and the covenants and agreements herein contained shall be binding on the owner and owners and the mortgagees of the lands herein described its or their successors and assigns and shall be for the benefit of the future owners of the several lots shown on said map.

9. Judgment. District 2nd Judicial District, The Harris Distilling Company, a West Virginia Corp, *vs.* John J. Kelly, Jr. Deft. On Contract, dated March 14, 1918 book 9 page 125, amount $285.10, Frederick & Ranzenhofer, Atty.

10. Agreement, dated July 31, 1913, recorded in book 854 page 241, between John Englis and The Englewood Sewerage Company.

I John Englis owner of the land through which a proposed line of sewer pipe is to be laid at such location as shown approximately on accompanying map in order to accommodate a proposed residence to be built on the northwest corner of Woodland and Maple Streets by Frederic M. Burr and which is intended to form a part of this agreement

do hereby agree that the said party of the second part shall have right to enter upon said lands for the purpose of laying and constructing such sewer line together with all necessary manholes, branches and connections and when so constructed for the purpose of improving or repairing said line. And it is further agreed that I am to have the right to connect with such sewer at any time and at such part or parts as regulated by the rules of the Company at its regular rates.

11. John Englis died seized of the premises in question April 1, 1915. We shall require proof of the payment of the inheritance tax on the Estate of John Englis, deceased.

12. By Contract dated October 8, 1925 William S. Stuhr contracted to sell the premises in question to Jacob Baer and Samuel Sann and Harry Jaffe or their corporation formed thereafter.

By deed dated January 19, 1926 recorded in book 1385 page 629 William S. Stuhr, unmarried, conveyed the premises in question to J. B. & S. Realty Corporation.

We shall request proof that the J. B. & S. Realty Corporation is the one referred to in the contract of sale aforesaid.

13. The map of the premises in question referred to in Petition between J. B. and S. Realty Corporation and the City of Englewood has not been filed in the Bergen County Clerk's Office. Policy will be issued excepting any loss caused by the failure to file said map.

CLIFFSIDE PARK TITLE GUARANTEE AND
TRUST COMPANY

JOSEPH A. PRESTON
Title Officer.

Defendant Ross' Exhibits.

Exhibit D-R-9 for Identification.

WILLIAM KENNELLY, Auctioneer
WILLIAM KENNELLY, INC.
149 BROADWAY (Singer Building) New York City

AUCTION SALE OF 74 LOTS
Property of J. B. & S. Realty Corporation
at Englewood, N. J., ~~May~~ 19, 1928
June 9

TERMS OF SALE

The Seller agrees to sell and convey, and the Purchaser agrees to purchase All lot or parcel of land situate, lying and being in City of Englewood, County of Bergen, and State of New Jersey, described as follows:

Lot 49-51-53 Block 179, on a "Map of Property of J. B. & S. Realty Corp.," at Englewood, N. J., approved by the Common Council of the City of Englewood, N. J. by C. B. Hammond, President, and filed with the City Clerk, Roth Jamieson on March 15, 1927, approved in accordance with Chapter 224, P. L. 1921, as amended, on the following terms and conditions:

The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

Ten (10%) per cent. of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required

$2700. Dollars, and I do hereby promise and agree to comply with the above terms and conditions of sale.

WITNESS. NICHOLAS F. MAHONEY
(L. S.)
Address 706 Anderson Ave.
Grantwood, N. J.

Received from .....
the sum of $270. dollars being ten (10%) per cent. of the purchase price paid by the above named purchaser for the premises hereinabove described, also the Auctioneer's knockdown fee of $25. each lot. Total $345. dollars.

WILLIAM KENNELLY, INC., Auctioneer,
as agent for Owner.
By N. E. STANTON

I have assigned the within contract to Charles B. Ross of the Borough of Cliffside Park, Bergen Co., New Jersey

NICHOLAS F. MAHONEY

Exhibit H-1.

is same as Exhibit D-2 printed on page 481 of this record.

Exhibit H-2.

Please examine this statement upon receipt and report at once if you find any difference, so that we may know definitely whether our books agree with your own. If no error is reported in ten days the account will be considered correct. All items are credited subject to final payment.

Mahoney, Nicholas F.
Grantwood, N. J.

In Account With
THE FIRST NATIONAL BANK

Fairview, N. J.....192..

Vouchers		Date	Deposits	
		May 1	Balance	3.94
May 7, 1928	350.10	2		350.—
			Total Credits	353.94
Vouchers returned as per above list.....			Total Debits	350.10
		May 31, 1928	Balance	3.84

Please Sign and Return the Receipt Herewith

Please examine this statement upon receipt and report at once if you find any difference, so that we may know definitely whether our books agree with your own. If no error is reported in ten days the account will be considered correct. All items are credited subject to final payment.

Nicholas F. Mahoney
Grantwood, N. J.

In Account With
THE FIRST NATIONAL BANK

Fairview, N. J.....192..

Vouchers	Date	Deposits	
——o——	May 31, 1928	Balance	3.84
		Total Credits	3.84
Vouchers returned as per above list.....		Total Debits	—o—
	June 30, 1928	Balance	3.84

Please Sign and Return the Receipt Herewith

Exhibit H-3.

Please examine this statement upon receipt and report at once if you find any difference, so that we may know definitely whether our books agree with your own. If no error is reported in ten days the account will be considered correct. All items are credited subject to final payment.

N. F. Mahoney, Inc.
Grantwood, N. J.

In Account With
THE FIRST NATIONAL BANK

Fairview, N. J.....192..

	Vouchers		Date	Deposits	
June 2, 1928	1.20	June 29—250.00	May 31–28	Balance	3.83
8, 1928	146.04	29—145.25	June 8–		200.—
9, 1928	5.25	30— 10.00	11–		1,765.—
			13–		158.54
11, 1928	10.75	10,148.36	15–		7,572.50
13, 1928	58.25		20–		35.—
13, 1928	530.25		28		103.80
13, 1928	20.37		29		675.—
13, 1928	275.00				
12, 1928	20.00				
14, 1928	765.00				
14, 1928	24.20				
15, 1928	1000.00				
15, 1928	50.50				
16, 1928	304.40				
16, 1928	4095.00				
16, 1928	144.80				
19, 1928	30.00				
19, 1928	585.31				
20, 1928	1085.00				
20, 1928	84.62				
21, 1928	10.00				
21, 1928	64.50				
22, 1928	264.12				
23, 1928	68.00				
25, 1928	10.00				
25, 1928	10.00				
26, 1928	31.55				
27, 1928	17.00				
27, 1928	7.00				
28, 1928	10.00				
28, 1928	15.00				

	Total Credits	10,513.67
Vouchers returned as per above list.....	Total Debits	10,148.36
June 30–1928	Balance	365.31

Please Sign and Return the Receipt Herewith

Opinion of Lewis, V.-C.

This suit is to set aside certain contracts of sale of real estate claimed to have been made by complainant, through defendant William Kennelly, Inc., as auctioneer, to defendant Mahoney, and assigned by Mahoney to defendant Ross. Defendant Ross seeks specific performance of the contracts.

Complainant contracted with the Kennelly corporation to auction 74 lots in Englewood. The contract between them provided that the auctioneer's compensation should be considerably less if the sale should not bring at least $50,000.00. The sale was advertised for the 19th day of May, 1928, but because of weather conditions was adjourned to the 9th day of June following, at which time it was held. The question now before this court is as to whether there was a valid and binding sale to defendant Mahoney of a certain 42 of the lots. Of the total 74 lots it is conceded that valid sales were made by the auctioneer of 32, of which defendant Mahoney made a purchase of 10.

There is a conflict in the testimony as to what took place at the auction respecting the 42 lots in question. The defendants claim that one Sann, an officer of complainant, bid in these 42 lots from time to time during the course of the sale. They assert that at the conclusion of the sale, when it was made known to the auctioneer that Sann did not intend to actually take the lots, the auctioneer again put up the 42 lots in one block, that Mahoney first bid $900.00 for each of them, that some undisclosed person bid $950.00 and that Mahoney then bid $1,000.00 each, whereupon the 42 lots were knocked down to him and he executed contracts of sale with the auctioneer. Complainant contends that no such transaction took place but

that the alleged sale to Mahoney was made some time after the conclusion of the sale, was made without the knowledge or consent of complainant and was in no wise binding upon it.

I find that the contentions of the complainant have been sustained by the evidence. Under the contract with the auctioneer, complainant had the right at its option to direct a resale. It was not satisfactorily shown that complainant directed a resale such as the alleged transaction with Mahoney would have been. Printed forms of contracts of sale with terms attached were prepared in advance with dates fixed by the original date set for the auction, which provided for a payment of 10% of the purchase price together with the auctioneer's fee at the time of the sale, and 20% on the 19th day of June which would be 30 days later. On the contracts admittedly valid for the 32 lots, the date of June 19th for the second payment was altered in pen and ink on the printed forms to July 9th. With one exception, in the 12 contracts for the 42 lots in dispute, the date for the payment of 20% was not altered and accordingly the payment of 20% on all except the 3 lots was left as due on June 19th. This seems significant of irregularity in the transaction. No payment was made of the 20% on June 19th.

If Mahoney bought 52 lots, as defendants claim, he was required by the terms of sale to make a deposit of 10% plus auctioneer's fee of $25.00 a lot. This would amount to $7,410.00. All the Mahoney contracts, including those for the disputed lots, show receipts signed on behalf of the auctioneer for the full payment of the 10% and the auctioneer's fee, but these payments were not made then. Mahoney's checks were produced on the trial. There are three of these, one dated June

9th for $765.00, one dated June 13th for $4,095.00 and one dated June 18th for $1,050.00. On the date of the sale Mahoney had only a nominal balance in the bank. Deposits were made by him to make good the first two of these checks, two days after their respective dates. The check dated the day of the sale did not cover the requirements of the 10 lots admittedly purchased by him, since the requirement of the 10% deposit on these lots was $1,015.00 and auctioneer's fees $250.00, but it is a substantial proportion. It is significant that the second check for $4,095.00, exactly 10% of the purchase price of the 42 lots, was not given until four days after the sale. There seems to have been no compliance with the terms of sale so far as the 42 lots were concerned.

Testimony of the auctioneer as to the transactions relating to the 42 lots is by no means clear or convincing. His testimony was confused and was contradicted not only by complainant's witnesses but to a certain extent by that of Mahoney himself. Mr. Kennelly testified that when he was about to close the sale Mr. Sann came up to him and said that he wished the auctioneer to get him out of the lots he had bid in. That there was an argument and then Mahoney came up to where they were standing and said he would give $900.00 a lot for anything there was left. That someone else said $950.00, Mahoney said $1,000.00 and thereupon the two lots were knocked down to Mahoney. Mahoney testified that he was sitting in the rear of the tent when he made his bid. The auctioneer is directly interested, for on the upholding of the disputed contracts depends not only commissions thereon, but his bonus for aggregate sales exceeding $50,000.00.

Mr. Harry Cooper, attorney for the complainant, was present at the sale. He testified that he sat alongside of the auctioneer during the entire sale and when the bidding was over on each particular group of lots, he indicated to the auctioneer whether the sale was a bona fide one or whether the high bidder was a representative of the owner merely bidding to keep the prices up. This the complainant had a right to do under their contract with the auctioneer, although the complainant as well as the auctioneer advertised the sale as a liquidation sale, and apparently allowed the public to believe that it was being held without reservations. Mr. Cooper testified that he was present from the beginning of the sale until the auctioneer left the stand. He says that at the time he made a record, produced at the trial, of all sales, indicating thereon whether they were bona fide or fictitious, and that there was no sale of 42 lots made to Mahoney up to the time the auctioneer left the block. If this testimony be accepted as true, the sale to Mahoney was not a valid one. Mr. Stuhr, also a member of the bar of this state, testifies that he was present at the end of the sale. That he talked to Mahoney; that Mahoney told him he had bought 10 lots and that the witness thereupon arranged to buy Mahoney's contract for the 10 lots. This direct testimony is convincing as against the hazy inconsistent testimony of the defendants', particularly in the absence of the auctioneer's assistants who signed in his behalf the contracts for the disputed lots.

I therefore find that there was no valid sale of the 42 lots in question and that the documents purporting to be the contracts therefore are void. Submit a decree accordingly.

New Jersey Court of Errors and Appeals

J. B. & S. Realty Corporation, Complainant-Respondent, *and* William Kennelly, Inc., and Charles B. Ross, Defendants-Appellants, *and* Nicholas F. Mahoney, Defendant.	On Bill. On Appeal from Chancery. Sat Below: Lewis, V. C. Appeal of Defendant Kennelly, Inc.

BRIEF FOR DEFENDANT-APPELLANT WILLIAM KENNELLY, INC.

(Italics, etc., ours except where otherwise noted.)

Statement of the Record.

The facts charged in the bill (p. 11) now stated are admitted: On January 4, 1928, complainant, being the owner of a tract of land consisting of 78 lots, contracted with defendant, William Kennelly, Inc. (hereinafter called Kennelly or the auctioneer), an auctioneer, to sell the lots at public auction on May 19, 1928; the sale was postponed until June 9, 1928, when it was held; the contract (p. 17) provided *inter alia* (where the words "we" or "us" are used in the contract they mean the complainant):

> "If the bids be unsatisfactory to us, we reserve the right to withdraw the property from the sale and in such an event no commission is to be paid.";

with respect to the compensation of the auctioneer, the contract provided that complainant should pay for advertising a sum not to exceed $5,000 and

> "If $50,000. or more in actual bona fide sales are made, then the said J. B. & S. Realty Corporation agrees to pay to said William Kennelly, Inc., a further sum of $2500. as and for the advertising of the aforesaid property at auction. If less than $50,000. worth of property is actually sold, then the said J. B. & S. Realty Corporation agrees to pay a sum equal to 5% of the total sales so made as and for advertising expense of said sale and in the event that less than $50,000. worth of property is sold, no commission is to be paid to said William Kennelly, Inc. for the effecting or making sale of any of said property. If $50,000. or more is sold then the said J. B. & S. Realty Corporation agrees to pay in addition to the said $2500. additional advertising expense, a sum equal to 5% of the total actual bona fide sales."

The contract is signed for the Realty Corporation "Harry Jaffe, president; Jacob Baer, Sect'y; Samuel Sann, Treasurer," the three individuals being the owners of the Realty Company.

The bill then charged that (par. 8): at the sale, *after* the lots had been knocked down to a purchaser, the auctioneer would inquire of complainant whether the bid was satisfactory, and if complainant replied that it was, the purchaser was requested to and did sign the contract and paid the deposit "except in one particular case where the purchaser paid only a deposit of $10.00 on the purchase of three lots which had been struck down to said purchaser."; when the auctioneer was informed by complainant that the bid was unsatisfactory, the lot struck off was withdrawn from the sale; during the course of the sale 42 lots were struck off by the auctioneer *at sums unsatisfac-*

tory to complainant, who immediately withdrew the same from the sale and informed the auctioneer that the lots would not be sold, but would be withdrawn **(Not a word of proof to support this allegation.)**; at the conclusion of the sale the auctioneer advised complainant that 32 lots had been sold for the aggregate sum of $30,710.00; included in the 32 lots were three for which the purchaser had paid a deposit of only $10 in violation of the contract and terms of sale; on June 14, 1928, the auctioneer forwarded to complainant a paper purporting to indicate that he had actually sold to *bona fide* purchasers the entire 74 lots owned by complainant at the total aggregate price of $71,660, and claimed a commission of 5% on said sum, plus a sum of $2,500 for advertising, and annexed the contracts to said report, including contracts for 42 lots alleged to have been purchased by one Nicholas F. Mahoney; the auctioneer did not sell to Mahoney or to any other *bona fide* purchaser any of the 42 lots; the said lots were struck down at such prices *"which were unsatisfactory to the complainant, and that the complainant immediately withdrew the same from the said sale"* **(Not a word of proof to support this allegation.)**; the sales were fictitious and for the purpose of bringing the total aggregate sale price to a sum exceeding $50,000 in order that the auctioneer could collect the commission and the advertising fee of $2,500; the auctioneer and Mahoney had entered into a conspiracy to cheat and defraud complainant; *complainant never intended to sell the lots at the prices mentioned in the contract and the prices mentioned in the contracts were not the same as those which were the highest bid made at such public sale; other persons bid higher and complainant refused to approve the bids so made by such persons for such higher sums* **(Not a word of proof to support these allegations.)**; on

June 15, 1928, Mahoney sold or assigned all his right, title and interest in and to the contracts for the said 42 lots to Charles B. Ross; the assignment to Ross *was with full knowledge of the facts and of the fraudulent nature of the purported sale to Mahoney* **(Not a word of proof to support this allegation.)**. The bill made parties defendant the auctioneer, Mahoney and Ross, and prayed for a cancellation of the contracts and an accounting from the auctioneer.

Defendant auctioneer answered (p. 23 amended answer) denying essential allegations of the bill including those with respect to the alleged fraud, and asserting that the entire tract of 74 lots had been sold at the time of the sale at prices in excess of the upset prices set by complainant.

Defendant Ross (p. 24) answered asserting lack of knowledge as to the statements contained in the bill except those which specifically refererd to him, and denying that he had any knowledge of any fraud, and by a counterclaim he asserted (p. 25) that he was a purchaser from complainant through assignment from Mahoney of his rights in the contracts to purchase made with the auctoineer as the agent of complainant, and prayed for specific performance.

The case was heard before Vice Chancellor Lewis (p. 35). The Vice Chancellor delivered an opinon (p. 556), 109 N. J. E. 337, in which he held that the contentions of complainant were sustained by the evidence and that there was no valid sale of the 42 lots to Mahoney, which resulted in the decree (p. 31) declaring the sale to Mahoney mentioned in paragraph 10 of the bill and the assignment from Mahoney to Ross null and void, and dismissing the counterclaim of Ross and taxing costs against all of the defendants, including a counsel fee of $750.

From that decree both the auctioneer and Ross appealed (notice of appeal of the auctioneer, p. 1; petition of appeal, p. 2; notice of appeal of Ross, p. 6; petition of appeal, p. 7).

The Issues Involved and the Opinion of the Court.

There were two issues involved in the case:

1. Whether complainant had established its claim upon the facts, and

2. Whether complainant was entitled to any relief under the doctrine of unclean hands.

With the first of these issues the Vice Chancellor dealt (p. 557). As to the second he made but a passing reference, as follows (p. 559):

> "Mr. Harry Cooper, attorney for the complainant, was present at the sale. He testified that he sat alongside of the auctioneer during the entire sale and when the bidding was over on each particular group of lots, he indicated to the auctioneer whether the sale was a bona fide one, or whether the high bidder was a representative of the owner merely bidding to keep the prices up. This the complainant had a right to do under their contract with the auctioneer, *although the complainant as well as the auctioneer advertised the sale as a liquidation sale, and apparently allowed the public to believe that it was being held without reservation.*"

The fact is that, with the approval of complainant, the sale was extensively advertised, the form of the advertisement being as follows:

> "Liquidation Auction. To close out the Holdings of the J. B. & S. Realty Corp. Superb—74 Residential Lots, 74. Located in the Heart of one of the Most Beautiful Residential Sections of Englewood (Bergen

County, N. J.), with Frontages on Jones Road, Linden Avenue and on Maple Street, 2 Blocks from Palisade Avenue."

The case of complainant rested upon a repudiation of this advertisement and of the representations made to the public. According to the story of complainant the sale was not in any respect a liquidation sale nor was it to close out the holdings of complainant, nor was it to be a bona fide auction sale in any respect, for complainant reserved the right, and actually exercised it, of having what are familiarly known as "cappers."

Upon the other issue as to whether complainant had sustained its case of fraud upon the facts, the Court, we submit, ignored the rule that the burden of proving fraud by clear and persuasive evidence rests upon the person who alleges it.

Summerill v. *Summerill,* 83 N. J. E. 3, affirmed 83 N. J. E. 350.

The opinion of the Court in its statement of the facts (considered in connection with *demonstrated* facts), which it found, indicates that complainant had *not* made out the case alleged in its bill, and the proofs showed that Mr. Cooper, who was the first and most important witness of complainant (p. 35) in testifying when first called in an attempt to support the allegations of the bill *as made* either deliberately falsified or displayed such a lack of knowledge as to what had actually occurred at the sale as to make his testimony so unreliable as to be of no importance and without his testimony complainant cannot possibly succeed.

The bill alleged (par. 10) that the auctioneer did not sell to Mahoney, or any other bona fide purchaser at the said sale any of the 42 lots—"but that the said lots were struck down at such

prices which were unsatisfactory to the complainant, and that the complainant immediately withdrew the same from the said sale'' (p. 14).

The Vice Chancellor said (p. 556) (109 N. J. E. 338):

> ''There is a conflict in the testimony as to what took place at the auction respecting the forty-two lots in question. The defendants claim that one Sann, an officer of complainant, bid in these forty-two lots from time to time during the course of the sale. They assert that at the conclusion of the sale, when it was made known to the auctioneer that Sann did not intend to actually take the lots, the auctioneer again put up the forty-two lots in one block, that Mahoney first bid $900 for each of them, that some undisclosed person bid $950 and that Mahoney then bid $1,000 each, whereupon the forty-two lots were knocked down to him and he executed contracts of sale with the auctioneer. Complainant contends that no such transaction took place, but that the alleged sale to Mahoney was made some time after the conclusion of the sale, was made without the knowledge or consent of complainant and was in no wise binding upon it.
>
> I find that the contentions of the complainant have been sustained by the evidence.''

If, by the latter statement, the Court meant that defendants had not established their claim that Sann, who was the treasurer and one of the three owners of the Company, had bid upon any of the 42 lots from time to time during the course of the sale it was mistaken *for the proofs demonstrated that such an occurrence did take place.*

Statement of the Facts.

The facts as developed by the testimony will be stated under the respective points of the argument.

ARGUMENT.

I.

Complainant failed to prove its allegations of fraud and conspiracy with respect to the sale of the lots to Mahoney.

The contention of defendants as to the facts is fairly stated in the excerpt from the opinion of the Vice Chancellor from which we have already quoted (p. 7), and the first question to be answered is whether Sann, the treasurer of the company, actually bid in the 42 lots or a part of them.

Mr. Cooper, who was one of the attorneys for complainant in the transaction, was the first and most important witness for complainant (p. 36), and on direct examination he stated that he had been present at the sale (p. 37) and, describing the manner in which the sale was conducted, he said (p. 39):

> "Q. What was said between the parties? A. That I was to stand behind Mr. Kennelly, and if the price was satisfactory, I was to say, "Let it go," or approve of the sale of the particular lots he was offering at that time.
>
> Q. Otherwise? A. Otherwise, there was no sale."

Mr. Cooper was being examined by counsel for complainant and it is clear from the testimony which we have quoted considered with following testimony that what he said is not to be relied upon. He stated that after the sale was over he spoke to MacDonald, who was one of the auctioneer's men, who told him that they had sold about $50,000 worth of property and (p. 43):

"I said, 'I didn't think you sold that many,' and I said, '*Do you intend to figure Sann's contracts?*' and he said, 'Yes,' and I said, 'They aren't sold,' and he said, 'Speak to the Major.' "

At page 54 Mr. Cooper testified that his office was in Mr. Heyman's (counsel with complainant) suite and that complainant was his client as distinct from an office client and that the company consisted of Jaffe, Baer and Sann, who were all in the court room (p. 54) during the trial. As to the alleged bidding by Sann, a one-third owner and treasurer of the company, Mr. Cooper said on cross-examination (p. 59):

"Q. Did you hear Mr. Sann make some bids? A. Yes, he made some bids.

Q. *Was he a dummy?* A. *I don't know.*

Q. *Did you inquire?* A. *No, sir.*

Q. He was one of your clients? A. Yes, sir.

Q. And he was out in the tents? A. Yes, sir.

Q. Were any of the lots conveyed to him? A. No, sir.

Q. Why? A. Because he didn't have any of the contracts.

Q. Did he after? A. He might have.

Q. Did you have any of the contracts for him? A. No, sir.

Q. *What did you say or do when he bid?* A. *I didn't do anything.*

Q. Did you say to Mr. McDonald or Mr. Kennelly, that he was a dummy? A. *I said, It was not a bid; that was one of our men.'*

Q. *Who authorized you to say that was not a bid?* A. *Nobody authorized me to say it.*

Q. Just your judgment? A. Yes.

Q. Did you know before that Mr. Sann was going to bid? A. I did not.

Q. Did anybody say they were going to bid? A. No, sir.

Q. As a matter of fact, it was the other way—that they were not going to bid and

this was a legitimate sale? A. There was no conversation about it.

Q. Just tell the court, then, why when Mr. Sann made a bid you turned to the secretary and Mr. Kennelly and said, 'That is a dummy?'

Mr. Heyman: I object to the question.
The Court: The objection is sustained.

Q. That it was no bid; it was one of our men?

By the Court:

Q. Why did you turn to the officer and say, 'that is no bid; that is one of our men?' A. Because, for the same reason that he would turn to me and tell me that when one of his men bid.

Q. *Didn't you know your clients were going to bid?* A. *No, I didn't know that.*''

The witness then said that he had had no conversation with Sann and that Sann only bid once or twice and that he (Sann) ''didn't give his check'' and he did not see Sann sign anything. Immediately the witness's testimony was stamped either as false or mistaken for there was produced and shown to him a check marked for identification T-1, Exhibit C-2, page 61, made by Sann to the order of the auctioneer, dated June 9, 1928, for $690 and another check dated the same day, payable to the order of the auctioneer, for $750 but unsigned and there was also produced and shown to him contracts of sale signed by Sann as follows: ''6 lots, $1,000.00 each * * * lots Nos. 28-29-30-26-27-25 in Block No. 179'', total purchase price, $6,000 (p. 332); lots 7-8-9 in Block No. 179, $900 each, total purchase price $2,700 (p. 341); lots 13-14-15 in Block 179 (these lots must have been double lots for they are figured as six) $875 each, total purchase price $5,250 (p. 350). (And there may be others.) Notwith-

standing this demonstrative evidence that Sann *had* bid *more* than once or twice and that he *had* given a check for the deposit and that he *had* signed contracts of sale the witness said (p. 62) that his testimony that Sann had only bid once or twice stood. His testimony (p. 62) when he was asked to identify the Sann signature, is evasive. There was no question but that the signatures to these documents were the signatures of Sann, yet Mr. Cooper attempted (pp. 63, 64) to equivocate. This check and these contracts signed by Sann unquestionably stamp the story of Mr. Cooper as false for his story is that, whenever Sann bid, and that only once or twice, he told the auctioneer that Sann was their man and that there was no sale. Notwithstanding this story of Mr. Cooper as to what had occurred San actually delivered the check for the deposit and actually signed the contracts of sale.

Mr. Cooper's testimony (p. 66) is illuminating:

> "Q. You had already advised the auctioneer, in substance, that he had no right to bid?
>
> Mr. Heyman: I object to that.
>
> The Court: The witness has testified that he advised the auctioneer that he had no right to bid.
>
> Mr. Townsend: He told the secretary.
>
> The Court: He said it was no sale; he had no right to bid.
>
> By the Court:
>
> Q. What did you say about these contracts; you saw them in his hand; he was your client; what did you say; you had advised the auctioneer it was no sale; what did you say to him? A. Nothing; we were discussing the sale—how many lots were sold; that is all.
>
> Q. Did he ask you whether this check could be collected? A. No.

Q. Did he ask your advice whether the contracts could be enforced against him? A. He didn't; no.

Q. And you didn't volunteer any advice to him? A. I did not.

Q. Did he tell you what he had bid, after he signed these contracts and had given this check? A. No; he didn't say anything."

Mr. Cooper was examined on April 24, 1929 (p. 35). He was recalled on May 28th (p. 163). He had had an opportunity to reflect on his testimony previously given and had seen the checks and contracts signed by Sann. He said (p. 167) that after McDonald had told him that the auctioneer had sold over $50,000 worth of property he had said to McDonald, " 'You are not going to figure Sann's sales, are you?' He said, 'Well, speak to the Major about that,' " and he had then gone over to Kennelly who had said that he was busy and who then went away. Sann was still present (pp. 167, 168). Mr. Cooper then testified (p. 161):

"Q. When did you first find out that Sann's bid was not a legitimate bid, as you say? A. When did I first find out that?

Q. Yes.

Mr. Heyman: What was the question?

(The question was read as above recorded.)

A. *I knew that Sann was not buying for himself, but for the corporation.*

Q. When did you know that? A. When he made his bid.

Q. Had you been told before that that was what he was going to do? A. No, I had not been told that he was going to do it at all.

Q. How did you figure out that he was not buying for himself? A. *I knew that he was not buying it for himself.*

Q. *How did you know that?* A. *Nothing in particular, but I figured that he was buying to protect himself.*

Q. *You thought he was buying to protect himself?* A. *Under the terms of the contract, they had the right to withdraw property, and that was his method of withdrawing it.*

Q. *Did you get up and ask Major Kennelly to announce that to the crowd?* A. *No, sir.*"

And (p. 172):

"Q. You talked to Sann? A. Yes.

Q. How long was it from the beginning until the end of the sale? A. The whole thing only took about an hour or so.

Q. *How did you know that he gave a check?* A. *He told me he had given a check when the sale was over. He told me he had* given the check.

Q. Did you ask to see the check? A. No, I did not.

Q. Why not? A. I was not interested to find out why.

Q. *Did he tell you he had signed contracts of sale?* A. *I knew he had bid, and I figured he had signed them. (Why, if there was no sale?)*

Q. *Did you not ask him whether he had signed contracts of sale?* A. *No, he told me he had signed contracts of sale.*

Q. Did you ask him? A. I did not ask him; no, sir.

Q. *Did you make any objection to his having signed the contracts of sale?* A. *No, sir.*

Q. Why not? A. Because he had signed it.

Q. You were his lawyers? A. I did not object to his signing them.

The Court: You were his lawyer.

The Witness: Yes, sir; I was his lawyer at the time.

By Mr. Townsend:

Q. Did you say anything to Mr. McDonald? A. *I thought that it was not—that they were not legitimate sales; that is all.*

Q. When did you say that? A. *When we knocked them down. He did not ask me about*

those sales at all; he went right ahead and knocked them down.

Q. I repeat. So, as soon as they knocked them down, you turned to McDonald and told him that they were not legitimate sales? A. I did not say that.

Q. You turned and said that— A. I did not say it to Mr. McDonald. I said it to Loftus, the cashier.

Q. You told Loftus, the cashier, that is not a legitimate sale? A. Yes.

Q. Without knowing anything whatever about it? A. I knew he was not buying for himself.

Q. You did not know at that time that he had given a check, did you? A. No, sir; I did not.

Q. *You did not know that he had signed terms of sale, did you?* A. *No, sir.*

Q. And you made no inquiries about that, did you? A. No, sir; I did not.

Q. Still you took it upon yourself to say that that was not a legitimate sale? A. Yes, I did.

Q. Why? Because you had not been consulted? A. *Why, because they did not ask me for my O. K. I was not asked to O. K. those sales.*"

And (p. 175):

"Q. Did you go to any of Mr. Kennelly's representatives and say that he ought to give the checks back or the contracts back? A. No, I did not. I never did.

Q. Did Sann say anything to you about getting them back? A. No, he did not.

Q. Did he say that he was going to leave them there? A. No, he did not say anything to me about a check.

Q. In other words, the way you figure it, then, is this: Here is a man who had obligated himself for some ten or twenty thousand dollars worth of lots—whatever the figure may be—and he has given his check for $690, for a fake sale that you say was to de-

ceive the people, the public? A. I did not say that.

Q. Well, was it or was it not? I am asking you whether it was a legitimate sale or not? A. It was not a legitimate sale, no. That is what I say.

Q. And you knew it?

The Court: The question is directed to you. It is a very important question: And you knew it, that it was not a legitimate sale.

By Mr. Townsend:

Q. And you knew it, and yet you say that here he leaves the tent entirely and says nothing whatever to Major Kennelly or anyone else about getting back those checks or those contracts? A. I say that I did not ask him."

Mr. Cooper testified (p. 176) that: he did not hear Sann speak to the auctioneer, although Sann was present (p. 177), he did not hear Sann ask for either his money or his contracts back (p. 178); Sann told him that he had given a check immediately after the sale; he (Cooper) did not ask the auctioneer to give the check back although the sale was not legitimate. Under examination by the Court (p. 181) he stated that he saw Sann after the sale but did not discuss the giving back of the check or the contracts which Sann had signed. And (p. 182):

"Q. Why not, in view of your statement that the sale was not legitimate, and in view of your opinion which you have already given to the court that, at the time, this sale was not a legal or proper sale? Why did you not discuss it? As a member of the Bar, why did you not do that? A. We did not discuss the amount.

Q. That is the question: As a member of the Bar, as a lawyer, why did you not discuss it with your client when you knew the thing

was wrong? A. Before a week or two after the sale, this case had already been started, and Mr. Heyman—we discussed the matter about the case.

Q. You discussed it with Mr. Heyman then? A. Yes.

Q. And not with your client? A. No, not with Mr. Sann."

The Court will observe the discrepancies in the testimony of Mr. Cooper. When first called on April 24, 1929, he attempted to substantiate the allegations of the bill which are consistent only with the idea that there had been *no sale whatever* of these forty-two lots and only a pretended sale to Mahoney, and, in his attempts to support these allegations he led the Court to believe that he had heard Sann make some bids but that he did not know whether Sann was a dummy (p. 59). He then immediately said (p. 60) that, when Sann bid, he (Cooper) told either McDonald or Kennelly, whoever was representing the auctioneer, that it "was not a bid, that was one of our men," although he was not authorized to say it (p. 60). Up to this point he had led the Court to believe that Sann was merely bidding to protect the property for complainant, and when asked (p. 61), "Q. You saw him (Sann) come up and give his check, didn't you?" he answered, *"He didn't give his check."* And then, when confronted with the check, he changed his testimony to (p. 62): "I didn't *see* him give any check"; and then, when shown the contracts signed by Sann (p. 62), he equivocated with respect to the signatures, and then, finally, he said that he had had a talk with Sann (p. 66) in which Sann told him "that he had some contracts" but that he had said nothing to Sann about them or about the check (p. 67).

When recalled, a month later (p. 163), his memory seemed to have been refreshed for he said (p.

171) that he had known that Sann was not buying for himself but for the corporation, but he could not tell just how he had known it, his answer when asked being "Nothing in particular, but I figred that he was buying to protect himself" (p. 172). When he originally answered (p. 61) that "he (Sann) didn't give his check" he was not telling the whole truth for he said (p. 172) that *immediately after the sale, the same day, Sann had told him that he had given a check.* But he never spoke to Sann about getting the check or the contracts back, although he knew that it was not a legitimate sale (p. 179), and he could not explain, when questioned by the Court, why, if it were not a legitimate sale, something was not done about getting the check and the contracts back (p. 182).

The only other witnesses produced by complainant in its direct case were Mr. Stuhr, a lawyer, who only said that he had had a conversation with Mahoney after the sale (p. 78), and that, in the course of the conversation, Mahoney had stated that he had bought ten lots.

Harry Jaffe, a one-third owner of complainant, was produced (p. 79), and said that he was present at the sale only a part of the time (p. 80):

> "Q. What happened in the course of the bidding? A. Mr. McDonald was asking me, 'This is a legitimate bid; shall we sell it?'
> Q. What did you say? A. *I said, 'Yes.'*
> Q. How many times did that occur? A. About three or four times."

With this testimony, complainant rested without calling Sann or Baer, the two other owners of the property, as witnesses.

Up to this point complainant had not proven a single disputed allegation in its bill. It *had* proven (brought out on cross-examination of Mr. Cooper) that there *had* been a sale made to Sann. It *had*

proven, first, by Mr. Cooper that *he* was the one who had advised the auctioneer whether the sale was legitimate or no, and, second, by Jaffe, that *he* was the one who had advised the auctioneer, at the time when *he* was present, whether the sale was legitimate or no. It had *not* proven, or attempted to prove, the allegations in the bill (paragraph 10) "but that the said lots (the forty-two) were struck down *at such prices which were unsatisfactory to the complainant and the complainant immediately withdrew the same from the said sale.*" It had attempted to prove that there had been *no* sale of these lots in any manner, shape or form. It had succeeded in proving that these 42 lots, or that portion of them represented by the deposit of Sann and the contracts signed by him had been bid off by Sann, the treasurer and a one-third owner of the Company, and it had attempted to explain this bidding by Sann by asserting that that was the method he used to withdraw the property from the sale, but had failed to explain why, if that were so, the actual deposit had been made by Sann and the contracts actually signed. It had not attempted to prove that the prices were unsatisfactory to it or that it "immediately withdrew the same (the forty-two lots) from the sale." *It must have known its case when it filed its bill. Why did it allege what it did not attempt to prove?* Complainant was not aided by the subsequent proof.

We have already adverted to the testimony of Mr. Cooper when he was recalled (p. 163).

Jaffe was recalled (p. 196) and said that he had heard no conversation between Sann and Kennelly as to a re-offer of the lots bid in by Sann (p. 197). But it appears that he was slightly deaf (p. 200), and either could not read or else could not read without glasses (p. 206). And (p. 213):

"A. I do not know. Whenever it was. *The gentleman said, shall we sell it? And he says, yes, go ahead, and the others said it was not an actual legitimate sale.*

Q. *So you were the one who determined whether it was a legitimate sale or not?* A. *Yes, sir.*

Q. *That was all through the sale?* A. *Yes, sir, all through the sale.*"

Compare this with his previous testimony (p. 79) that he was not present during all of the sale, and with Mr. Cooper's testimony (pp. 39, 60) that it was *he* who passed upon the question as to whether the property should be sold. And compare the following testimony of Jaffe with Mr. Cooper's story that when Sann bid he was bidding for the Company as a method of withdrawing the property from the sale (p. 215):

"Q. I did not ask you that, sir. I asked you whether you heard anybody bid. A. You do not hear any bids at a sale, because the auctioneer points out with his finger, and the other fellow shakes with his head. Whether that is a bid or not you do not know.

Q. Did you see Major Kennelly point out with his finger to Sann? A. No, I did not see it.

Q. Did you see Sann shake his head? A. No, I did not see it.

Q. *Did you know that Sann made a bid?* A. *He told me after the sale was over.*

Q. Where? A. At the time of the sale.

Q. On the stand? A. When Kennelly left the stand.

Q. *After Kennelly had left the stand or before?* A. After.

Q. *After. What did he say to you?* A. *He said he was bidding on it.*

Q. What did you say? A. I did not say anything.

Q. Why not? A. *It was not necessary to say anything to him because he said he was bidding at the sale, and Kennelly told him,*

'That is your business.' There is nothing to it.

Q. What is it? A. 'That is your business'—was a lot of camouflage.

Q. That it was a lot of camouflage? A. Yes, sir.

Q. That is what Sann told you? A. Yes, sir.

Q. Sann told you that? A. That is what Sann told you? A. Yes, sir.

Q. San told you that? A. That is what Sann told me that Kennelly told him.

Q. Where did this conversation take place between Sann and Kennelly? A. Well, as I understand, Kennelly did not even give him a chance to talk to him. He packed up right away his papers and went away."

And, page 217:

"Q. What did Sann say that he said to Major Kennelly when he told him that it was a camouflaged bid? A. Sann was satisfied.

Q. Sann was satisfied? A. That is right.

Q. *Did Sann tell you he had given him a check?* A. *He told me he had given a blank check, yes.*

Q. What do you mean by a blank check? A. A piece of paper. That is what he told me.

Q. Signed by him? A. Signed by him, yes.

Q. For how much? A. I do not remember whether it was six hundred or over six hundred.

Q. *Did he say he had signed contracts in writing?* A. *Yes, sir; he did.*

Q. What did you say to him when he told you that? A. I didn't say nothing to him.

Q. Why not? A. Because it was not necessary.

Q. You did not ask him whether he was bidding privately or for the company? A. He said he wanted to take out the property from the sale.

Q. *We wanted to take the property up from the sale?* A. *Yes.*

Q. *Did he say why?* A. *There was no reason for it.*

Q. Did you ask him? A. What is that?

Q. Did you ask him? A. I did not ask him.

Q. Why did you not ask him? A. Because it was not necessary to ask him.

Q. *You did not want the property taken out of the sale. You had gone over to Major Kennelly to get him to sell it.* A. *Yes, sir.*

Q. Did you not object to his attitude? A. To whose attitude?

Q. Sann's. A. He said, 'It is only a camouflaged bid,' so that——

Q. So that—that is what I am asking you. Did you not object to the camouflaged bid, to his taking the property out of the sale? A. I did not object.

Q. Why did you not object? A. I did not think it was necessary.''

And, page 221:

''Q. *Did you give Mr. Cooper any instructions as to how he should act there the day of the sale?* A. *Repeat that, please.*

(The question was read as above recorded.)

A. *No, I did not.*

Q. You were the president of this company? A. Yes, sir.

Q. *You were the active man in charge, were you not?* A. *Yes, sir.*

Q. *You said nothing whatever to him as to what he should do?* A. *No.*

Q. Why not? A. It was not necessary. It was all said.

Q. What? A. It was not necessary. I thought——

Q. What else did you say?

(The answer was read as above recorded.)

A. I thought it was all arranged.

Q. Who arranged it? A. It was all arranged before the sale.

Q. Arranged by whom? A. In Kennelly's office.

Q. Oh, this conversation you told us about? A. Yes, I told you before about it.

Q. *Did you authorize Mr. Cooper to let anything go for a thousand dollars?* A. *Any legitimate sale, whether it was a thousand or nine hundred dollars.*

Q. *Or eight hundred or seven hundred?* A. *Well, whatever way he should sell it, as long as it was a legitimate sale.*

Q. *Or seven hundred or six hundred, as long as it was a legitimate sale, it did not make any difference to you what price it was; is that correct?* A. *That is right.*

Q. You had given him no instructions as to any price he was to get? A. I made up instructions before, about trying to get at least two thousand dollars a lot."

Another item which indicates that Mr. Cooper's testimony is false or mistaken when he says that *he* was the person delegated to pass upon the legitimacy of each sale and the price and the like is the fact that he admits (p. 69) that he was unfamiliar with real estate values in Bergen County.

It was the testimony of Mr. Cooper that the court below relied upon when it said: "If this testimony be accepted as true, the sale to Mahoney was not a valid sale" and "This *direct* testimony is convincing as against the hazy inconsistent testimony of the defendants, particularly in the absence of the auctioneer's assistants who signed in his behalf contracts for the disputed lots."

The testimony of complainant's important witnesses, who were Mr. Cooper and Jaffe, particularly Mr. Cooper, was neither direct nor convincing. It was contradictory and equivocal and it demonstrated at least that the story as alleged in the bill was incorrect. What these witnesses finally said, when driven to it by cross-examination, as to the bidding by Sann *fitted in with the story told by defendants but was wholly inconsistent with the story told in the bill.*

Kennelly, the auctioneer, was called for defendants (p. 90) and said (p. 97):

"Q. Do you recall Mr. Sann having bid on any of this property? A. Yes, sir; very distinctly.

Q. What took place on the first bid that he made, when the price was knocked down to him? A. A man was sent down with the terms of sale to sign, and he signed up and gave him a check and he reported to me that he was buying for himself.

Q. Do you know how many lots he bought? A. No, I do not.

Q. Did he give you a check? A. He gave one check and signed the different contracts.

Q. After the close of the sale, did Mr. Sann have any conversation with you? A. Yes, sir.

Q. Just tell us what it was? A. When the sale was about to close, Mr. Sann came up the aisle and came up to the stand and said, 'Major, I want you to get me out of those lots; I don't want them.' I said, 'You bought them for yourself; I understood you were out of it, and these four men were here to protect you,' and there was quite an argument, and then Mr. Mahoney came up to where we were standing.

Q. What did Mr. Mahoney say? A. 'I will give you nine hundred dollars for anything you got left, including the auctioneer's fee.'

Q. Was that in the hearing of Sann? A. He was quite close to us. I presume he heard it.

Q. How close was he? A. Within three or four feet.

Q. What did you do then? A. On account that Mr. Sann said he didn't want them, I said, 'What will you give for what is left?' and Mr. Mahoney said nine hundred dollars, and somebody said nine hundred and fifty dollars, and Mr. Mahoney said one thousand dollars, and we knocked them down to him, because it was over there and very quick, because there was nobody else to buy.

Q. Now, did that conclude the sale? A. Yes, sir; that concluded the sale; everything was sold.

Q. Did you talk to Mr. Jaffe after the sale?

A. Yes; I shook hands with Mr. Jaffe and Mr. Cooper and Mr. Sann, after the sale, and said, 'Goodbye,' and went away.

Q. Was any objection made about any of these sales?

Mr. Heyman: I object to the question. Let him ask what happened.

Q. All right; what happened? A. They seemed to be satisfied and didn't offer any objection.

Q. Do you remember anything—specifically anything—that Mr. Jaffe said? A. I think he said—it is quite a while ago—I think he said, 'We are glad to get rid of them.'

Mahoney, who was called as a witness in his own case and that of Ross (p. 254) stated that he had bought the forty-two lots and also another ten lots (p. 254) and had given checks for the deposit (p. 258), and had signed contracts (p. 256) and had assigned the contracts which are in evidence as Exhibit D-6 (p. 256) to Ross and had made a profit (p. 257) ~~(agreement of assignment, Exhibit D-R-5, pp. 258, 259, printed page 436).~~ He assigned to Ross four days after the sale. The check from Ross to himself is in evidence (Exhibit D-R-7, p. 259). No connection whatever was shown between the auctioneer and Mahoney and Ross. On the contrary, the proof is that neither one of them had any connection with either of the others.

The bill was not filed until July 1, 1928 (p. 7), two weeks or more after the assignment by Mahoney, the purchaser, to Ross. Ross (p. 362) was not at the sale. He purchased the contracts of Mahoney by agreement (Exhibit D-R-6, p. 203) and paid $10,000 and proceeded to have a search made (Exhibit D-R-8, p. 304), and, on July 9th,

tendered performance (p. 304). He had had no prior connection either with Kennelly or Mahoney (pp. 302, 305). There was no proof that Ross had any knowledge of any alleged imperfection in the sale or that he had had any prior connection with Kennelly or with Mahoney. The proofs demonstrated, and the Court did not find the contrary, that he was a *bona fide* purchaser of the Mahoney contracts for the purchase of forty-two lots without notice. No attempt was made to prove the charge of conspiracy and knowledge on the part of Ross alleged in the 12th and 15th paragraphs of the bill (pp. 14, 15).

Complainant, in the court below, as did also the Court in its opinion, laid great stress upon certain facts.

A. Mahoney's check books show that on June 9, 1928, when he drew his check for a deposit of $765.00 there were not sufficient monies in the bank to meet it, and that on June 11th he deposited $1,165 and on June 15th $7,572.50 and then drew checks for the balance of the deposit, on June 13th for $4,095, and on June 18th for $1,050.

It is quite true that the deposits, as required by the conditions of sale, were not made on the day of the sale. They were not only not made on the day of the sale for the forty-two lots but they were also not made upon the ten lots which complainant concedes were purchased by Mahoney and for which deeds have been given. Only part of the deposit on those lots were made.

It is clear that Mahoney was a speculator. Title has been delivered for the ten lots which he purchased but the contracts for which he had assigned to Veldran. Between the date of the sale and the times that he made the deposits in his bank account from which he drew the money to pay the deposits to the auctioneer he had assigned his contracts to Veldran for the ten lots and to

Ross for the forty-two lots and had received $10,000 from Ross and had split the profit, approximately $5,000 with another broker, Montando, who had brought Ross and Mahoney together (p. 265).

It was immaterial to complainant whether the deposit was paid on June 9th or not. The auctioneer assumed the responsibility. Complainant raised no question because the deposit on the ten lots was not made in full on June 9th. The failure to make the deposit on June 9th was not made a basis of complainant's claim. Hence the statement of the Court below (p. 558), "There seems to have been no compliance with the terms of sale so far as the forty-two lots were concerned," speaking now of the fact that the deposits were not made on time, is without significance.

Complainant, in the Court below, stated that Mahoney's books and records were not produced. He produced (p. 309) every paper or record which he had with respect to the transaction.

B. Some of the Mahoney contracts have the dates changed with respect to the time of the payment of the balance of the contract price from June 19, 1928 to July 9, 1928, while others have not such changes. The court refers to this fact (p. 557) and says "This seems significant of irregularity in the transaction."

This failure to change the dates in some of the contracts instead of being indicative of fraud is indicative that there was no fraud, for, had defendants intended to perpetrate a fraud, they would have been extremely careful to have changed these dates. All of the contracts were printed with the printed date of May 19, 1928, and, as printed, provided that the deed should be delivered on June 19, 1928 and that the adjustment should be as of June 19, 1928. When the contracts were printed the sale was supposed to take place on

May 19th, 1928. The sale was adjourned until June 9, 1928, which fact required a change in several dates in the contracts. In the hurry of preparing these contracts for execution, it is obvious that the change of these dates at certain places would be overlooked if the parties intended to be honest. If they intended to be dishonest and to use these contracts as instruments of fraud, they would have been very careful to have every date correctly changed. There is no doubt but that Sann *signed* contracts for the purchase of some of these lots, and yet some of the contracts which he signed have the dates changed in one place (p. 325) and not in another (p. 326), while others of the contracts have their dates changed in both places (pp. 329, 331, 334, 338, 340, 343, 344, 347, 349), while at least eleven of the Mahoney contracts have the dates changed in one place (p. 372) but not in another (pp. 377, 379, 381, 384, 385, 393, 406, 407, 410, 412, 414, 416, 427, 429, 432, 433, 445, 446, 458, 460) and at least two in both places (pp. 338, 390, 401, 403), and *at least one contract to a third party, the validity of which is not questioned,* the contract of a man named Schlitt, was changed in one place and not in the other (pp. 436, 438).

It is obvious that in making these changes mistakes were made by changing in one place and not in the other, and in some instances by overlooking a required change entirely, but the mistakes are not confined to either the Mahoney or the Sann contracts but extended to contracts with respect to which there is no question.

C. In the Court below complainant adverted to the fact that the contracts signed by Sann do not cover forty-two lots and it said that Kennelly could not have resold lots the purchase for which Sann had not signed contracts. *All* of the Sann contracts offered in evidence *were signed by the*

owner and receipts were attached thereto of deposits by the auctioneer as agent for the owner. In some instances they were not signed by Sann but that is accounted for by the fact that Sann desired the auctioneer to resell the lots and, of course, when the auctioneer resold the lots he did not proceed to get further contracts actually signed by Sann. The explanation is obvious.

It was upon this testimony that the Court found in effect that the auctioneer and Mahoney had engaged in a conspiracy to make it appear that the lots had been sold to Mahoney, whereas in fact they had not been, for the purpose of permitting the auctioneer to claim that he had sold upwards of $50,000 worth of land so that he might obtain from complainant the commission plus $2,500 advertising expense.

The Court below, notwithstanding the fact that it was complainant who had made the charge of fraud apparently put upon defendants the burden of proving their innocence. The Court states (p. 558), "Testimony of the auctioneer as to the transaction relating to the forty-two lots is by no means clear and convincing." In a case of fraud it is the testimony of the person who alleges the fraud which must be clear and convincing.

The peculiar circumstance about this case is that there is no contention but that the sales were legitimate in the sense that the purchaser desires to complete the purchase, nor is there any claim (although so alleged in the bill) that the prices obtained were not satisfactory.

There is no question, under the proofs as we have heretofore set forth, but that these lots were in the first instance *knocked down* to Sann, who was the treasurer and a one-third owner of the Company and therefore of the property, and that he actually paid a deposit and signed contracts of sale.

We submit that the proofs demonstrated that the theory of complainant on the trial that Sann was not a legitimate bidder and that his conduct in bidding was a mere method devised by him to withdraw from the property from the sale, has no support whatever.

The law is settled that *after property is once struck off there can be no withdrawal.*

Property is struck off or knocked down when the auctioneer by the fall of his hammer or by any other verbal or visible announcement signifies to the bidder that he is entitled to the property by paying the amount of the bid according to the terms of the sale.

> 6 *Corpus Juris* 829, title "Auctions," Sec. 27;
> 189 N. Y. Supp. 707, *Burling* v. *Brinn* (Supr. C., App. Term, 2nd Dept.).

Until the hammer falls and the bid is accepted a *locus penitentiae* remains and the seller may withdraw his property from the sale or the bidder may withdraw his bid * * * but the withdrawal in order to be effective must be open and loud enough to be heard by the auctioneer, and this can only be done by notice to the buying public.

> 6 *Corpus Juris* 830, title "Auctions," Sec. 29.

In any event, to permit a withdrawal in this sale would be to repudiate the statements made to the public, to wit, that the proceeding was a "liquidation auction to close out the holdings of the J. B. & S. Realty Corporation" and involved seventy-four lots.

Whatever may have been the secret thoughts of Sann, Jaffe or Cooper is of no importance.

If the sale to Sann actually took place, then it is quite immaterial whether complainant ordered

a resale or no. The auctioneer states that Sann, who was in a position of authority with complainant, asked him to resell the lots, and there was no objection, and he did resell them, and he got for them $150 per lot more than Sann had bid. The resale was of advantage to complainant. Sann had the right in his individual capacity, if he so desired, to ask the auctioneer to resell these lots.

Complainant now seems to object to a resale, although the resale was to its advantage.

It is not difficult to ascertain the motive of complainant. Title was passed by complainant to twenty-nine lots sold at this auction, the purchase price of which was $27,710. It is a fair inference, from the testimony, that this sum of money relieved its then financial distress and left it in a position to carry the forty-five lots which were in question in the Court below—forty-two involved in this appeal and three denominated the "Thronley lots" with respect to which complainant has either agreed to or has in fact given deeds—until the market price improved. In fact, it paid off the first mortgage of $15,000 in the Fall of 1928 and paid $7,000 on account of the second mortgage at the same time. It expected a marked improvement in real estate. And the real reason for the position it took is indicated at page 222, when Jaffe was on the stand, when he testified as follows:

> "Q. Is it not a fact, Mr. Jaffe, that, since this sale, it has been officially announced that Jones Road is to be one of the main arteries to the new bridge? A. I have heard about it."

And see the testimony, page 223 *et seq.* and also that of Kennelly p. 151

Complainant insists that the motive of the auctioneer in attempting to have it appear that these sales were in fact made is to get his commission, but the fact is that, whatever the technique may

have been, *the alleged purchasers are ready and have been ready at all times to pay the money and complete, and if that is so, why should it not get its commission, particularly where there is no proof that the prices were not adequate and satisfactory?*

On the other hand it is clear, we submit, that the motive of complainant is not only to save itself the amount of the commission but to hold the property for a rise in the market which is anticipated and the possibility of which it did not give due attention to when it advertised its *"liquidation auction."*

There is one significant fact, we submit, which should have led the Court below to have found against complainant and it is that *complainant never called Sann to testify with respect to what the auctioneer and Mahoney said had occurred at the auction,* although Sann was present at every session of the Court (pp. 227, 86). He was called by defendant after complainant rested (p. 86) and examined with respect to other matters and was asked the question on cross-examination: "Q. How did you come to sign this check, that has been shown here today?", which question was objected to as not proper cross-examination, counsel for defendant conceiving that he would be put in a disadvantageous position if he permitted the cross-examination of an adverse witness. Counsel for complainant said that he would recall him in rebuttal. He never was examined in rebuttal. After Kennelly and Mahoney testified he was called at the end of a day (p. 227) and the following occurred:

> "Q. You have testified before? A. Yes, sir.
>
> Mr. Heyman: We cannot finish by three-thirty, if your Honor please. Probably I had better withdraw this witness and put on another one.

Mr. Townsend: *I would like to hear this man. He is a very important figure in the trial. He has been here for several days.*

Mr. Heyman: Oh, he will be here.

The Court: He says he cannot finish him at all.

Mr. Heyman: *I could not finish on direct examination.*

Mr. Townsend: Suppose you do it as far as you can go.

Mr. Heyman: The Vice Chancellor says he will sit here only until three-thirty. I have an attorney on subpoena here, who will be very short.

The Court: Then you had better call him. I know Mr. Townsend would perfer to have Mr. Sann, but I think Mr. Heyman should have the right to conduct his own case."

(The witness was withdrawn.)

That was the last that was heard of Sann.

Neither was Baer, the secretary of the Company, who was present in the court room at every hearing and who had attended the auction sale, called as a witness.

While Jaffe, the president of the Company, was on the stand (p. 217) under cross-examination by counsel for the auctioneer, the following occurred:

"Q. You have not called him (Sann) as a witness have you?

Mr. Heyman: I object to that. The witness is not conducting this case. I am. *I will call Sann in good time.*"

If any witness was important from the standpoint of complainant in the light of the testimony of Kennelly and Mahoney, it was Sann. Its failure to produce Sann is potent evidence that the story told by the auctioneer and Mahoney represents the truth.

22 *Corpus Juris,* title "Evidence," Sec. 24, page 81, states the rule:

> "In the administration of justice it is often wise to place the burden of producing evidence on the party best able to sustain it, and ambiguity, concealment, or evasion react with peculiar force on a pleader who asserts a fact and fails to produce the evidence, which if his assertion were true, would be in his possession. Hence it is very generally held that where the party who has not the general burden of proof possesses positive and complete knowledge concerning the existence of facts which the party having that burden is called upon to negative, or where for any reason the evidence to prove a fact is chiefly, if not entirely, within his control, the burden rests on him to produce the evidence, although he is obliged to go no further than necessity requires."

Corpus Juris also states, title "Evidence," page 115, Sec. 56:

> "Failure of a party to call an available witness possessing peculiar knowledge concerning facts essential to a party's case, direct or rebutting, or to examine such witness as to the facts covered by his special knowledge, especially if the witness would naturally be favorable to the party's contention, relying instead upon the evidence of witnesses less familiar with the matter, *gives rise to an inference that the testimony of such unterrogated witness would not sustain the contention of the party.*"

In *United States, ex rel. Vajtauer* v. *Commr. of Immigration,* 273 U. S. 103, 71 L. Ed. 561, at page 565, Mr. Justice Stone, delivering the opinion for the Supreme Court of the United States, said:

> " 'Conduct which forms a basis for inference is evidence. Silence is often evidence of the most persuasive character.' United States, *ex rel.* Bilokumsky *v.* Tod, 263 U. S. 149, 153, 154, 68 L. Ed. 221, 223, 224, 44 Sup. Ct. Rep. 54. Appellant as a witness was

> called upon to testify whether he was the author of the pamphlet and the Chicago speech, facts within his knowledge. If the author, he was in a position to challenge or explain a way if possible any unfavorable inference which might be drawn from the passages read into the record. His silence without explanation other than that he would not testify until the entire evidence was presented, was in itself evidence that he was the author. In addition, it fortified the inferences drawn from the pamphlet and speech by the immigration authorities."

In *United States, ex rel. Bilokumsky* v. *Tod,* 263 U. S. 149, 150, 68 L. Ed., at page 224, Mr. Justice Brandeis, delivering the opinion for the Supreme Court said:

> "Conduct which forms a basis for inference is evidence. Silence is often evidence of the most persuasive character."

In *Runkle* v. *Burnham,* 53 U. S. 217, 38 L. Ed. 694, Mr. Justice Fuller delivering the opinion of the Supreme Court of the United States said (at p. 697):

> "If the new power of attorney was sent, and revoked the one relied on here, Runkle or his attorney could have dispelled all doubt by offering it in evidence, or by testifying as to its contents. Their silence must necessarily make against them on the question of revocation. Mansfield, J., in Roe *v.* Harvey, 4 Burr. 2487. The doctrine that the production of weaker evidence, when stronger might have been produced, lays the producer open to the suspicion that the stronger evidence would have been to his prejudice was expressly adopted in the case of Clifton *v.* United States, 4 How. 242."

In *Kirby* v. *Tallmadge,* 160 U. S. 379, 40 L. Ed. 463, at page 465, Mr. Justice Brown, delivering

the opinion for the Supreme Court of the United States, said:

> "While he avers in his answer, and Miller admits, the payment of $3,000 in cash, defendants introduced no testimony whatever in support of their case, but relied solely upon their answers. As they had it in their power to explain the suspicious circumstances connected with the transaction, we regard their failure to do so as a proper subject of comment. 'All evidence,' said Lord Mansfield in Blatch *v.* Archer, Cowp. 63, 65, 'is to be weighed according to the proof which it was in the power of one side to have produced and in the power of the other side to have contradicted.' It would certainly have been much more satisfactory if the defendants, who must have been acquainted with all the facts and circumstances attending this somewhat singular transaction, had gone upon the stand and given their version of the facts. McDonough *v.* O'Neil, 113 Mass. 92; Com. *v.* Webster, 5 Cush. 295, 316, 52 Am. Dec. 711. It is said by Mr. Starkie, in his work on Evidence (Vol. 1, p. 54): '*The conduct of the party in omitting to produce that evidence in elucidation of the subject-matter in dispute, which is within his power and which rests peculiarly within his own knowledge, frequently affords occasion for presumptions against him, since it raises strong suspicion that such evidence, if adduced, would operate to his prejudice.*"

And see upon the subject in this State by analogy *State* v. *Gimbel,* 151 Atl. 756, 107 N. J. L. 235; *State* v. *Schlosser,* 85 N. J. L. 165.

In answer to the testimony of the auctioneer and Mahoney, complainant produced only Cooper and Jaffe, who testified that they did not *hear* the alleged conversation between *Sann* and *Kennelly,* the auctioneer. Sann, who was within their control and present at the trial, was the person best

fitted to testify as to whether that conversation took place and complainant's failure to call him "raises strong suspicion that such evidence if adduced would operate to his prejudice" and "gives rise to an inference that the testimony of such uninterrogated witness would not sustain the contention of the party."

In the court below complainant criticized defendants for not calling McDonald and others who were in the employ of the auctioneer and were present at the time of the auction. McDonald was no longer in the employ of defendant, appellant here, and was beyond its control and was as available as a witness to complainant as to defendant (pp. 99, 100). The other witnesses could only have been cumulative. Defendant-appellant might well have relied upon its knowledge that Sann, the treasurer and one-third owner of complainant and the only person who knew whether the story told by defendant-appellant was true, could not take the stand and deny it. The burden was on complainant to establish its case, not upon defendant. That defendant-appellant was right in its belief that Sann could not take the stand and deny what Kennelly had said had taken place is demonstrated by the fact that Sann did not take the stand and deny it.

It is submitted upon this branch of the case that complainant failed in its proof to support the allegations of the bill.

II.

Complainant did not come into Court with clean hands.

Complainant represented to the public, in newspaper advertisements as well as circulars, sent through the mail and distributed at the sale both

on May 19th and at the adjourned day of the sale, June 9th, that the sale was

> "A LIQUIDATION AUCTION TO CLOSE OUT THE HOLDINGS OF THE J. B. & S. REALTY COMPANY"
>
> (Exhibit C-2, Record, p. 312).

This can only mean an absolute sale without reservation.

Kennelly (p. 91) testified that complainant's officers had said that: they wanted to sell their property and close it out; they had tried to do so at private sale but had been unsuccessful (Jaffe testimony, pp. 200-201); their mortgages (p. 92) were becoming due and they wanted to dispose of the property (Jaffe testimony, pp. 200-201-202); they suggested the word "Liquidation" (p. 95).

Jaffe (p. 200) said that, when this property was sold, complainant would be completely out of that section. That complainant's representatives saw this advertisement for the sale and approved of it appears from the testimony of Jaffe, the president, on pages 209-210:

> "Q. You thought the advertisement was all right, did you not? A. Yes, sir."

The sale was continued until June 9th and was re-advertised in the same manner, for which advertisement complainant paid, and made no objection to it (Jaffe, p. 210).

Mr. Cooper, complainant's attorney, saw the advertisement prior to the sale (pp. 36 and 55) and he did not object to its form:

> P. 56: "Q. Did you object to the form of the advertisement? A. I did not.
>
> Q. Did you at any time up to the sale object to the form of the advertisement? A. No.
>
> Q. Did you object to the representations held out by that advertisement? A. No, I did not. * * *

Q. You never made any objections on behalf of your clients? A. No, I did not."

Complainant now contends that the sale was not a "liquidation" sale to close out the holdings of the company, but *was* a sale at which they reserved the right to withdraw the property if the prices were not satisfactory. *That they appreciated that this was a fraud upon the public and were satisfied to deceive the bidders,* is the only inference that can be drawn from the answers of Mr. Cooper, complainant's attorney, and Jaffe, the President, on cross-examination, as follows:

Cooper:

P. 57: "Q. Was there anything in the advertisement that you objected to? A. I didn't object to it; of course not.

Q. Now, coming up to the time of the sale, did you make any objection to Mr. Kennelly or anyone as to the representations that they had made in the advertising? A. No, sir; I did not.

Q. Or what they conveyed to the public? A. No, sir, I did not."

* * * * * *

P. 64: "Q. As a lawyer, you are very attentive to your client's interest? A. I try to be."

* * * * * *

Page 64:

"Q. You had represented to the public that this was a liquidation sale. A. I had not represented anything.

By the Court:

Q. Weren't you familiar with it? A. I saw the advertisement.

Q. You did not object? A. I didn't object, no."

Page 74:

"Q. At the sale, did you ask the Kennelly Company, or any of his men, to announce that this was a liquidation sale, or not a liquidation sale? A. I didn't ask them to announce anything.

Q. You didn't? A. No, sir."

Page 58, line 8:

"Q. Don't you know that your clients agreed to pay at least four men to sit in the tents and bid the property up until they got a certain price? A. I didn't know anything about that. Kennelly had his own cappers. They all do.

Q. *You know that?* A. *I have heard it.*

Q. *Did you object to it?* A. *I did not.*

Q. *Why?* A. *I just didn't.*

By the Court:

Q. Why didn't you object to it—this forcing others to bid? A. I didn't understand that was customary at auction sales.

By Mr. Townsend:

Q. You thought that it was entirely proper? A. I don't know whether it was proper or not; I didn't object to it."

By Mr. Townsend (p. 64):

"Q. You had represented to the public that this was a liquidation sale? A. I hadn't represented anything.

Q. Weren't you famiilar with it? A. I saw the advertisement.

By the Court:

Q. Weren't you familiar with it? A. I saw the advertisement.

By Mr. Townsend:

Q. You didn't object? A. I didn't object, no.

Q. Did you think it was a liquidation sale? A. *I didn't think anything of the kind; I knew it was an auction sale, and knew it was to be sold.''*

Jaffe (p. 81) says that he conducted the negotiation with Kennelly about advertising, and asked him if it would be in the newspapers, and that he saw the ad which was the same as Exhibit C-2.

''Q. Were you sincere in your advertising to the public; that this was a liquidation sale to close out your holdings? A. We never talked to the auctioneer about the advertising.

Q. WERE YOU SINCERE IN YOUR ADVERTISING TO THE PUBLIC? A. NO, NOT THE LIQUIDATION SALE.

Q. You saw the advertising before the sale? A. I saw a lot of advertising, *but I never objected to it.''*

* * * * * *

''Q. *Was this a liquidation sale?* A. *It was not a liquidation sale.*

Q. *Did you object to it?* A. *No, sir.''*

* * * * * *

''Q. You were perfectly willing to stand and let the people believe that; is that right? A. I meant good.

Q. You meant good? A. Yes, sir.

Q. And this representation to close out the holdings of the J. B. & S. Realty Corporation wasn't true, was it? * * * A. It wasn't to sell out the corporation; no.

Q. *'To close out the holdings';* that wasn't true? A. *No, sir.*

Q. And I suppose you took the same position about that as you did about the representation as to the liquidation sale; is that right? A. *I didn't mean to have a liquidation sale.*

Q. *You didn't say or do anything about that, did you?* A. *No, sir.''*

Whether this advertisement was inserted after approval by complainant or not is quite immaterial for complainant thereafter approved it and by its silence ratified it.

> "In the United States, it is clear, both upon principle and the weight of the authorities, that, where the sale is advertised or stated to be without reserve, there is implied guaranty that the property is to be sold to the highest bidder, and each bidder has a right to assume that all previous bids are genuine and the seller in substance so assures him. * * *"
>
> 6 *Corpus Juris,* page 839, title "Auction," Sec. 34.

Complainant is estopped, we submit, from denying that this was a liquidation sale to close out its holdings.

If it was a liquidation sale, then complainant had no right to have dummy bidders. If Sann's bids were dummy bids, then his actions were illegal and a fraud upon the public.

If we assume for the purpose of argument that it was not a liquidation sale to close out the holdings, then the advertisement and the action of complainant in having dummy bidders was a deliberate fraud of which it now seeks to take adventage.

Complainant comes in with unclean hands and can have no relief:

> *Gluck* v. *Rynda Development Co.,* 99 N. J. E. 788, at page 797;
> *Vulcan Detinning Co.* v. *American Can Co.,* 70 N. J. E. 588;
> *Pendleton* v. *Gondolf,* 85 N. J. E. 308;
> *Prindiville* v. *Johnson,* 93 N. J. E. 425;
> *Clickner* v. *Clickner,* 95 N. J. E. 479;

Pfender v. *Pfender,* 104 N. J. E. 107, affirmed 105 N. J. E. 247;
American Plaster Drill Co. v. *Francisco,* 108 N. J. E. 323.

The general rule is stated in 21 *Corpus Juris,* title "Equity," Sec. 163, at page 182, and, with reference to the maxim that he who comes into equity must come with clean hands, the author says:

> "This maxim expresses rather a principle of inaction than one of action. It means that equity refuses to lend its aid in any manner to one seeking its active interposition, who has been guilty of unlawful or inequitable conduct in the matter with relation to which he seeks relief."

And in Section 165 (p. 184) it is stated:

> "Any wilful act in regard to the matter in litigation, which would be condemned and pronounced wrongful by honest and fair-minded men will be sufficient to make the hands of the applicant unclean."

And Pomeroy says, Sec. 397, 4th Edition:

> "On the other hand, the maxim now under consideration, he who comes into equity must come with clean hands, is much more efficient and restrictive in its operation. It assumes that the suitor asking the aid of a court of equity has himself been guilty of conduct in violation of the fundamental conceptions of equity jurisprudence, and therefore refuses him *all* recognition and relief with reference to the subject matter of transaction in question. It says that whenever a party, who, as *actor,* seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him *in*

limine; the court will refuse to interfere on his behalf, to acknowledge his right, or to afford him any remedy.''

Conclusion.

It is respectfully submitted that the decree below should be reversed and the record remitted to the Court of Chancery with directions to dismiss the bill of complaint.

Respectfully submitted,

MARK TOWNSEND,
MERRITT LANE,
Of Counsel for Appellant.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.
(2500)

New Jersey Court of Errors and Appeals

J. B. & S. Realty Corporation,
Complainant-Respondent,

and

William Kennelly, Inc., and
Charles B. Ross,
Defendants-Appellants,

and

Nicholas F. Mahoney,
Defendant.

On Bill, &c.
On Appeal from Chancery.
Sat Below: Lewis, V. C.
Appeal of Defendant, Charles B. Ross.

BRIEF FOR DEFENDANT-APPELLANT, CHARLES B. ROSS.

Statement of Facts.

The defendant, Charles B. Ross, is a *bona fide* purchaser for a consideration of $10,000 of certain contracts for the purchase of forty-two lots sold at auction on June 9th, 1928, by the defendant, William Kennelly, Inc., as agent for the complainant, J. B. & S. Realty Corporation, to the defendant, Nicholas F. Mahoney.

The auction sale was originally advertised and fixed for May 19th, 1928, but due to inclement weather, it was adjourned until June 9th, 1928. The printed advertisements and contracts and terms of sale all had been printed for use on May

19th, 1928, which date was incorporated in said documents. The said contracts of sale were used on the adjourned date, June 9th, 1928, and all dates mentioned in such contracts were correspondingly altered, to wit: the date of sale from May 19th, 1928, to June 9th, 1928; payment of twenty per cent. of purchase price from June 19th, 1928, to July 9th, 1928; closing of title from June 19th, 1928, to July 9th, 1928; that such alterations were written in at the time of the sale. The contracts for the forty-two lots assigned by Mahoney to Ross were altered in accordance with the foregoing changes, except in some instances, through inadvertence, they were omitted (Complainant's Exhibits, pp. 328-332-335-337-340). Complainant's Exhibit C-6-1F, pages 343 to 347, does not contain the change in date, but said contract was performed by the complainant and deed delivered to the purchaser, Henry A. Schlitt.

The said contracts were purchased by the defendant Ross from the said Mahoney on June 15th, 1928. Prior to the purchase by Ross of the said contracts, he attempted to communicate with Harry Cooper, the attorney for the complainant (p. 303), but not finding him in, he called William Kennelly, the agent of the complainant, in order to ascertain the validity of the said contracts. He was advised that the contracts were valid and subsisting. In reliance thereon, the said Ross took an assignment of said contracts from Mahoney for the consideration of $10,000 (p. 303). The said Ross thereupon notified the J. B. & S. Realty Corporation of the assignment, and thereafter, in accordance with the terms of the said contracts, appeared at the office of Harry Cooper, No. 1 Exchange Place, Jersey City, New Jersey, which are also the offices of Heyman & Heyman, solicitors of com-

plainant in this suit, in order to tender performance on his part of the contracts for the purchase of the said forty-two lots (p. 304). The complainant, by its officers and solicitors, Messrs. Heyman & Heyman, at that time refused to perform the contract and refused to deliver title to the said lots covered by the said contracts, although the defendant, Ross, duly and in good faith, tendered to complainant the performance in accordance with the terms thereof.

Thereafter, the complainant, J. B. & S. Realty Corporation, brought the instant suit in an attempt to rescind some of the contracts entered into by itself through its agent, William Kennelly, Inc., with certain purchasers. One of these purchasers, Mrs. Thornley, who was also refused performance of her contract, brought suit for specific performance and that suit, tried simultaneously with this suit, resulted in a decree by the Court of Chancery in her favor for specific performance of her contract for the lots which she had bid in at the sale. The complainant thereupon delivered to the said Mrs. Thornley its deed for the three lots in which the said Mrs. Thornley was interested, pursuant to the decree made by the Court of Chancery in the suit instituted by the said Mrs. Thornley against the J. B. & S. Realty Corporation. The Thornley sale was referred to in the bill of complaint (p. 13).

The defendant, Ross, in his answer, denied any knowledge of the statements contained in the bill, excepting those which specifically referred to him, and he further denied that he had any knowledge of any fraud or that he had been guilty of any conspiracy and by his counterclaim he charged that he was a *bona fide* purchaser from the complainant, through assignment from Mahoney, of

his rights in the contract made with the defendant Kennelly as agent for the complainant, and he prayed for specific performance thereof.

The case was heard before Vice-Chancellor LEWIS, who delivered an opinion (p. 556) in which he held that the contentions of the complainant were sustained by the evidence and that there was no valid sale of the forty-two lots to Mahoney and that the documents purporting to be the contracts were null and void, and dismissing the counter-claim of Ross and taxing costs against all of the defendants, including a counsel fee of $750. From that decree both defendants, Kennelly and Ross, appealed (Ross' Notice of Appeal, p. 6; Ross' Petition of Appeal, p. 7).

The Issues Involved.

Out of the large volume of testimony taken at the hearing and subsequently adjourned hearings in this cause the issues seem to resolve themselves into three main problems, as follows:

1. Has the complainant sustained its burden of proof to show a fraud and conspiracy between William Kennelly, Inc., Nicholas F. Mahoney and Charles B. Ross, as charged in its bill of complaint (pp. 14 and 15);

2. Does the complainant come into the Court with clean hands; and

3. With reference to the defendant Ross, is the complainant estopped to deny the validity of the contracts purchased by the defendant Ross for the forty-two lots in question?

We shall deal with these problems in the order named.

ARGUMENT.

POINT I.

The complainant has not sustained the burden of proof as to the allegations of fraud and conspiracy contained in its bill.

It is essential to a conspiracy to defraud that there be some design and positively fraudulent artifice employed or that a fraudulent intent should exist on the part of the parties sought to be held, and that such fraud or artifice should be practiced on the party defrauded.

Revere Water Co. v. *Winthrop,* 192 Mass. 455;
Clark v. *Exchange Printing Co.,* 128 N. Y. 721;
Fox v. *Mackay,* 123 Calif. 582;
12 Corpus Juris, 586, Sec. 107.

It is submitted that in the instant case there is not an iota of testimony in proof of the allegations contained in paragraphs 14 and 15 of the complaint herein to the effect that Charles B. Ross was a party to a conspiracy between Mahoney and Kennelly. Nor is there, it is submitted, any credible testimony from which the Court may infer such conspiracy between William Kennelly, Inc., and Nicholas Mahoney. The complainant's case seems to be a very weak and incomplete one. The testimony, given the best construction possible for the complainant, falls far short of proof which the court of equity requires in a case such as this.

The charge of a fraud such as the bill of complaint sets forth is indeed a serious one and the burden is upon the complainant to show by a clear

and convincing preponderance of the evidence, *not only that a fraud and conspiracy existed,* but that in pursuance of such fraud and conspiracy, the *defendant did actually act* to the damage of the complainant. There is nothing in the testimony to indicate that Mahoney had any cause for a fraudulent intent nor is there any credible testimony from which it should be inferred that William Kennelly had any fraudulent intent.

It is insignificant in this respect to note that the evidence reveals the fact that Mahoney was not personally acquainted with William Kennelly or his agents (pp. 255, 256 and 257) prior to the auction sale mentioned hereinabove, and also that Charles B. Ross was personally acquainted with *neither* William Kennelly nor Nicholas Mahoney prior to the time he purchased the said contracts (p. 302). Certainly, the mere fact that the auctioneer would receive greater commissions from a larger number of sales, an arrangement which is practically universally true in auctions, is no reason for impugning to said William Kennelly a fraudulent intent.

The great problem which the Court has in the instant case is to penetrate beyond the mere words, of the various witnesses and parties to the action, to the pithy substance of the facts; or, in other words, decide which of the witnesses is telling the truth and which of them is permitting his imagination to distort the facts.

With respect to this problem, it is respectfully submitted that the Court, sitting as it has, to hear the various witnesses testify, should undoubtedly, not only by its own long and extensive training along these lines, but also by virtue of the ease with which the truth may be found in the instant case, have little difficulty in ascertaining the correct facts. It becomes, therefore, a question of

credibility, a weighing of the testimony of one witness or party as against that of another; a weighing of the possibility and probability for carelessness with the truth in the interest of self-enrichment as against a strict adherence to the truth, whatever be the outcome. The Court is, consequently, the judge as to whether Mr. Kennelly, a man of excellent standing and high reputation, not only in the business in which he is engaged, but also in society at large, would prejudice such reputation to secure a comparatively small amount of money; whether such type of man would stoop to an undignified contrivance of conspiracy to deprive certain people of their rights for the sake of a comparatively few dollars.

Let us consider the stories of the complainant and defendants with reference to an ascertainment as to which of them seems the more probable and which is the more improbable.

The story of the complainant boils down to a charge unsupported by any actual testimony. If the Court did find that there was fraud or conspiracy on the parts of Kennelly and Mahoney, that conclusion must have been arrived at wholly and solely by inference from circumstances and had no foundation in actual, positive, credible testimony. The complainant asked this Court to give credence to a story which seems to be the following: Prior to the time of the sale, the complainant entered into an agreement with the defendant, Kennelly, for the defendant to conduct an auction sale in order to sell certain lands and premises owned by the complainant in Englewood, N. J. Under the agreement between those parties, Kennelly was to receive $2,500 for a very wide and extensively-circulated advertisement of the lots in question. Kennelly was to receive a further sum of $2,500.00 for advertising expenses if $50,000.00

or more in actual *bona fide* sales were made, and if less than that amount of sales were made, then Kennelly was to receive a sum of 5% of the total amount of sales for advertising expenses. If $50,000.00 worth of lots or more were sold, then Kennelly was to receive a sum equal to 5% of the total sales as commission. That prior to the date of the sale the defendant, William Kennelly, contrived with Mahoney and Ross to bid in the property on false bids, in order that the requisite amount, to wit: $50,000.00, be arrived at. That pursuant to such arrangement the said Mahoney did bid in the property and the sales consequently totaled more than $50,000.00. In support of this story, the burden of proof of which is on the complainant, absolutely no credible testimony directly in support of this proposition was adduced. The only testimony which was offered was the fact that the auctioneer would have made a commission if the full amount were sold, and that he did, therefore, try his best to sell $50,000.00 or more worth of property.

Omit

In addition to that, complainant attempted to show a conspiracy by testimony of complainant's attorney, Harry Cooper, who was present at the sale, to the effect that he did not hear the forty-two lots in question offered for sale by Kennelly a second time. Such testimony is, of course, negative, even accepting the statement of this attorney, who is in the nature of a party in interest to this suit. The mere fact that one does not hear or see certain things happen is absolutely no testimony to the effect that they did not happen. This Court is interested in determining whether or not certain things did occur and what did occur can be established positively and not negatively. What did occur was established by the testimony of the de-

fendants, and this testimony was corroborated as to every material fact.

What actually did take place was that Sann, one of the triumvirate who conducted business in the corporate form as the J. B. & S. Realty Company, without any intimation to his other two partners, having received information from authentic sources to the effect that Jones Road, on which many of the forty-two lots in question faced, would be improved as one of the main arteries to the Hudson River Bridge, thought it a very wise move to secure for himself certain of these valuable lots. He therefore bid against the public on these lots and these lots were struck down to him at a price averaging $900.00 per lot. That Sann's bid was *bona fide* was evidenced by the fact that on completing his bids, he walked up immediately to the auctioneer, signed contracts for certain of the lots and gave deposits on part of these lots (p. ~~88~~). 97-98.
There was in evidence the following in corroboration of the purchases by Sann:

A check drawn on the Corn Exchange Bank, 42nd St. Branch, to the order of William Kennelly, Inc., and signed by Samuel Sann (p. 426); a contract for the purchase of three of the lots at $900.00 each, which contract is signed by Sann as the purchaser and Kennelly as agent for the owner; another contract of purchase for six lots at $875.00 a lot, signed by Samuel Sann as purchaser and William Kennelly, Inc., as agent for the owner (p. 434); another contract of purchase for six lots, $1,000.00 each, signed by Samuel Sann as purchaser and William Kennelly as agent for the owner, together with check in the sum of $750.00 duly filled out but not signed by Sann (p. 435); another contract of purchase for three lots, together with check drawn on the Corn Exchange Bank, 42nd Street Branch, to the order of William

Kennelly, Inc., in the sum of $690.00, and signed by Samuel Sann (p. 439).

In all, Sann signed contracts for over half of the forty-two lots, to wit, 24 lots, and gave checks as deposits for a large part of them. Sann, however, on being presented with the balance of the contracts which had been drawn for that property which he had bid in for himself, realizing that he had stepped beyond his means, entreated the auctioneer who was still on the block "to get him out of it" (p. 98), whereupon the auctioneer announced that they would resell some forty-two lots and described those lots. He received an initial bid on those lots averaging $900.00 per lot. Someone else thereupon bid $950.00. Mahoney then bid $1,000.00, and there being no higher bids, the lots were struck down to Mahoney for an average of $1,000.00 per lot (p. 98). It must be noted that this bid of $1,000.00 per lot, on the average, was $100.00 greater than the price for which they had previously been struck down to Sann, bidding personally. That Sann was bidding *bona fidely* and for himself is clearly illustrated by the fact that he actually signed contracts of purchase and drew checks in payment on a large part of the said contracts. It is also further corroborated by the testimony of the complainant's own witness, Mr. Cooper, who testified that if there were to be any puffers, the same were to be supplied by the auctioneer, and that there were actually four men present to boost the sales, at the request of the complainant. Mr. Cooper further testified that Sann did not at any time at the sale or prior thereto or after it say anything to him or to anyone else of the fact that he did bid for the company at the time of the sale (p. 67).

Possibly the most significant thing in the many days spent in taking testimony in this case is the

failure of Sann, the key man to the situation involving the forty-two lots in question, and certainly the man who could, if anyone could, enlighten the Court as to precisely what had happened on the day of the sale with reference to those lots. He, Sann, did not take the stand to testify or deny that he had said to Kennelly, "Get me out of it," meaning the purchases he had made.

Under the circumstances in this case, it is respectfully submitted that in the absence of any denial by Sann, who was present and could have denied it, the testimony of Kennelly to the effect that Sann had absolutely and unqualifiedly bid in those lots in question stands unimpeached as does his statement with reference to the resale at Sann's request, which resale resulted in the purchase by Mahoney of the lots in question, for which, as appears by the contracts in evidence, he duly signed contracts therefor and paid the necessary deposits thereon.

That certain of these lots in question were struck down to Sann and that he actually signed contracts and made payments as deposits therefor, clearly indicate that the complainant, the J. B. & S. Realty Corporation, was perfectly willing and satisfied to sell those lots at prices averaging $900.00 per lot, and since it receives under the contracts signed by Mahoney prices averaging $1,000.00 per lot, it certainly should not be in a position to complain.

* * * * * * * *

By reason therefore of the failure on the part of the complainant to substantiate by testimony the allegations in the bill of complaint and by reason of its failure to produce credible testimony to which the complainant had access, and by reason of the corroboration of the defense, which is found throughout the very testimony of the complainant,

it is respectfully submitted that the complainant had utterly failed to prove a case showing fraud or conspiracy on the part of the defendants and showing facts which entitled it to relief in this Court.

The testimony of Mr. Cooper, which in many respects unwittingly corroborated many of the material facts of the defense, the failure to produce Sann, probably *the* most important witness who might be produced in this case, which failure undoubtedly caused a presumption to arise that his testimony would be damaging to the complainant if he told the truth, and the further failure on the part of the complainant to produce any testimony in support of its contention, should clearly entitle the defendants to a reversal of the decree entered in this suit for these reasons if for no other.

We also wish to include herein, as if set forth at length, the statements contained in Point I of the brief filed herein for the defendant-appellant, William Kennelly, Inc.

POINT II.

Complainant did not come into court with clean hands.

In its advertising matter, including its circulars, sent by mail to various prospects and the public at large, which advertising matter was sent out prior to May 19th, 1928, and thereafter to the adjourned date, June 9th, 1928, the complainant represented to the public that the sale was a "liquidation auction to close out the holdings of the J. B. & S. Realty Corporation" (Exhibit C-2, p. 312).

There can be one interpretation drawn from such statement and that is that J. B. & S. Realty

Corporation was to conduct an absolute sale without any reservations whatsoever.

The complainant's officers had informed Kennelly that they had desired to sell out all of the property (p. 91) and the testimony also shows that they had tried to do so at private sale but unsuccessfully (pp. 200 and 201). The mortgages had become, or were becoming, due and an immediate disposal of the property was extremely desirable (pp. 200 to 202), and thereupon advertising containing the word "liquidation" was prepared by the attorneys for the complainant and submitted to the defendant Kennelly (p. 95).

It is contended for the defendants that the advertisements for the sale were examined and approved by the J. B. & S. Realty Corporation through its officers and attorneys. That this is correct is shown by the testimony of Jaffe (pp. 209 and 210), as follows:

> "Q. You thought the advertisement was alright, did you not? A. Yes, sir."

That the advertisements were satisfactory was also shown by the fact that the complainant paid therefor, without objection (p. 210).

That the advertisements were also endorsed as correct by the attorney for the J. B. & S. Realty Corporation is shown by the testimony of Mr. Cooper (pp. 36, 55 and 56). That he did not object to the form of the advertisement is shown by his testimony (p. 56), as follows:

> "Q. Did you object to the form of the advertisement? A. I did not.
>
> "Q. Did you, at any time up to the sale, object to the form of the advertisement? A. No.
>
> "Q. Did you object to the representations held out by that advertisement? A. I did not.

"Q. Now, coming up to the time of the sale, did you make any objection to Mr. Kennelly, or anyone, as to the representations they had made in the advertising? A. No, sir, I did not.

"Q. Or what they had made to the public? A. No, sir, I did not."

It is now contended by the complainant that the sale, rather than a liquidation sale closing out the holdings of the corporation, was a sale at which they had the right to withdraw the property if they did not secure prices which they believed satisfactory. This, of course, being unknown to the public at large, was a fraud upon it and that the complainant knowingly perpetrated this fraud to deceive the bidders is the only possible conclusion that can be drawn from the following testimony of Mr. Cooper, the complainant's attorney, and Jaffe, the President of the corporation. Cooper's (p. 57):

"Q. Was there anything in the advertisement that you objected to? A. I didn't object to it; of course not.

"Q. Now, coming up to the time of the sale, did you make any objection to Mr. Kennelly, or anyone, as to the representations they had made in the advertising? A. No, sir, I did not.

"Q. Or what they had made to the public? A. No, sir, I did not. * * *

"Q. They were all there? A. Only two of them.

"Q. Mr. Sann and Mr. Jaffe? A. Yes, sir.

"Q. But you didn't hear anybody make any objection to it? A. No, I didn't hear anybody make any objections to it" (p. 74).

"Q. At the sale did you ask William Kennelly, or any of his men to announce that this was not a liquidation sale? A. I did not ask them to announce anything" (p. 58).

"Q. Don't you know that your clients agreed to pay at least four men to sit in the tents and bid the property up until they got a certain price? A. I don't know anything about that; Kennelly has his own cappers; they all do.

"Q. You know that? A. I have heard it.

"Q. Did you object to it? A. I did not.

"Q. Why? A. I just didn't.

"Q. You thought that it was entirely proper? A. I don't know whether it was proper or not; I didn't object to it.

"Q. How did you find it out? A. They told me.

"By the Court:

"Q. Why didn't you object to it; this forcing others to bid? A. I didn't understand; that was customary at auction sales" (p. 64).

"Q. You had represented to the public that this was a liquidation sale? A. I hadn't represented anything.

"Q. Weren't you familiar with it? A. I saw the advertisement.

"Q. You didn't object? A. I didn't object, no.

"Q. *Did you think it was a liquidation sale?* A. *I didn't think anything of the kind; I knew it was an auction sale and knew it was to be sold.*"

The testimony of Jaffe (p. 81) further indicates the intent of the complainant to deceive the public:

"Q. Were you sincere in your advertising to the public that this was a liquidation sale to close out your holdings? A. We never talked to the auctioneer about the advertising.

"Q. Were you sincere in your advertising to the public? A. No, not the liquidation sales.

"Q. You saw the advertising before the sale? A. I saw a lot of advertising, but I never objected to it.

"Q. Did you ever complain to Mr. Kennelly about the use of the word 'liquidation'? A. No, sir" (p. 82).

"Q. *Was this a liquidation sale?* A. *It was not.*

"Q. Did you object to it? A. No, sir.

"Q. Did you ask Mr. Kennelly to make an announcement? A. No, sir.

"Q. Why didn't you ask him to get up and tell the people there that this was not a liquidation sale? A. I didn't think it was necessary to say that.

"Q. You were perfectly willing to stand there and let the public believe that; is that right? A. I meant good.

"Q. And this representation 'to close out the holdings of the J. B. & S. Realty Corporation' wasn't true, was it? * * * A. It wasn't to sell out the corporation; no.

"Q. 'To close out the holdings'; that wasn't true? A. No, sir.

"Q. And I suppose you took the same position about that as you did about the representation of the liquidation sale; is that right? A. I didn't mean to have a liquidation sale."

That the complainant is held accountable for the advertisements of its agent, William Kennelly, Inc., is clearly established, for whether or not they authorized it is immaterial since the complainant thereafter approved it, paid for it and by its silence ratified it.

6 Corpus Juris, page 839, is authority for the proposition that in this country "it is clear, both upon principle and the weight of the authorities that where the sale is advertised or stated to be without reserve, there is an implied guarantee that the property is to be sold to the highest bidder, and each bidder has a right to assume that all previous bids are genuine and the seller, in substance, so assures him."

Under these facts and by virtue of this law, complainant, it is respectfully submitted, should not at this time be permitted to deny that this was a liquidation sale to close out its holdings. If it was a liquidation sale, then complainant had no right whatsoever to employ false bidders. If Sann's bids were false bids, his actions in behalf of the corporation were unlawful and a fraud upon the public at large.

On the other hand, if it is to be assumed that this was not a liquidation sale to close out the holdings of the corporation, then the advertisements and the actions of the complainant or its officers and agents in securing false bidders to bid against the public, was a preconceived fraud and deception of which it now seeks to secure unto itself a benefit.

Since, therefore, complainant has come into court with unclean hands, it can have no relief.

American Plaster Drill Co. v. *Francisco,* 108 N. J. E. 323;
Pfender v. *Pfender,* 104 N. J. E. 107, affirmed 105 N. J. E. 247;
Clickner v. *Clickner,* 95 N. J. E. 479;
Prindiville v. *Johnson,* 93 N. J. E. 425;
Pendleton v. *Gondolf,* 85 N. J. E. 308;
Vulcan Detinning Co. v. *American Can Co.,* 70 N. J. E. 588;
Gluck v. *Rynda Development Co.,* 99 N. J. E. 788, at page 797.

It is a maxim well regarded in this court of equity, that he who comes into equity must come with clean hands.

21 Corpus Juris, page 182.

It is further stated by the same authority (p. 184) that "any wilful act in regard to the matter in

litigation which would be condemned and pronounced wrongful by honest and fair-minded men, will be sufficient to make the hands of the applicant unclean."

It is therefore respectfully submitted, that by reason of the fact that complainant comes into this Court with unclean hands, he is not entitled to relief and the decree below should therefore be reversed and the record remitted to the Court of Chancery.

POINT III.

The complainant is estopped to deny the agency of William Kennelly, Inc., and the validity of the contracts purchased by the defendant Ross for a valuable consideration.

It is now, finally, respectfully submitted, in behalf of the defendant, Charles B. Ross, who paid $10,000.00 in cash in consideration of the assignment to him of the contracts for the forty-two lots in question, that whatever may be the situation as between the J. B. & S. Realty Corporation and its auctioneer agent, William Kennelly, Inc., the defendant, Charles B. Ross, is not to be prejudiced thereby.

This defendant purchased from a purchaser at the auction sale the contracts for the forty-two lots in question. He paid for these contracts $10,0000.00 (p. 305). This money was paid only after the defendant Ross had made due inquiry; first, by attempting to interview the attorney for the J. B. & S. Realty Corporation, Mr. Cooper, and on finding Mr. Cooper unavailable, inquiring of William Kennelly, Inc., who, on all of the adver-

tisements and notices of sale, was held out as the duly authorized auctioneer and agent of the complainant. And, only on being advised by the said Kennelly that the contracts were valid and subsisting, entered into the agreement for the purchase of the contracts for the lots in question.

Certainly, whatever be the facts and circumstances as between the corporation and its agent, it cannot be held against this defendant, Charles B. Ross, the complainant having held out William Kennelly, Inc., as its duly authorized agent and having led this defendant, Charles B. Ross, to rely thereon, and in reliance thereon to expend the sum of $10,000.00 in consideration of the assignment of the said contracts to himself. Complainant should not, at this time, to the extreme prejudice of the defendant, Charles B. Ross, be permitted to set up any facts controverting the agency or the validity of the contracts in question, but should, in all equity and good conscience, at this time be estopped therefrom.

It is therefore respectfully submitted, that the decree below should be reversed and be remitted to the Court of Chancery with instructions to dismiss the bill of complaint herein and grant the prayer of the defendant, Charles B. Ross, in his counterclaim thereto.

CONCLUSION.

It is now, therefore, in conclusion, respectfully submitted and urged that inasmuch as the complainant has failed (a) to sustain its burden of proof to show fraud and conspiracy on the part of the defendant as alleged in the bill of complaint; (b) since the complainant has come into the Court of Chancery with unclean hands; and (c) since whatever be the situation as between the complainant and the defendant, William Kennelly, its agent, it is estopped from setting up the lack of agency or the invalidity of the contracts in question, **the decree made by the Court of Chancery should be reversed and the record remitted to the Court with directions to dismiss the bill of complaint and grant the prayer of the defendant, Charles B. Ross, for specific performance, as prayed in his counterclaim thereto.**

Respectfully submitted,

HOLLANDER & LEICHTER,
Solicitors for and of Counsel with Defendant-Appellant, Charles B. Ross.

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New Jersey Court of Errors and Appeals

OCTOBER TERM, 1932—CASE NO. 49.

Between

J. B. & S. REALTY CORPORATION, a corporation of the State of New Jersey,
Complainant-Respondent,

and

WILLIAM KENNELLY, INC., NICHOLAS F. MAHONEY and CHARLES B. ROSS,
Defendants-Appellants.

On Appeal from Chancery of New Jersey.

BRIEF FOR COMPLAINANT-RESPONDENT.

Statement of Facts.

On January 24, 1928, the complainant entered into a contract with William Kennelly, Inc. (Testimony p. 36; Exhibit C-1, p. 310), wherein and whereby it engaged said William Kennelly, Inc. to sell at public auction 74 lots in Englewood, New Jersey, as per diagram submitted, upon the following terms:

"* * * * * *

"Cash 10% on the date of sale—20% in cash in 30 days and 70% on mortgage 1, 2 or 3 years at 6%.

"5% discount for all cash in 30 days."

and agreed to pay said Kennelly for advertising, a sum not to exceed $5,000, payable $1,000 on the 16th day of April and $1,500 ten days before the day of sale.

The contract further provided as follows:

> "*If the bids be unsatisfactory to us* (*J. B. & S. Realty Corporation*), we reserve the right to withdraw the property from the sale and in such an event no commission is to be paid. If $50,000.00 or more in actual *bona fide* sales are made, then the said J. B. & S. Realty Corporation agrees to pay to said William Kennelly, Inc., a further sum of $2500.00 as and for the advertising of the aforesaid property at auction. If less than $50,000.00 worth of property is actually sold, then the said J. B. & S. Realty Corporation agrees to pay a sum equal to 5% of the total sales so made as and for advertising expense of said sale, and in the event that less than $50,000.00 worth of property is sold, no commission is to be paid to said William Kennelly, Inc., for the effecting or making sale of any of said property. If $50,000.00 or more is sold, then the said J. B. & S. Realty Corporation agrees to pay in addition to the said $2500.00 additional advertising expense, a sum equal to 5% of the total actual *bona fide* sales."

The contract further provided that the attorney for the seller should furnish the terms of sale.

The terms of sale were furnished by the attorney for the seller and provided, among other things, as follows:

> "The Seller agrees to sell and convey, and the Purchaser agrees to purchase, upon the following terms and conditions:
>
> "The purchaser will be required at the time and place of sale to sign a memorandum of purchase and to pay therefor on the following basis:

"Ten (10%) per cent of the purchase price in cash at time and place of sale for which the receipt of the auctioneer as agent for the seller will be given. The purchaser likewise will be required to pay to the auctioneer in addition thereto the auctioneer's fee of Twenty-five ($25.00) Dollars for each lot sold.

"Twenty (20%) per cent of the purchase price in cash on June 19, 1928, at 12:00 noon at the office of Harry Cooper, 1 Exchange Place, Jersey City, N. J.

"Seventy (70%) per cent of the purchase price by the purchaser executing and delivering to seller bond and mortgage for a period of one, two or three years from June 19, 1928.

"Five (5%) per cent discount for all cash in 30 days.

"* * * * * *

"The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser may, *at the option of the Seller,* be sold under the same terms of sale, and the said purchaser shall be liable for any deficiency between the sum for which the property is struck down and the sum for which such property shall be sold at said resale, and also for any expense of resale" (Exhibit C-6-1A, p. 321, and all the contracts following).

The sale was originally advertised and fixed for May 19, 1928, but by reason of unfavorable weather conditions was adjourned until June 9, 1928 (Testimony p. 37).

The proofs disclose that at the sale, the auctioneer, William Kennelly, Inc. (herein called "auctioneer"), and one of the defendants-appellants in this cause, sold only 32 lots to *bona fide* purchasers (p. 43, l. 17), who thereupon duly

signed the terms and conditions of sale and paid the 10% deposit, plus the auctioneer's fees, and that after making said sale there were left unsold 42 lots (p. 48, l. 32; p. 51, ll. 13-41; p. 52, ll. 1-22).

That thereafter, on June 14, 1928, the auctioneer sent to the complainant a statement (p. 45, l. 22) of what purported to be the sales made by it on behalf of the complainant, annexed to which statement were attached certain alleged contracts for the sale of 42 lots to Nicholas F. Mahoney (Exhibit C-5, pp. 315, 316, 317, 318), which the complainant avers were not sold by said auctioneer at the public sale, and of which complainant had no knowledge. All of the contracts for the 42 lots which the complainant disputes, are on the regular printed form and conform exactly to the contracts made for the other 32 lots, *except that the time for the second payment is not changed from June 19, 1928 to July 9, 1928.* The contracts were printed upon the basis that the sale would take place on May 19, 1928, and provided that the second payment of 20% should be made on June 19, 1928. In all of the contracts which this complainant has affirmed, with only one exception, the date for the second payment is corrected in ink from June 19 to July 9, *but on all the contracts which the complainant disputes, with only one exception, the date for the second payment is not changed* (Exhibit C-6-2A, Exhibit C-6-2L, pp. 365-415).

The complainant refused to affirm the contracts for the sale of the 42 lots to said Mahoney, and on June 16, caused to be written and delivered to the auctioneer a letter repudiating such sales (Exhibits C-6-X, p. 318; Testimony p. 47, I. 3).

Nothing further occurred with reference to these 42 lots until July 9, when one Charles B. Ross applied to the complainant for a conveyance of the lots alleged to have been sold to the defend-

ant Nicholas F. Mahoney (Case p. 304, l. 12), and requested the complainant to convey the same to him (Case p. 304, l. 21).

Complainant refused to convey the title, and on July 11 filed its bill in the Court of Chancery, for a rescission of these contracts, making as parties defendant to that suit, William Kennelly, Inc., Nicholas F. Mahoney and Charles B. Ross.

The testimony shows that at the time of the sale, Harry Cooper, the attorney for the complainant, was directed to instruct the auctioneer as each bid was made, whether or not the complainant would sell the property for the amount bid, or whether the same should be withdrawn from the sale (Case p. 39, ll. 20-32; p. 40, ll. 25-40). That as the auctioneer received bids from persons in its employ, the auctioneer would advise Cooper to that effect and say that it was no sale, and that Cooper would thereupon mark his sales sheet accordingly (Case p. 40). That after the sale was completed, and the auctioneer had stepped off the block, *Cooper compared his list with the list of the auctioneer's bookkeeper Loftus, and that Exhibit C-4, page 314,* is a true and correct list of all of the sales as they were made and as they were recorded by the auctioneer's bookkeeper (Case p. 42, l. 12).

The proofs show that the defendant Mahoney had purchased 10 lots which were approved by the complainant (Case p. 48, ll. 28-31) up to the time when the sale was completed and the auctioneer had left the grounds. The contract for these ten lots are in regular form signed by Mahoney at the time of the sale, and the printed date, June 19, is corrected to July 9 throughout, exactly the same as on all the contracts which have been honored by the complainant.

The witness William S. Stuhr, a counselor-at-law of the State of New Jersey, testified that he

had spoken with Mahoney immediately after the sale, and that Mahoney had told him that he had bought 10 lots, and had pointed them out to the witness, and Mahoney offered to sell at a profit of $500, and that Mahoney and the witness and one White, had talked for about a half hour and then Mahoney left in one car and witness in another car and they met again (Testimony p. 76, ll. 30 to 40, and p. 77, ll. 1 to 14).

The witness Joseph White was called to corroborate Stuhr's testimony (p. 78, l. 30), but the Vice-Chancellor felt (p. 79, l. 13) that it was unnecessary to do that and therefore the witness was not examined at length.

The witness Jaffe, an officer of the complainant, testified that he stood with Mr. Cooper, behind the auctioneer's block, and that the auctioneer's assistant advised him when there was a legitimate bid, and asked when he should sell, and whether he would approve or disapprove (Testimony p. 80, ll. 12 to 27).

The defendant William Kennelly, Inc., produced as its first witness, William Kennelly, its president, who conducted the sale. He says that he was instructed to conduct an absolute liquidation sale (p. 94, ll. 21-25). That every lot was to be sold, and there was to be no protection (p. 94, l. 25). That thereafter the complainant desired to put prices on the lots (p. 94, l. 27), and they wanted them protected, and that he told them how they could protect them. He said that he would employ four men at $10 each to represent them, and do the bidding (p. 94, l. 30). That the upset price was fixed at $850 or $875 per lot (p. 95, l. 10). That at the sale, a Mr. Sann, one of the officers of the complainant corporation, bid for a number of lots (p. 97, l. 40). That Sann signed some contracts of sale and gave a check (p. 98, l. 9). That

after the sale, Sann came to him and asked him to get him out of the lots (p. 98, l. 20); that he did not want them and that there was an argument (p. 98, l. 25) and that the defendant Mahoney thereupon came up and offered $900 for whatever was left, including the auctioneer's fee (p. 98, l. 35), and that somebody said $950 (p. 98, l. 36), and Mahoney said $1,000 (p. 98, l. 38), and he thereupon sold the same to Mahoney at $1,000 each, which concluded the sale, and that everything was sold (p. 94, ll. 1-2). He produced in court several records and books which were in the handwriting of Mr. McDonald and Mr. Loftus, but which were not admitted in evidence (Case p. 100, l. 27). He testified that McDonald, although gone from the witness's employ, had agreed to attend the hearing and be a witness (p. 100, l. 15). On cross examination, Mr. Kennelly says that the upset price for the lots, as given to him by the complainant, was *"$875.00 average."* He could not give the price fixed for any individual lot (Case pp. 106 and 107).

His testimony is that at the first meeting with the officers of the complainant, he was instructed that this was a liquidation sale (p. 107, l. 35), to get rid of their holdings (p. 108, l. 10). That thereafter, the contract (Exhibit C-1) was made, which provided that the owner-complainant, should have the right to withdraw the property from the sale, if the bids were not satisfactory (p. 311, l. 9), and that one day before the sale, *he was surprised* (p. 111, ll. 10-20) *when the officers of the complainant called upon him and said that they had decided to reserve the right to withdraw the property, if the bids were not satisfactory,* and that then he agreed to engage four men to protect the property for them at the sale. He knew the day before the sale that the sale was not to be an

absolute liquidation sale (Case p. 113, l. 10). That he did not inform his public that the owner had reserved the right to protect its property (p. 113, l. 11). That after the sale, Sann came up to him (p. 115, l. 23) and asked him to get him out of the bid. That he thereupon announced a resale (p. 118, l. 18); that Mahoney bid $900 (p. 118, l. 32), somebody else bid $950; Mahoney bid $1,000, and that he struck off the lots to Mahoney for $1,000 (p. 118, l. 38). That Mahoney signed all of the contracts at that place, at that time, and gave his check for 10% (Case p. 120, l. 40, and p. 121, l. 11).

He testified later (p. 121, l. 38), that at the time of the sale Mahoney only gave a part of the amount required as a deposit. He testified that he did not ask McDonald to come to the hearing (p. 126, l. 38).

He testified that he sold to the four men whom he had employed for the complainant, some of the lots, and that some of those lots were thereafter resold to Mr. Mahoney (p. 129, ll. 24-28); that he did not ask for the approval of the sale to those four men because they were not *bona fide* sales. He testified that the handwriting which appeared on the printed forms of contract was his cashier's (p. 131, l. 40).

On page 157, line 28, he testifies that some of the lots which he alleged had been sold to Sann, had *really* been *sold to the owner's representatives and not to Sann.* The contracts for these lots which were produced and offered in evidence do not bear any signatures at all. He could not tell how many lots he had sold to the owner's representatives (p. 158, l. 12). He knew when he sold to these owner's representatives that they were not *bona fide* purchasers (p. 159, l. 29).

All of Kennelly's testimony regarding the sale to Sann and the resale to Mahoney, is denied by

Cooper (p. 163, l. 15); by Jaffe (p. 197, l. 20); and by Stuhr (p. 231, l. 10).

Complainant then produced Alfred Troutman, assistant cashier of The First National Bank of Fairview, New Jersey, who produced the records of that bank of the accounts of Nicholas F. Mahoney and Nicholas F. Mahoney, Inc. (p. 239, l. 20; p. 241, l. 38). These accounts, which are Exhibit H-2, page 554, and Exhibit H-3, page 555, show that on June 9, 1928, Nicholas F. Mahoney, in his individual account in that bank, had on deposit to his credit the sum of $3.84, and that Nicholas F. Mahoney, Inc., on June 9, 1928, had on deposit to its credit in said bank the sum of $51.34.

The account of Nicholas F. Mahoney, Inc., shows that there was deposited on June 11, 1928, the sum of $1,765 and on June 13, there was paid out of that account the sum of $530.25, and on June 14 there was paid out the sum of $765; also that on June 15 there was deposited the sum of $7,572.50, and on June 15 there was paid out $1,000 and on June 16 there was paid out $4,095 and on June 20 there was paid out the sum of $1,085.

According to the defendants' testimony (p. 257, l. 32) Mahoney gave $500 cash at the time of the sale, $765 by check at the time of the sale, and $1,050 on June 18, and $4,095 on June 13. This makes a total of $6,410 paid by Mahoney.

Mahoney testifies (p. 269, ll. 11 and 12, and p. 270, l. 39) that he was sitting at the center in the rear of the tent which was about three times the size of the courtroom (p. 290, l. 18) when he made his first bid of $900 for the 42 lots, and that somebody bid $950 and that he thereupon bid $1,000 (p. 270, l. 18), and that the auctioneer's man McDonald, came down to him and talked with him about the sale and about signing up (p. 272, l. 18), and that he then went forward with the auc-

tioneer's man and they prepared and signed the contracts, and that the auctioneer struck him on the back and said to McDonald, "Take care of it" (p. 273, l. 1), and that the auctioneer then walked out and said that he was going to "beat it" and he did "beat it" (p. 273, l. 11).

Mahoney testified (p. 281, l. 39) that he borrowed the money from his wife, but he did not know exactly how much (p. 282, l. 1; p. 284, ll. 11-17), and that after he had sold his contracts to Ross, he repaid his wife, and that the transaction between himself and his wife was all in cash (p. 264, l. 39). He was subpoenaed twice to produce all of his checks, papers, books, pass books and other books of record between himself and Kennelly, Inc. and between himself and Ross (p. 262, l. 35; and p. 309), but he failed to produce any papers other than the checks which are printed in the State of Case (p. 309, l. 30).

He had testified previously (p. 309, l. 31; p. 263, l. 1; p. 265, l. 34) that his books would probably show how much he had paid and how much he had received, yet he failed to produce any of his records other than the checks above mentioned.

He testified that the first three contracts which were genuine contracts were signed by him with an indelible lead pencil (p. 289, l. 20). All of the contracts which are disputed are signed with pen and ink (p. 289, l. 30). There is no way that Mr. Mahoney could explain this difference. At first he said that the salesman had handed him the pen, but then he thought it was his friend's pen or it might have been his own (p. 288, l. 31). He testified (p. 288, l. 12), that he went to Kennelly's office about June 18th and he thought it was for the purpose of telling him to put through one of the post-dated checks. He testified that he did not appear at Mr. Cooper's office on June 19th (p. 292, l. 31; p. 293, l. 22), nor did he at any time offer

to pay to the complainant the 20% additional deposit provided for in the contract (p. 293, ll. 21-26). Throughout his entire testimony he is evasive. He cannot tell a coherent story. He cannot tell any story twice the same way. He does not know (p. 261, ll. 10-40) how much he was supposed to pay for the lots which he was supposed to have bought. He does not know how much he received. He does not know how much he earned, nor how much he paid to his co-broker, Montando (p. 285, l. 1; p. 265, l. 31). He can only guess. He does not know how much money his wife gave him (p. 281, l. 38), nor how much he gave her (p. 281, l. 14), nor where she got the money from. He testified (p. 285, ll. 30-40) that this was a pretty big transaction amounting to $10,000 (p. 285, l. 30); that he did not have transactions like that very often (p. 285, l. 32).

The record shows and the testimony is undisputed that the witness Cooper made a copy of the auctioneer's salesbook, which is Exhibit C-4, page 314. This exhibit shows clearly each lot as it was sold, and each lot as it was knocked down and not sold. Exhibit C-5, page 315, is a letter from the auctioneer to the complainant, giving a list of all sales made on June 9th, together with a statement of the account and the alleged original Terms of Sale signed by the alleged purchasers. Exhibit C-5, page 17, contains a record of 11 alleged sales. Of these 11, four are genuine sales made to strangers and seven are made to Mahoney. The prices as set forth in the Mahoney sales on page 317, are entirely different from the prices as set forth on Exhibit C-4, which is uncontradictedly a true copy of the auctioneer's sales record. Nowhere in this entire case has the defendant attempted to disprove Exhibit C-4, or Mr. Cooper's testimony that it is a true copy of the auctioneer's record.

POINT I.

The contracts for the 42 lots were fraudulent.

POINT II.

The assignee of these fraudulent contracts gets no greater title than the assignor.

POINT III.

The auctioneer had no right to resell any of the lots without the direction of the complainant.

POINT IV.

The purchaser at a public sale is bound by the auctioneer's agency and the limitations thereof.

POINT V.

The question of the auctioneer's commissions is merely incidental to the main question, which is, whether or not there was a genuine sale of the 42 lots in dispute.

POINT VI.

Failure to produce witnesses within one's control, or to explain their absence, and failure to prove by competent witnesses within one's control the original records, is presumption against a litigant.

POINT I.

The Court below found as a fact that the complainant had sustained, by the evidence, its contention that no sale of the 42 lots in dispute had been made to Mahoney *at the time of the auction sale;* that it had not been shown that the complainant directed a resale of said 42 lots, such as the alleged transaction with Mahoney, and that the fact that the Mahoney contracts were not changed in pen and ink as were all the genuine contracts, with one possible exception, was significant of the irregularity in the transaction. The Court found as a fact that no payments of the 20% were made on the contracts in dispute on June 19 as provided for in said contracts. The Court found as a fact that the 10% deposit on the sale of the 42 lots in dispute, which was to have been paid on the day of the sale, was not actually paid by Mahoney on the day of the sale; that the checks given or alleged to have been given for these contracts, were given on June 13 and on June 18. The check of June 9 for $765 was for the 10 lots which he actually did purchase and which were afterwards conveyed to his assignee, Veldran. The Court found as a fact that on June 9, 1928, Mahoney had only a nominal balance in the bank, and that two days after the date of the sale he deposited the moneys in the bank to meet some of these checks; that the check dated the date of the sale did not cover the requirements of the ten lots admittedly purchased by Mahoney, since that would require $1,015 and auctioneer's fees, and that $4,095, which was 10% of the purchase price of the 42 lots, was not given until 4 days after the sale; that there was no compliance with the terms of sale so far as the 42 lots were concerned.

The Court below found that there was a conflict in the testimony as to what took place at the auction respecting these 42 lots; that the defendant claimed that Sann asked the auctioneer to get him out of his bid; that there was an argument; *that Mahoney came up to where they were standing* and bid $900, that some undisclosed person bid $950 and that Mahoney then bid $1,000 each, whereupon the 42 lots were knocked down to him; *that Mahoney testified that he was sitting in the rear of the tent when he made his bid.*

The Court further found that the story of the complainant was sustained by the evidence.

The Court below had before it at the hearing of this cause, all of the witnesses. The Court below had the advantage of observing their demeanor and of judging of the manner of giving their testimony, and there is certainly sufficient in the evidence adduced to support the finding of the Court below. Under the circumstances, great weight should be given to the finding of the question of fact, because the Vice-Chancellor who hears the cause in the Court below and sees the witnesses, has a better opportunity of judging their credibility than the reviewing Court.

Carton v. *Phelps,* 91 N. J. Eq. 312;
Sparks v. *Lorentowicz,* 106 N. J. Eq. 178, at 181;
Union County Trust Co. v. *Goerke,* 105 N. J. Eq. 190, at 195;
Bowen v. *Pursell,* 109 N. J. Eq. 67, at 72.

POINT II.

Ross received no greater rights than Mahoney, his assignor. The purchaser for value of a chose in action, is bound by the equities existing against it in the hands of the original obligor.

Putnam v. *Clark,* 29 N. J. Eq. 412; affd. 33 N. J. Eq. 338;
Reddavide v. *Laskowitz,* 99 N. J. Eq. 614; affd. 100 N. J. Eq. 588.

Ross testified that on June 15, 1928, Mr. Hollander, his attorney, called up Mr. Cooper, the attorney for the complainant, and was not able to get in touch with him; that he thereupon called Mr. Kennelly and told him about the transaction which was then taking place with Mr. Mahoney.

There is not one word of evidence in this case on the part of the defendants that between June 15 and July 9, Ross or Hollander ever attempted to ascertain from the complainant or Mr. Cooper, its attorney, whether or not the transaction was legitimate and whether Mahoney was a *bona fide* purchaser of the lots in question. There was no way in which the complainant could find out that Mahoney had assigned his contracts to Ross. Ross elected to rely upon Mahoney's representations, and under these circumstances, is charged with negligence, and must suffer the consequences. If Ross had inquired of the complainant, or its attorney, regarding this transaction, the same information would have been given to him as was given to Kennelly on June 16, 1928.

Additionally, if this had been a *bona fide* transaction, and if Ross had been in earnest, he would have complied with the terms of the contract and would have tendered the additional 20% deposit on June 19, 1928, as was required by his contracts. The evidence is clear on the part of the complainant that neither Ross nor Mahoney, nor anyone in their behalf, attempted to make any additional payment of 20% on June 19, 1928, as provided in the contracts, and nowhere is there any denial of this fact. The evidence on the part of both Ross

and Mahoney is that neither one of them attempted to make any additional payments on June 19, and this, the Court below held, was a very important element in the case.

POINT III.

The testimony on behalf of the complainant is that after the auctioneer had knocked down all of the lots, and before any alleged sale to Mahoney, Mr. Cooper was informed by McDonald, the auctioneer's representative, that the lots sold exceeded $50,000; Mr. Cooper thereupon inquired of McDonald what lots were included in this amount, and was informed by McDonald that this amount included the 32 lots and also the lots claimed to have been sold to Sann. Thereupon Mr. Cooper immediately denied and repudiated the sale of the lots to Sann, and made comparison with and a copy of the cashier's record, which showed the sale of only 32 lots.

This evidence on the part of the complainant is supported by two totally disinterested witnesses, one a reputable member of the bar of the State of New Jersey, William S. Stuhr, Esq., who is corroborated by Mr. White, and the Vice-Chancellor, in coming to his decision in this matter, gave Mr. Stuhr's testimony the weight it properly deserved, and went even so far as to instruct counsel that it was not necessary to have it corroborated by another witness. Surely, in these circumstances, the Appellate Court should give this testimony the same weight as the Vice-Chancellor who heard the cause.

Additionally, the written evidence corroborates the complainant's version of what took place. The auctioneer's salesbook would undoubtedly have given us the history of what actually took place

at that sale and would have corroborated the auctioneer's statement of the results of the sale. However, the auctioneer fails to produce his book and fails to produce the cashier, although he is in his employ; and the statement rendered by the auctioneer to the complainant on June 14 is so totally at variance with a true copy of the auctioneer's salesbook made by Mr. Cooper, as to admit of no question.

The auctioneer's powers are limited by his contract and by the terms of sale, and a purchaser at an auction sale is bound by them. The terms of sale distinctly provide that the owner shall have the right to withdraw the property from sale if the bids are unsatisfactory to it. Ross had before him these terms of sale and therefore had knowledge of all of the conditions.

The terms of sale are specific and provide:

> "The bidding will be kept open after the property is struck down, and if any purchaser shall fail to comply with any of the terms and conditions of the sale, the property so struck down to such purchaser *may, at the option of the seller,* be sold under the same terms of sale, and said purchasers shall be liable for any deficiency between the sum for which the property is struck down and the sum for which the said property shall be sold at said resale, and also for other expenses of such resale."

There is a total absence in the testimony of all of the witnesses of any statement on behalf of the complainant corporation that it had elected to resell any of the 42 lots which remained unsold; also there is no testimony in the entire record which shows that the complainant instructed the auctioneer to resell any of the 42 lots. The best possible excuse which the auctioneer offers is that the alleged purchaser, Sann, asked the auctioneer

to get him, Sann, out of his bid, but there is no evidence of any kind that the complainant elected to have or authorized any resale.

POINT IV.

The purchaser is bound by the printed terms of the sale and, therefore, is bound to see that the owner, the complainant, elected to have and authorized the resale. The auctioneer is a special agent, without any authority other than that which comes from his position as auctioneer. He cannot bind the parties by any contract other than that which is actually made. The contract is expressed in the terms and conditions of sale which were promulgated by the complainant's attorney. The contract provided that the owner shall furnish such conditions of sale and those conditions of sale prescribed the manner and terms upon which the sale should be had. They are binding upon the purchaser and cannot be varied (*6 C. J.*, pp. 825-826-827-828).

Immediately after the close of the sale and before Sann is alleged to have asked the auctioneer to get him out of his bid, the authority of the auctioneer ceased and came to an absolute end. Any act which he did thereafter was a mere gratuity and was not binding upon the complainant.

Jacob v. *McDuell*, 99 N. J. Eq. 656;
Schmidt v. *Quinzel*, 55 N. J. Eq. 792.

POINT V.

The appellant Kennelly bases his appeal upon the theory that this is a dispute between the auctioneer and the complainant respecting the auctioneer's commissions. If this were the grava-

men of this complaint, we should be induced to argue this case on that basis, but that question is not before this Court and was not before the Court of Chancery.

This is a dispute between the owner and an alleged purchaser as to whether or not a sale actually took place, and the question of whether or not Mr. Sann purchased any lots and signed any contracts and checks, cannot enter into the consideration of the decision of the Vice-Chancellor, who found as a fact that the contracts which are now in dispute were not signed at the time of sale. That is the only question for consideration at this time. The complainant contends and it has proved to the satisfaction of the Court below, that these contracts were never signed by Mahoney at the time of the sale, and surely if this is so, there can not be any binding contract between the parties.

The Vice-Chancellor went one step further in his consideration of the question by saying not only that there had never been any contracts signed by Mahoney at the time of the sale, but that there had been no authority for Kennelly to hold a resale, and that the complainant had not directed him to resell any of the property. The defendants lay great stress on the alleged argument which took place between Kennelly and Sann, and their entire argument is based upon the fact that Sann instructed the auctioneer to get him out of his bids. The testimony is unequivocal that Sann did not bid for 42 lots, but that the auctioner had knocked down to several of the "owner's representatives" several of the lots in question; that he knew that they were not *bona fide* purchasers; that he did not attempt to get the owner's approval because he knew that those alleged purchasers would not complete their bids.

In the face of this testimony, it is ridiculous to argue that the owner authorized a resale. The auctioneer, by accepting bids of the "owner's representatives", automatically withdrew those lots from the sale.

POINT VI.

Failure to produce witnesses within one's control, or explain their absence, and failure to prove by competent witnesses within one's control the original records, is presumption against a litigant.

Throughout the hearing of this cause, the name of one McDonald was mentioned by almost every witness. It was testified that McDonald was the cashier of the defendant William Kennelly, Inc., and that McDonald had carried on all of the negotiations with the complainant, both before and during the sale; that he attended the sale; that he negotiated with the complainant's representatives throughout the sale; that he stayed alongside of Kennelly while he was conducting the sale; that he reported to the witness Harry Cooper whether or not bids were genuine or whether they were made by owner's representatives; that he saw that the purchasers signed the contracts of sale, and that he did everything as a principal in this cause, yet he was not produced at the trial. Kennelly testified that McDonald lived in the Bronx, New York; that he was in his employ up to one day prior to the day fixed for the hearing; that he had promised to attend the hearing, but that on the day prior to the hearing Kennelly had talked with him, but had not requested his attendance. Kennelly does not attempt to justify McDonald's ab-

sence. McDonald was without the jurisdiction. The hearing was carried over for a considerable period, but at no time did Kennelly offer to produce McDonald, or to explain his failure to attend. Assuredly, McDonald was a most important witness for Kennelly, and McDonald could have corroborated Kennelly's story, if it were true.

Kennelly produced in court a number of books and records. He testified that they were in his cashier's (Loftus') handwriting. He does not attempt to explain why Loftus did not appear in court or why he did not produce him to prove those records, although he attempted to use the information contained therein which he considered corroborative of his story.

Mahoney was subpoenaed to produce his records. He was subpoenaed twice. The first subpoena did not include check books, so that a new subpoena was served upon him to produce check books and all other books and records which would show the transaction between himself and Kennelly and between himself and Ross. Most assuredly, it was not possible for the complainant to bring into court the evidence which was strictly within the control of the defendants. The complainant must, of necessity, in a case of fraud, rely in a great measure upon the testimony which it is able to adduce out of the mouths of the wrongdoers. It is not usually possible for a complainant who charges fraud, to be able to bring in direct evidence of the fraudulent transaction because wrongdoers do not operate in the open. They usually attempt to conceal their wrongs.

The witness McDonald, Kennelly's records and Mahoney's records were most important pieces of evidence in this cause, and the failure on the part of the defendants to produce them raises a pre-

sumption that their presence would have resulted adversely to the defendants.

While it is true that fraud will never be presumed, but that it must be established by proofs, the rule is, that positive and express proof of fraud is not required. Fraud may be deduced from circumstances and conditions which offer strong presumptions of its existence. It is not impossible for courts of equity to relieve against fraud which is established by presumptive evidence only (*Buchanan* v. *Buchanan*, 73 N. J. Eq. 544, at 551).

The respondent respectfully submits that the decree below should be affirmed.

Respectfully submitted,

HEYMAN & HEYMAN,
Solicitors for and of Counsel with Complainant-Respondent.