

INDEX.

	PAGE
Notice of Appeal From Entire Decree.....	1
Petition of Appeal.....	2
Summons	5
Complaint	6
Contract, Annexed to Complaint.....	8
Answer	13
Replication and Answer to the Counter- claim	15
Order of Reference.....	16
Order Designating	17
Notice to Produce.....	18
Notice to Produce.....	20
Notice of Hearing.....	21
Decree	22
Testimony	27
Oral Conclusions.....	158
Stipulation as to Exhibits.....	174

WITNESSES FOR COMPLAINANTS.

Emil Isbell:	
Direct	28
William F. Isbell:	
Direct	29
Cross	43
Re-direct	50

	PAGE
Re-called :	
Direct	99
Cross	103
Re-called :	
Direct	149
George Taufer :	
Direct	52
Cross	64
Re-direct	75
Re-cross	77
Re-called :	
Direct	89
Re-called :	
Direct	151
Cross	153
Rollo Steenland :	
Direct	78
Cross	87
Ralph Mattocks :	
Direct	107
Cross	110

WITNESSES FOR DEFENDANTS.

James Duffy :	
Direct	111
Cross	116
John D. Craven :	
Direct	131
Cross	145

COMPLAINANT'S EXHIBITS.

	<i>Admitted at Page</i>	<i>Printed at Page</i>
Exhibit C-1.....	28	175
Exhibit C-2.....	30	179
Exhibit C-3.....	42	183
Exhibit C-4.....	51	184
Exhibit C-5.....	54	187
Exhibit C-6.....	55	188
Exhibit C-7.....	55	189
Exhibit C-8.....	55	190
Exhibit C-9.....	56	191
Exhibit C-10.....	59	192
Exhibit C-11.....	59	194
Exhibit C-12.....	59	196
Exhibit C-13.....	59	198
Exhibit C-14.....	59	200
Exhibit C-15.....	81	202
Exhibit C-16.....	83	203
Exhibit C-17.....	83	204
Exhibit C-18.....	83	205
Exhibit C-19.....	84	206
Exhibit C-20.....	84	207
Exhibit C-21.....	90	208
Exhibit C-22.....	90	209
Exhibit C-23.....	91	211
Exhibit C-24.....	91	213

	<i>Admitted at Page</i>	<i>Printed at Page</i>
Exhibit C-25.....	91	215
Exhibit C-26.....	92	217
Exhibit C-27.....	92	218
Exhibit C-28.....	92	219
Exhibit C-29.....	93	220
Exhibit C-30.....	93	222
Exhibit C-31.....	93	223
Exhibit C-32.....	93	225
Exhibit C-33.....	93	227
Exhibit C-34.....	94	229
Exhibit C-35.....	94	231
Exhibit C-36.....	96	232
Exhibit C-37.....	96	233
Exhibit C-39.....	97	233
Exhibit C-40.....	98	236
Exhibit C-42.....	101	238
Exhibit C-43.....	102	240
Exhibit C-44.....	107	241
Exhibit C-46.....	152	242

DEFENDANT'S EXHIBITS.

Exhibit D-1.....	112	247
Exhibit D-2.....	137	251
Exhibit D-3.....	139	251
Exhibit D-4.....	139	252

Notice of Appeal from Entire Decree.

In Chancery of New Jersey

Between

EMIL ISBILL and GEORGE TAUFER,
Complainants,

and

JAMES DUFFY and MARY DUFFY,
his wife,
Defendants.

On Bill, &c.
Notice of Appeal
from
Entire Decree.

10

The defendants, James Duffy and Mary Duffy,
his wife, hereby appeal from the final decree made
by the Chancellor on the advice of Vice Chancellor
Fallon in the above entitled cause on January
15th, 1931, and from the whole and every part
thereof, to the Court of Errors and Appeals in
the Last Resort in All Causes.

20

Dated February 26, 1931.

JOHN D. CRAVEN,
Solicitor for and of Counsel
with Defendants, James Duffy
and Mary Duffy.

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

30

JOHN D. CRAVEN,
Of Counsel with Defendants,
James Duffy and Mary Duffy.

Service of a copy of the within Notice of Ap-
peal acknowledged this 28th day of February,
1931.

FRED W. MATTOCKS,
Solicitor of Complainants.

40

Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10

EMIL ISBILL and GEORGE TAUFER,
Complainants-Appellees,

vs.

JAMES DUFFY and MARY DUFFY,
his wife,
Defendants-Appellants.

On Appeal from
the Court of
Chancery.

Petition of
Appeal.

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

20

The petition of James Duffy and Mary Duffy, his wife, the appellants in the above entitled cause, respectfully shows that:

30

1. Petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date January 15th, 1931, in a certain cause in said Court of Chancery wherein the said Emil Isbill and George Taufer were complainants and the said James Duffy and Mary Duffy, his wife, were defendants, in this respect, to wit, that the said decree adjudges that the contract be specifically performed by the said defendants on the 11th day of February, 1931, and that the complainants pay to the defendants the sum of \$1,736.90, with interest from the 17th day of October, 1929, together with any sums paid by the defendants for taxes, and that the defendants deliver to the complainants a full covenant and warranty deed and that if the defendants fail

40

Petition of Appeal.

to tender a deed conveying the lands and premises to the complainants, that the complainants have judgment against the defendants and a lien therefor be impressed upon the lands and premises aforesaid, for all moneys expended by them in the construction of said dwelling house.

10

And petitioners appeal from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that:

1. It found that the clause in the contract making time of the essence of the contract for January 15, 1930, had been waived as to Emil Isbill.

2. It found that valid notices were not given to the complainants to make time of the essence of the contract as of March 17, 1930.

20

3. It found that the complainants were never in default as to taking title to said premises.

4. It found that the defendants were not able, in accordance with the terms of the contract, to convey title at any time, even up to the time of the hearing.

5. It did not find that the complainants abandoned the contract.

30

6. It did not find that the complainants were not guilty of laches in making tender of the balance of the purchase price according to the terms of the contract.

7. It found that the sum of \$5,200 was put into the construction of the house on the said premises by the complainants.

40

Petition of Appeal.

8. It found that because the complainants had started to construct a building on the said premises it was unequitable to enrich the defendants at the expense of the complainants.

10 9. It did not find that William Isbill had complete authority and power to act for and was the agent of Emil Isbill to receive any notices for him.

Petitioners therefore pray that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this Court shall seem proper.

20

JOHN D. CRAVEN,
Solicitor for and of Counsel with
Appellants.

Service of a copy of the within Petition of Appeal is hereby acknowledged this 10th day of March, 1931.

30

FRED W. MATTOCKS,
Solicitor of Complainants-
Appellees.

40

Summons.

NEW JERSEY, to wit:

[L. S.]

The State of New Jersey to James Duffy and Mary Duffy, his wife, GREETING: Whereas a bill of complaint has lately been exhibited against you in our Court of Chancery by Emil Isbell and George Taufer, to be relieved touching the matters therein contained; 10

THEREFORE WE COMMAND YOU, if you intend to make a defense, that you file an answer to said bill in the office of the Clerk of our said Court at Trenton, on or before the expiration of twenty days from and after the 7th day of July, 1930, and in default thereof such order or decree will be made against you as the Court shall think equitable and just. 20

WITNESS, his Honor, Edwin Robert Walker, Chancellor of our said State, at Trenton, the 27th day of June in the year of our Lord, One Thousand Nine Hundred and Thirty.

FERD GARRETSON,
Clerk. 30

FRED W. MATTOCKS,
Sol'r.

Complaint.

IN CHANCERY OF NEW JERSEY.

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

10 The complainants, Emil Isbell, of the Town of West New York, Hudson County, New Jersey, and George Taufer, of the Borough of Demarest, Bergen County, New Jersey, respectfully show that:

1. On the 17th day of October, 1929, James Duffy and Mary Duffy, his wife, entered into a contract in writing a true copy of which is hereto annexed and made a part hereof, whereby they
20 agreed to convey to complainants, for the sum of Seventeen hundred and thirty-six and 90/100 (\$1,736.90) dollars, by deed of warranty, on or before the 15th day of January, 1930, ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Village of Ridgefield Park, in the County of Bergen and State of New Jersey.

30 BEGINNING at a point in the southerly line of Highland Place, distant thereon four hundred and fifty-three (453) feet easterly from its intersection with the easterly line of Gibson Street, as shown on a certain map entitled, "Map of Property of Mamie H. Kelly, Haselton Heights, Ridgefield Township, Bergen Co., N. J.", filed in the Bergen County Clerk's Office, September 10, 1890 as Map No. 471, and running thence (1) southerly parallel with the easterly line of Gibson Street one hundred (100) feet more or less to the southerly line of the property shown on the above mentioned map and the northerly line of the property
40 now or formerly of Charles Enders, Jr., thence

Complaint.

returning to the point of beginning and running (2) easterly along the southerly line of Highland Place thirty (30) feet, more or less, to a point distant along the southerly line of Highland Place one hundred and thirteen (113) feet westerly from the corner formed by the intersection of the southerly line of Highland Place and the westerly line of Teaneck Road; thence (3) southerly at right angles to the southerly line of Highland Place one hundred (100) feet, more or less, to the southerly line of property shown on said map and the northerly line of property now or formerly of Charles Enders, Jr.; and thence (4) westerly along said southerly line, thirty (30) feet, more or less to the end of the first course. 10

The said contract, after having been duly acknowledged, was, on May 26th, 1930, recorded in the Bergen County Clerk's Office in Book 1719 of Deeds for said County, at page 256, &c. 20

2. The lands mentioned and described in the aforesaid contract of sale consist of two lots upon which the complainants have been erecting a building and have entered into actual possession of the land described above.

3. That after the time stated in said contract for the conveyance of the property and the passing of the title, the contract was extended from time to time, and complainants are, and have been ready to perform said contract. 30

4. On or about the 26th day of May, 1930, complainants tendered to the defendant, James Duffy, the purchase price of the lot and requested from him, a deed of conveyance, but said James Duffy refused to convey the same.

5. Complainant is without adequate remedy in the Courts of law and therefore prays: 40

Complaint.

1. That James Duffy and Mary Duffy, his wife, who are defendants to this suit, may answer this bill of complaint and each statement therein made.

10 2. That the said James Duffy and Mary Duffy, his wife, may be decreed specifically to perform the said agreement, the complainants tendering themselves ready and willing and hereby offering specifically to perform the said agreement on their part.

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

20

FRED W. MATTOCKS,
Solicitor for and of Counsel
with Complainant, Closter,
New Jersey.

Contract, Annexed to Complaint.

30 ARTICLES OF AGREEMENT, made and entered into the seventeenth day of October, in the year one thousand nine hundred and twenty-nine, BETWEEN, JAMES DUFFY and MARY DUFFY, his wife, of Jersey City, New Jersey, parties of the first part, and EMIL ISBELL, of West New York, New Jersey, and GEORGE TAUFER, of Demarest, New Jersey, parties of the second part, in manner following: The said parties of the first part, in consideration of the sum of ONE THOUSAND SEVEN HUNDRED AND THIRTY SIX DOLLARS AND NINETY CENTS (\$1,736.90),
40 to them duly paid by the said parties of the second part, hereby agree to sell unto the said parties of

Contract, Annexed to Complaint.

the second part, ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Village of Ridgefield Park, in the County of Bergen and State of New Jersey.

BEGINNING at a point in the southerly line of Highland Place, distant thereon four hundred and fifty-three (453) feet easterly from its intersection with the easterly line of Gibson Street, as shown on a certain map entitled "Map of Property of Mamie H. Kelly, Haselton Heights, Ridgefield Township, Bergen Co., N. J.", filed in the Bergen County Clerk's Office, September 10, 1890 as Map No. 471, and running thence (1) southerly parallel with the easterly line of Gibson Street one hundred (100) feet, more or less, to the southerly line of the property shown on the above mentioned map and the northerly line of the property now or formerly of Charles Enders, Jr., thence returning to the point of beginning and running (2) easterly along the southerly line of Highland Place thirty (30) feet, more or less, to a point distant along the southerly line of Highland Place one hundred and thirteen (113) feet westerly from the corner formed by the intersection of the southerly line of Highland Place and the westerly line of Teaneck Road; thence (3) southerly at right angles to the southerly line of Highland Place one hundred (100) feet, more or less, to the southerly line of property shown on said map and the northerly line of property now or formerly of Charles Enders, Jr.; and thence (4) westerly along said southerly line thirty (30) feet, more or less, to the end of the first course.

Being part of the same premises conveyed to James Duffy by Wallace MacNeill, by deed dated October 8, 1926, and recorded in Book 1430 of Deeds for Bergen County on page 633.

10

20

30

40

Contract, Annexed to Complaint.

For the sum of one thousand seven hundred and thirty-six dollars and ninety cents (\$1,736.90), which sum is to be paid at the time of passing of title.

10 The parties of the second part hereby agree to pay all the taxes and interest on the unpaid purchase price of one thousand seven hundred and thirty-six dollars and ninety cents (\$1,736.90) from this day to the time of taking title.

It is hereby further agreed that the property is not subject to any assessment of any kind.

20 It is also agreed between the said George Taufer and James Duffy, that this agreement is in no way to affect the status of the lien claim suit in the Bergen County Circuit Court between the said parties, and it is hereby agreed between the said parties that the hearing on the motion shall be adjourned until further notice, until after the 15th day of January, 1930, and this agreement is not to be considered as a waiver of any reasons to strike out the lien claim so filed.

30 And the said parties of the first part, on receiving such payment at the time and in the manner above mentioned, shall at their own proper cost and expense execute, acknowledge and deliver to the said parties of the second part, or to their heirs and assigns, a proper deed for the conveying and assuring to them, the fee simple of the said premises, free from all encumbrances.

40 The balance of said purchase price to be paid, and the deed therefore to be given at the office of JOHN D. CRAVEN, on or before the 15th day of January, 1930, at the hour of o'clock in the noon of said day, which deed shall contain a general warranty and the usual full covenants, and time to be considered as of the essence of this agreement.

Contract, Annexed to Complaint.

And it is understood that the stipulations aforesaid are to apply to and bond the heirs, executors, administrators of the respective parties.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals the day and year first above written.

10

JAMES DUFFY (L. S.)

MARY DUFFY (L. S.)

EMIL ISBELL (L. S.)

GEORGE TAUFER (L. S.)

Sealed and delivered in
the presence of

20

CATHERINE MURPHY
as to 1st party.

WM. F. SCHUBERT
as to 2nd Parties

30

40

Contract, Annexed to Complaint.

STATE OF NEW JERSEY }
COUNTY OF HUDSON } ss.:

10 BE IT REMEMBERED, that on this seventeenth day of October, in the year one thousand nine hundred and twenty-nine, before me, the subscriber, a Notary Public of New Jersey, personally appeared, JAMES DUFFY and MARY DUFFY, his wife, who, I am satisfied, are two of the parties mentioned in the within Indenture named, and I having first made known to them the contents thereof, they did severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

20

CATHERINE MURPHY
Notary Public of New Jersey

STATE OF NEW JERSEY }
COUNTY OF BERGEN } ss.:

30 BE IT REMEMBERED, that on this seventeenth day of October, in the year one thousand nine hundred and twenty-nine, before me, the subscriber, a Notary Public of New Jersey, personally appeared, EMIL ISBELL and GEORGE TAUFER, who, I am satisfied, are two of the parties mentioned in the within Indenture named, and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

WM. F. SCHUBERT
Notary Public of N. J.

40

[NOTARY SEAL]

Answer.

IN CHANCERY OF NEW JERSEY.

Between EMIL ISBILL and GEORGE TAUFER, Complainants, <i>and</i> JAMES DUFFY and MARY DUFFY, his wife, Defendants.	}	On Bill, &c. Answer.	10
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The defendants, James Duffy and Mary Duffy, his wife, in reply to the complaint, say that: 20

1. They admit the allegations contained in the first paragraph of the complaint, except that they have no knowledge or information as to the recording of the said contract.

2. They admit the allegations contained in paragraph two of the complaint, except that they deny that the complainants have entered into possession of the land described above.

3. They admit the allegations contained in paragraph three of the complaint that the time of passing the title was extended from time to time, but deny that the complainants are or have been ready to perform the said contract. 30

4. They deny the allegations contained in paragraph five.

By way of counterclaim against the complainants the defendants say: 40

Answer.

10 1. According to the terms of the said contract, time was to be of the essence of the agreement, and title was to be taken on or before the 15th day of January, 1930, but the complainants were not ready, able or willing to perform the said contract according to the terms thereof, though the defendants were able, ready and willing to perform according to the terms of the said contract.

20 2. Complainants were advised by the defendants that unless they performed the contract according to the terms thereof and took title on or before March 17th, 1930, that they would consider the contract at an end, and that the complainants would have no interest in the land, and that the said contract would be null and void. Although the defendants were ready, able and willing to perform their part of the contract according to the terms thereof on or before March 17th, 1930, the complainants were not ready, able and willing to perform the contract according to the terms thereof.

Complainants therefore pray:

- 30 1. That the complainants reply to this counter-claim and each statement made therein.
2. That the contract between the complainants and the defendants may be decreed to be null and void, and that the complainants have no right, title or interest in the said lands described in the said contract.

JOHN D. CRAVEN,
Solicitor for and of Counsel
with Defendants.

Replication and Answer to the Counterclaim.

IN CHANCERY OF NEW JERSEY.

Between EMIL ISBELL and GEORGE TAUFER, Complainants, <i>and</i> JAMES DUFFY and MARY DUFFY, his wife, Defendants.	}	On Bill, &c. Replication and Answer to the Counterclaim.	10
--	---	---	----

The complainants join issue on the answer of the defendants;

20

Also as to the counter-claim contained in said answer complainants say:

1. The term of the contract mentioned in paragraph 1 of the counter-claim was changed by agreement of the parties and the time for closing was extended from January 25th, 1930, without a definite date or time fixed.

2. In reply to the allegations of paragraph 2 of the counter-claim, complainants deny each and every statement therein made.

30

FRED W. MATTOCKS,
 Solicitor for Complainants.

40

Order of Reference.

IN CHANCERY OF NEW JERSEY.

10	Between EMIL ISBILL and GEORGE TAUFER, Complainants, <i>and</i> JAMES DUFFY and MARY DUFFY, his wife, Defendants.	} On Bill, &c. Order of Reference.
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20 It is, on this 13th day of August, A. D. 1930,
 on motion of Fred W. Mattocks, Esq.,

ORDERED that the above stated cause be referred to John J. Fallon, one of the Vice Chancellors of this Court, to hear the same for the Chancellor, and to report thereon to him and advise what order or decree should be made therein.

E. R. WALKER,
C.

30

I hereby consent to the above order being made.

JOHN D. CRAVEN,
Solicitor and of Counsel with
Defendants.

40

Order Designating.

IN CHANCERY OF NEW JERSEY.

EMIL ISBILL and GEORGE TAUFER, Complainants,	} On Bill, &c. Order Designating.	10
<i>vs.</i>		
JAMES DUFFY and MARY DUFFY, his wife, Defendants.		

The hearing of the above stated cause, having been referred to me,

IT IS, on motion of Fred W. Mattocks, Solicitor of the complainants, 20

ORDERED, that the hearing of this cause be set down on Wednesday, the 26th day of November, A. D. 1930, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard, at Chancery Chambers, in the City of Jersey City, in the County of Hudson and State of New Jersey.

JOHN J. FALLON,
V. C. 30

I hereby consent that the above order be made.

FRED W. MATTOCKS,
Solicitor and of Counsel with
Complainants.

JOHN D. CRAVEN,
Solicitor and of Counsel with
Defendants. 40

Notice to Produce.

IN CHANCERY OF NEW JERSEY.

10	Between EMIL ISBILL and GEORGE TAUFER, Complainants, <i>and</i> JAMES DUFFY and MARY DUFFY, his wife, Defendants.	}	On Bill, &c. Notice to Produce.
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20 *To the Complainants, Emil Isbill and George
Taufers:*

You are hereby notified to produce at the hearing of the above entitled cause, on Wednesday, the twenty-sixth day of November, nineteen hundred and thirty; at the Chancery Chambers, in the City of Jersey City, before the Honorable John J. Fallon, to whom the above entitled matter has been referred, the following letters, or in default thereof, secondary evidence will be produced.

- 30
1. A letter written by John D. Craven to William F. Isbill, dated July 15th, 1929.
 2. A letter written by John D. Craven to William F. Isbill, dated July 18th, 1929.
 3. A letter written by John D. Craven to George Taufer, dated July 19th, 1929.
 - 40 4. A letter written by John D. Craven to William F. Isbill, dated August 26th, 1929.

Notice to Produce.

5. A letter written by John D. Craven to George Taufer, dated September 19th, 1929.

6. A letter written by John D. Craven to William F. Isbill, dated December 28th, 1929.

7. A letter written by John D. Craven to George Taufer, dated January 11th, 1930. 10

8. A letter written by John D. Craven to George Taufer, dated January 16th, 1930.

9. A letter written by John D. Craven to George Taufer, dated January 18th, 1930.

10. A letter written by John D. Craven to George Taufer, dated January 24th, 1930.

11. A letter written by John D. Craven to George Taufer, dated February 25th, 1930. 20

12. A letter written by John D. Craven to William F. Isbill, dated February 27th, 1930.

13. A letter written by John D. Craven to William F. Isbill, dated March 17th, 1930.

14. A letter written by John D. Craven to George Taufer, dated March 17th, 1930.

JOHN D. CRAVEN,
Solicitor of Defendants. 30

Service of a copy of the within Notice to Produce is duly acknowledged this 13th day of September, 1930.

FRED W. MATTOCKS,
Solicitor of Complainants.

Notice to Produce.

IN CHANCERY OF NEW JERSEY.

10	EMIL ISBELL and GEORGE TAUFER, Complainants, <i>vs.</i> JAMES DUFFY and MARY DUFFY, his wife, Defendants. }	On Bill, &c. Notice to Produce.
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*To the Defendants James Duffy and Mary Duffy,
his wife:*

20 You are hereby notified to produce at the hearing of the above entitled cause, on Wednesday, the twenty-sixth day of November, nineteen hundred and thirty, at the Chancery Chambers, in the City of Jersey City, before the Honorable John J. Fallon, to whom the above entitled matter has been referred, the following contract, or in default thereof, secondary evidence will be produced.

30 1. A contract of sale between James Duffy and Mary Duffy, his wife, and William F. Isbell, dated July 24th, 1928.

FRED W. MATTOCKS,
Solicitor of Complainants.

Service of a copy of the within Notice to Produce is duly acknowledged this 12th day of November, 1930.

40 JOHN D. CRAVEN,
Solicitor of Defendants.

Notice of Hearing.

IN CHANCERY OF NEW JERSEY.

EMIL ISBELL and GEORGE TAUFER,
Complainants,

vs.

JAMES DUFFY and MARY DUFFY,
his wife,
Defendants.

On Bill, &c.
Notice of Hearing.

10

To John D. Craven, Solicitor of the Defendants:

TAKE NOTICE of the hearing of this cause before the Honorable John J. Fallon, the Vice-Chancellor of this Court to whom the said cause has been referred, on the 26th day of November, 1930, at the hour of ten o'clock in the forenoon, at the Chancery Chambers, in the City of Jersey City, the time and place designated by the order of the said Vice Chancellor made on the 2nd day of September, 1930.

20

FRED W. MATTOCKS,
Solicitor of Complainants.

30

Service of a copy of the within Notice is hereby acknowledged this 12th day of November, 1930.

JOHN D. CRAVEN,
Solicitor of Defendants.

40

Decree.

IN CHANCERY OF NEW JERSEY.

10	Between GEORGE TAUFER and EMIL ISBELL, Complainants, <i>and</i> JAMES DUFFY and MARY DUFFY, his wife, Defendants.	} On Bill, &c. Decree.
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20 This cause coming on to be heard in the presence of Fred W. Mattocks, solicitor of the complainants, and Ward G. Berry, of counsel with complainants, and John D. Craven, solicitor of the defendants, and Walter J. Freund, of counsel with the defendants, and the Court having examined the pleadings and having taken the proofs orally and in open Court and having heard and considered the arguments of counsel thereon;

30 And it appearing to the satisfaction of the Court that the defendant, James Duffy, was, on the Seventeenth day of October, 1929, seized in fee simple of all that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Village of Ridgefield Park, in the County of Bergen and State of New Jersey.

40 BEGINNING at a point in the southerly line of Highland Place, distant thereon four hundred fifty-three (453) feet easterly from its intersection with the easterly line of Gibson Street as shown on a certain map entitled: "Map of Property of Mamie H. Kelly, Haselton Heights, Ridge-

Decree.

field Township, Bergen Co., N. J.," filed in the Bergen County Clerk's office September 10, 1890, as Map No. 471, and running thence (1) southerly, parallel with the easterly line of Gibson Street, one hundred (100) feet, more or less, to the southerly line of the property shown on the above mentioned map and the northerly line of property now or formerly of Charles Enders, Jr., thence returning to the point of beginning and running (2) easterly along the southerly line of Highland Place, thirty (30) feet, more or less, to a point distant along the southerly line of Highland Place, one hundred thirteen (113) feet westerly from the corner formed by the intersection of the southerly line of Highland Place and the westerly line of Teaneck Road; thence (3) southerly at right angles to the southerly line of Highland Place, one hundred (100) feet, more or less, to the southerly line of property shown on said map and the northerly line of property now or formerly of Charles Enders, Jr.; and thence (4) westerly along said southerly line of thirty (30) feet, more or less, to the end of the first course. And that on said date the said defendant and Mary Duffy, his wife, entered into a contract, in writing, with the complainants, Emil Isbell and George Taufer, wherein and whereby said defendants agreed to convey the said lands and premises by a proper deed for the conveying and assuring to them the fee simple of the said premises, free from all encumbrances, on the Fifteenth day of January, 1930, to the said Emil Isbell and George Taufer, and the said Emil Isbell and George Taufer agreed to pay therefor the sum of One Thousand Seven Hundred Thirty-six and 90/100 (\$1,736.90) Dollars on that date, which said Contract provided that time should be of the essence thereof;

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Decree.

And it further appearing to the satisfaction of the Court that the parties to said Contract postponed the date of closing thereunder from time to time and that a provision in said Contract that time was of the essence thereof was waived by the defendants, and that, relying upon said waiver as
10 and when made, the complainants continued the erection of a dwelling house, the construction of which had been commenced upon the said lands prior to said waiver;

And it further appearing that on the 26th day of May, 1930, the complainants tendered to the defendant, James Duffy, the full purchase price of said lands as set forth in said Contract and the defendants refused to accept the same and to perform the Contract on their part;

20 And it further appearing that at the time of making said tender the complainants had expended in the construction of said dwelling house the sum of Five Thousand (\$5,000.00) Dollars and upwards;

And it further appearing that the complainants, since the Twenty-sixth day of May, 1930, have been ready and willing in all things to comply with the terms of the said Contract on their part and that the said defendants have refused and still refuse and fail to perform the said Contract
30 on their part;

And the Court being of the opinion that the complainants are entitled to the specific performance of the aforesaid Contract;

IT IS, on this fifteenth day of January, 1931,
ORDERED, ADJUDGED AND DECREED that the said Contract be specifically performed by the said defendants and it is further ORDERED that the said complainants, on the 11th day of February, 1931,
40 between the hours of one and three o'clock in the

Decree.

afternoon, attend at the office of John D. Craven, the solicitor of the defendants, at #15 Exchange Place, in the City of Jersey City, Hudson County, New Jersey, and pay to the said defendants the sum of One Thousand Seven Hundred Thirty-six and 90/100 (\$1,736.90) Dollars, with interest thereon from the Seventeenth day of October, 1929, the date of said Contract, together with such sums, if any, as have been heretofore paid by the defendants for taxes on the building constructed by complainants on the lands described in said Contract, and that the defendants attend at the time and place aforesaid and do make, execute and acknowledge in due form of law, and deliver to the said complainants, Emil Isbell and George Taufer, a full covenant Warranty Deed, conveying to the said Emil Isbell and George Taufer the lands and premises described in said Contract, in fee simple, free of all encumbrances, except, however, and subject to the taxes on said lands since the Seventeenth day of October, 1929, and subject also to all assessments, if any, which have become a lien against said lands since the Seventeenth day of October, 1929;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if, at the time and place hereinbefore mentioned, the said complainants shall fail or neglect to attend at the time and place aforesaid and pay or tender the said sum of One Thousand Seven Hundred Thirty-six and 90/100 (\$1,736.90) Dollars, with interest thereon as aforesaid, and pay or tender the said sum of taxes and assessments, all as hereinbefore mentioned, that all their rights under the said Contract shall cease and the said Contract shall become null and void;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if, at the time and place aforesaid,

Decree.

10 the said defendants shall fail to tender a Deed conveying the lands and premises to the said complainants, free of all encumbrances, except as aforesaid, that the complainants have judgment against the defendants and a lien therefor be impressed upon the lands and premises aforesaid for all moneys expended by them in the construction of said dwelling house, the amount thereof to be determined in accordance with the practice of this Court.

IT IS FURTHER ORDERED that no costs or counsel fee be allowed to either party as against the other, but that each party pay their own costs.

Respectfully advised,

20

E. R. WALKER,
C.

JOHN J. FALLON,
V. C.

30

40

Testimony.

IN CHANCERY OF NEW JERSEY.

Between	} On Bill, etc. Testimony.	10
EMIL ISBELL and GEORGE TAUFER, Complainants,		
<i>and</i>		
JAMES DUFFY and MARY DUFFY, his wife, Defendants.		

Final Hearing before Hon. JOHN J. FALLON, Vice Chancellor, Chancery Chambers, Jersey City, November 26, 1930.	20
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Appearances:

Mr. FRED W. MATTOCKS, for Complainant (Mr. J. B. SALISBURY, of Counsel).	30
Mr. JOHN D. CRAVEN, for Defendant (Mr. WALTER J. FREUND, of Counsel).	

The Court: I have read the pleadings. You may proceed.

Emil Isbell, Complainant—Direct.

COMPLAINANTS' CASE.

EMIL ISBELL, being sworn.

Direct examination by Mr. Salisbury:

- 10 Q. What is your name? A. Emil Isbell.
Q. Where do you live? A. 140 West 21st Street.
Q. I show you a paper and ask you whether the third signature on that paper is your signature?
A. Yes, it is.
Q. Do you know what that paper is?
The Court: The paper will speak for itself. Let it be marked.
Mr. Craven: We will admit it.
20 (Marked Exhibit C-1 in Evidence.)

By Mr. Salisbury:

- Q. Where was that paper signed, Mr. Isbell, if you remember? A. In Mr. Steenland's office.
Q. Where is that? A. Leonia.
Q. And what business is Mr. Steenland in? A. Building material.
Q. Do you know about the house that was being erected on the piece of property described in that contract? A. Yes, I do.
30 Q. Who was erecting that house? A. I don't know what you mean.
Q. Who was building it? A. The house is in my name.
Q. Who was building it? Were you building it? A. My brother.
Q. What's your brother's name? A. William Isbell.
Q. Was he erecting the house for you? A.
40 Yes.

William F. Isbell, for Complainants—Direct.

Q. And any arrangements that he made were satisfactory to you?

The Court: I will not permit that. That is too general.

The Witness: Whatever my brother told me I signed.

The Court: I will strike that out. I do not want your general conclusions. 10

By Mr. Salisbury:

Q. Do you know how the price of these premises were arrived at?

Mr. Freund: I object. The contract speaks for itself.

The Court: We are not concerned about that. Here is a contract and you are undertaking to enforce it. 20

Mr. Salisbury: That's all.

Mr. Freund: No questions.

WILLIAM F. ISBELL, being sworn.

Direct examination by Mr. Salisbury:

Q. Where do you live, Mr. Isbell? A. 140 West 21st Street, West New York. 30

Q. Are you related to Emil Isbell? A. I am.

Q. What is the relationship? A. I am his brother.

Q. Do you know about the house that was being erected in Ridgefield Park? A. Yes, I do.

Q. Who was erecting that house? A. My brother and Mr. Taufer, and I was directing it.

William F. Isbell, for Complainants—Direct.

By the Court:

Q. You said directing it. He is asking you who erected it? A. My brother and Mr. Taufer.

By Mr. Salisbury:

10 Q. What did you have to do with it? A. I had charge of the work.

Q. Can you describe where that property is located? A. It is located on the southwest side of Highland Place about 200 feet west of Teaneck Road in Ridgefield Park.

Q. What is the size of the plot? A. 30 x 100.

Q. Before this contract offered in evidence did you have any agreement to purchase a part, or more than that lot? A. I did.

20 Q. Who was that with? A. With Mr. Duffy and his wife.

Q. Do you remember when that agreement was made? A. I don't remember the exact date of the agreement.

Q. I show you what purports to be a contract and ask you if that is an agreement for the purchase of the property? A. Yes, this is the agreement.

Mr. Craven: Is that the first contract?

Mr. Salisbury: Yes.

30 Mr. Craven: If it is the same contract there is no objection.

The Court: Let it be marked.

(Marked Exhibit C-2 in evidence.)

By Mr. Salisbury:

Q. Under that contract, Mr. Isbell, what did you do?

The Court: Which contract?

40 Mr. Salisbury: Exhibit C-2.

William F. Isbell, for Complainants—Direct.

A. I commenced the construction of a one story building.

By the Court:

Q. On what property. A. On the first thirty feet nearest to Teaneck Road.

10

By Mr. Salisbury:

Q. That is the most easterly thirty feet of the tract described in that contract? A. Yes.

Q. How far did you proceed with that building?

Mr. Freund: I object unless he mentions when.

By Mr. Salisbury:

Q. Up to June, 1929, how far had you proceeded with that building? A. I had put up the foundation and the frame work of the one story building up to the roof.

20

The Court: Why is that date June, 1929, in here? I am trying to find out the significance of that month of June.

Mr. Salisbury: I want to show the reason for the making of this new contract, which was that a lien claim had been put on by the other complainant in this suit.

30

The Court: The first contract is the one marked Exhibit C-2 dated July 24, 1928. Now the contract which was first offered in evidence marked Exhibit C-1 bears date October 17, 1929. For that reason I want to know what the significance is of the month of June?

Mr. Salisbury: I was leading up to the reason why the second contract was made.

The Court: All right.

40

William F. Isbell, for Complainants—Direct.

Mr. Salisbury:

Q. Who had furnished materials for the foundation of that house you had started? A. George Taufer.

10 By the Court:

Q. George Taufer individually, or George Taufer, Incorporated? A. George Taufer, Incorporated.

By Mr. Salisbury:

Q. And what did Taufer, Inc., about June, 1929, do, if anything, in regard to that building? A. He delivered the cement blocks for the foundation.

20 Q. Was there any legal action taken?

The Court: If there was can't you concede it?

Mr. Craven: We will concede a lien claim was filed by George Taufer. We will stipulate the entire transaction in regard to the mechanics lien suit if your Honor wants it. What is it you want to bring out Mr. Salisbury?

30 Mr. Salisbury: A stipulation that a lien claim started June 5, 1929, by George Taufer, Inc., against the most easterly thirty feet.

The Court: You don't mean a lien claim started? You mean goods were furnished.

Mr. Craven: No, the lien claim was filed about the 19th of June, 1929.

40 The Court: You ought to know the date of it. I won't let the witness testify to a lot of guesses. You had better proceed. We don't seem to be getting anywhere. There is no stipulation on record.

William F. Isbell, for Complainants—Direct.

Mr. Salisbury: Will you stipulate a lien claim was filed against the most easterly thirty feet?

Mr. Craven: Yes. I moved to strike out the lien claim and the matter was held in obedience to find out the outcome of this contract, and the matter was argued before Judge Caffrey on June 6th last and Judge Caffrey then made an order striking out the lien claim and said there was no lien to be filed. 10

Mr. Salisbury: I don't stipulate the last part of it.

The Court: Go ahead and bring it out the way you want to.

By Mr. Salisbury: 20

Q. Do you remember the lien claim being placed on the building, Mr. Isbell? A. Yes, I remember there was a lien claim filed by Mr. Taufer.

Q. Then what happened after that? A. Mr. Taufer was to take over the property and finish the building.

The Court: I will strike that out. You will have to base that on some evidence. You folks had better try and get concessions of facts. I cannot permit that kind of testimony. He says Mr. Taufer was to do thus and so. It is clearly a conclusion. 30

By Mr. Salisbury:

Q. What did you do in regard to the property after the lien claim was filed? A. I kept on working there as much as I could to finish the building.

Q. Did you have any conversation with Mr. Duffy about taking over a portion of that property? A. Yes, I did. 40

William F. Isbell, for Complainants—Direct.

Q. What was that conversation? A. I explained to him that I couldn't take over the lots and all I could do was to finish this one building and take the thirty feet.

Q. Do you remember about when that conversation was had? A. I think it was in October.

10 Q. And as a result of that conversation what happened? A. Mr. Duffy agreed to convey the thirty feet to us and made arrangements to meet at Mr. Steenland's office to sign the papers.

Q. And that is the paper you referred to, Exhibit C-1, which was offered in evidence? A. Yes.

Q. And do you know how the price of seventeen hundred and some odd dollars was arrived at? A. Yes.

20 Mr. Craven: I object.
The Court: He said yes.

By Mr. Salisbury:

Q. How was the price arrived at?

The Court: How is that material? Here you have a contract which indicates on its face what the contract was between the parties. Why bring out a lot of matter that preceded it?

30 Mr. Salisbury: Just to explain the odd figure. The purchase price of a piece of property isn't usually stated in such odd figures as this is.

The Court: As long as counsel objects I will have to sustain the objection.

By Mr. Salisbury:

40 Q. After this contract Exhibit C-1 was signed Mr. Isbell, did you do any further work on the house? A. Yes.

William F. Isbell, for Complainants—Direct.

Q. And who supplied the material? A. Palisades Park Lumber Company. They pretty near supplied all the material.

Q. How about plumbing?

Mr. Freund: I object. We are not concerned about the supplying of materials to this property. We are only concerned about the thing at issue. These matters which counsel is asking is immaterial.

10

The Court: How is it material?

Mr. Salisbury: It is material under the allegation we are not in possession. Their answer says we are not in possession of the property. I desire to show we have gone ahead and have practically finished the house.

20

The Court: I think under those circumstances I will overrule the objection because they may think you are stopped from making the objection because you allowed them to go into possession of it and continue as owners.

Mr. Freund: I can't see as it makes any difference what was on the property.

The Court: I will receive it subject to your objection. I am frank to say I cannot see the materiality of it. I might strike it out after.

30

Mr. Craven: If he wants to show there is a house on the premises we will stipulate there is a house on the premises.

Mr. Salisbury: Will you stipulate how far it is completed?

Mr. Craven: How far?

Mr. Salisbury: Nine-tenths?

Mr. Craven: We will say fifty per cent. We say there is a building on there about fifty per cent.

40

William F. Isbell, for Complainants—Direct.

The Court: If you can show it is more than fifty per cent, go ahead.

Mr. Craven: We don't say what it is, but there is a building on the premises. He can drag out what it is.

10 Mr. Salisbury: Will you stipulate, Mr. Craven, that the building was put there by Mr. Isbell?

The Court: I guess you can do that.

Mr. Craven: Mr. William Isbell and Mr. Taufer so far as I know put the building there. We weren't there all the time. It is pretty hard to concede that. I wasn't there and I don't know.

20 The Court: Go ahead and prove it. It is fair to assume you brought your witnesses here to prove it.

By Mr. Salisbury:

Q. After October, 1929, when the contract C-1 was signed, did you do any work on the building which was partly erected on the property? A. I did.

30 Q. How much work was done on that, Mr. Isbell? A. We continued to finish the building and put on the bath and the steam work and the rough plumbing, put on the plaster and trimmed the building out and finished the building on the outside and gave it one coat of paint, and put on the stairs and the hallway floors and the electric wiring.

By the Court:

40 Q. What has to be done in order to complete the building? A. The plumbing fixtures is to be put in and some tile work and some painting to be completed.

William F. Isbell, for Complainants—Direct.

Q. Excepting those three items that you mentioned is the building entirely complete? A. When I said the plumbing, I mean the steam work.

Q. You mean the fixtures? A. Yes.

Q. The piping is in? A. Yes.

By Mr. Salisbury:

10

Q. How much do you estimate in amount of money is to be done on the building?

Mr. Freund: I object.

The Court: I am trying to find out the materiality of it in this case I am trying.

Mr. Salisbury: The reason being in possession and having erected a building on the premises we need the property for the building. We need the specific performance of this contract because we have put into the place somewheres about \$7,000.

20

The Court: You have erected a building on land which you do not own?

Mr. Salisbury: Yes.

The Court: But which you had under a contract to purchase.

Mr. Salisbury: Yes, sir.

The Court: Well, I suppose Mr. Freund, it ought to be permitted because it might be material. I will receive it subject to your objection.

30

Mr. Freund: The reason I objected before is that this witness has not qualified as a builder so as to be able to testify how far the work has gone.

The Court: I don't know what his business is but he did some work on that house and some work was done. You didn't object to it.

40

Mr. Freund: All right.

William F. Isbell, for Complainants—Direct.

By Mr. Salisbury:

Q. What is your business? A. A builder and contractor.

By the Court:

10 Q. How long have you been in business? A. About eight years.

Q. What have you been building? A. I have built three apartment and about a dozen one family houses.

By Mr. Salisbury:

Q. About how much in money would it take to finish this building? A. About seven or eight hundred dollars.

20 Q. And how much would the house be worth in your opinion when it is finished?

Mr. Freund: I object.

The Court: You can prove how much money he put into the building.

By Mr. Salisbury:

30 Q. Do you know approximately the cost of the house at the present time? A. It cost me approximately about \$7,000.

By the Court:

Q. Haven't you got a record of it to know how much material and labor went into it? You ought to be able to tell? A. I haven't got it accurately. It is about \$7,000.

Q. It might be eight thousand and it might be six thousand? A. Between seven thousand and seventy-five hundred.

40

William F. Isbell, for Complainants—Direct.

Q. And it might be between six and seven thousand? You are just guessing. A. It is between seven thousand and seventy-five hundred.

The Court: I will not let him guess. He should be able to show what went into that building.

10

By Mr. Salisbury:

Q. Do you know what the labor bill is you put in on the house? A. I don't know exactly.

Q. I notice in that contract there is a clause there that time is of the essence and the contract was to be closed on January 15, 1930. Did you have any conversation before that time with Mr. Duffy about the extension of that contract? A. Of which contract do you mean?

20

Q. The second one, C-1. The one of October? A. After that was signed?

Q. Yes, after that was signed? A. Yes, I did.

Q. Do you know when this conversation was? A. About what it was?

Q. About when it was? A. Well, I had frequent conversations with Mr. Craven about the extension of time.

By the Court:

30

Q. Was it before January 15th, or after? A. I had conversations with him before and after.

By Mr. Salisbury:

Q. Did you have a conversation with Mr. Duffy about the extension of time? A. I did.

Q. What was said? A. Mr. Duffy told me to go and see Mr. Craven and whatever Mr. Craven would do would be satisfactory to him.

40

William F. Isbell, for Complainants—Direct.

By the Court:

Q. Did you go to see Mr. Craven? A. I did.

By Mr. Salisbury:

10 Q. Was this contract extended from the date of
January 15th, 1930? A. It was.

Mr. Freund: I object.

The Court: I will sustain the objection.
You can bring out what the conversations
were which would lead the Court to say it
was.

By Mr. Salisbury:

20 Q. What was the first conversation with Mr.
Craven in regard to the extension of the contract?
A. We weren't able to——

The Court: Tell us what the conversation was.

(Witness continuing.) I asked Mr.
Craven for an extension of time because
we couldn't finish the building and couldn't
get the mortgage at that time, so he
agreed——

30 By the Court:

Q. Tell us what he said? A. He said "All
right, as long as you haven't finished the building
I will extend the time."

By Mr. Salisbury:

Q. Who is Mr. Craven? A. He is Mr. Duffy's
lawyer.

William F. Isbell, for Complainants—Direct.

By the Court:

Q. Was there any different time fixed for the extension? A. Yes. He gave me about two or three weeks' time.

Q. Don't be guessing about two or three weeks' time. Tell us what he said. Tell us the conversation that passed between you and Mr. Craven. A. He told me that if I would go ahead and work on the building he would help me out and wait for me until we got the mortgage to pay it off.

10

Q. Is that all he said? A. He said he would give me some time and would get some mortgage.

By Mr. Salisbury:

Q. Did you have any further conversation after that time? A. Sometimes he wrote to me and I answered his letters and went down there to ask for an extension of time.

20

The Court: If you have any letters, produce them.

Mr. Salisbury: I haven't with this man, but I have with the other complainant.

By the Court:

Q. You say you wrote letters to who? A. Mr. Craven.

30

The Court: Ask Mr. Craven to produce the letters.

Mr. Salisbury: Mr. Craven asked me to produce them. He served a notice to produce.

By the Court:

Q. Do you remember the date of the letters you wrote to Mr. Craven? A. No, it was after January 15th.

40

William F. Isbell, for Complainants—Direct.

Mr. Craven: I will give him all the correspondence if he wants it.

The Court: Do you want the letters now, Mr. Salisbury?

Mr. Salisbury: Have you any after the 15th of January?

10 Mr. Craven: I am just looking.

Mr. Freund: Here's the only one.

By Mr. Salisbury:

Q. Is that a letter you wrote to Mr. Craven?

A. Yes, I wrote that.

The Court: Offer it in evidence and read it.

20 (Marked Exhibit C-3 in evidence and read by counsel.)

By Mr. Salisbury:

Q. Relating to that conversation with Mr. Craven about January 15, 1930, did you go ahead and do further work on the house? A. Yes, I continued to work.

Q. And up until what time did you work on the house? A. Up until May, 1930.

30 Q. Were the materials delivered there from time to time as needed from that time on up until May? A. Yes, they were.

By the Court:

Q. Were the materials that were delivered there used on the house? A. Yes, they were.

Q. Did any of the other parties you were talking about visit the property at any time to see you working on the house? A. Yes, Mr. Schultz.

40 Q. What did he have to do with it? A. He

William F. Isbell, for Complainants—Cross.

furnished most of the lumber and plaster and most of the building materials.

Q. Who else came there? Did any of the Duffys go there? A. Yes, I remember Mr. Duffy going there once.

Q. During the progress of the building? A. Yes.

10

Q. Between January and May? A. Yes.

Mr. Salisbury: That's all.

Cross-examination by Mr. Freund:

Q. Mr. Isbell, referring to Exhibit C-2, a contract dated July 24, 1928, it is mentioned in the agreement that title was to close December 24, 1928. Were you ready on that day to pay the balance of the purchase price and receive a deed from the sellers? A. No, I wasn't.

20

Q. On or about January 15, 1929, did you receive a notice by registered mail, a copy of which I show you?

The Court: Have you the original of that?

Mr. Salisbury: No, I haven't.

A. (Witness.) I don't remember it.

30

By the Court:

Q. Look at the registry card and see if you recognize the writing. Do you know whose handwriting that is? A. It is not mine.

Q. Do you know whose it is? A. No, I don't.

Q. You say you don't remember that notice or you never received any such notice? A. I never remember receiving any such notice.

Q. Read it over and try and refresh your recollection. A. I am not quite sure whether it is an

40

William F. Isbell, for Complainants—Cross.

exact copy. I think I received some kind of a notice similar to it.

The Court: Let it be marked for identification.

(Marked Freund 1 for Identification.)

10 By Mr. Freund:

Q. Are you married? A. No.

Q. Do you know a Miss B. Isbell? A. Yes.

Q. Who is she? A. My sister.

Q. Would you know her handwriting if you saw it? A. I wouldn't be sure.

Q. Do you know your sister's handwriting? A. I am not very familiar with it.

20 The Court: Show it to him and see.

(Witness continuing.) It might be her signature.

By the Court:

Q. You wouldn't say it was not her signature?
A. No.

Q. Where is she now? A. She lives home.

Q. Where is her home? A. 140 21st Street,
West New York.

30 By Mr. Freund:

Q. Would you say you did not receive this notice? A. No, I wouldn't say it.

The Court: He said he received a notice somewhat similar to it but he wouldn't say that was the notice.

By Mr. Freund:

40 Q. Referring now to contract C-2, the second contract—

William F. Isbell, for Complainants—Cross.

The Court: C-2 is the one between James Duffy and William F. Isbell. C-1 is between James Duffy and wife and Emil Isbell and George Taufer.

By Mr. Freund:

Q. Referring now to Exhibit C-1, did you read the agreement before you signed it? A. I didn't sign the agreement.

10

Mr. Freund: I withdraw the question.

Q. Mr. Isbell, so far as you know your brother Emil never saw Mr. Craven? A. Yes, he saw Mr. Craven a number of times.

Q. Your brother did see Mr. Craven a number of times? A. Yes.

20

Q. Do you know the dates?

The Court: Does this man know the dates he went?

Mr. Freund: He said his brother saw Mr. Craven.

By the Court:

Q. Were you with your brother when he saw Mr. Craven? A. Yes.

30

By Mr. Freund:

Q. Where? A. At the time we made the tender to Mr. Craven.

Q. When was that? A. May, I think. Yes, it was in May.

Q. You have had charge of this entire matter for your brother, haven't you? A. I have, yes.

Q. And all the negotiations have been made between you and Mr. Duffy and Mr. Craven? A. Yes.

40

William F. Isbell, for Complainants—Cross.

Q. You know what the terms of this contract contained in Exhibit C-1 are, do you not? A. Which one are you referring to?

Q. The second contract. A. What is the question please?

10 (Last question read by stenographer.)

A. I know most of them.

Q. The contract marked Exhibit C-1 provides that title was to close on January 15, 1930, is that right? A. Yes.

Q. You knew that? A. Yes.

Q. Was your brother ready on that date to close title by paying the purchase price and accepting a deed? A. No.

20 The Court: He has already said no, and they went to Mr. Craven and asked for further time.

By Mr. Freund:

Q. When did you have this conversation with Mr. Craven about extending the time from January 15, 1930? A. Well, I had a number of conversations with him before and after.

30 By the Court:

Q. He is alluding particularly to the conversation in which you said you went there and told him you wouldn't be ready on that date and wanted further time to get a mortgage, or whatever you testified to. A. It was in the early part of March.

40 Q. I understood you to say you went there before January 15th and had a talk with him as a result of which you concluded you were going to

William F. Isbell, for Complainants—Cross.

do more work, and from that time on you did do work until May? A. What is the question?

Q. Tell us the first conversation you had with Mr. Craven. You told us you went to Mr. Duffy and Mr. Duffy referred you to Mr. Craven. When did you go to Mr. Craven? A. A few days before the contract expired.

10

Q. I don't know what that means. A. Before March 15, 1930.

Q. Before March 15, 1930? A. Yes.

By Mr. Freund:

Q. You mean to say it was a few days before March 15, 1930, the first time you went to Mr. Craven? A. No, I saw him a number of times before that.

20

By the Court:

Q. Mr. Witness, I understand this contract required the closing to be on January 15th. Now, is it January or March?

Mr. Freund: January 15, 1930 was the closing date of the contract.

By the Court:

Q. Was it January or March you went to Mr. Craven? A. It was a few days before closing title.

30

Q. What do you mean by closing title? A. January 15th.

By Mr. Freund:

Q. But you don't know the exact date? A. No.

Q. How do you figure it was three or four days before January 15, 1930? A. I just remember it was a few days before.

40

William F. Isbell, for Complainants—Cross.

By the Court:

Q. You were trying to arrange for a mortgage loan? A. I was.

Q. Had you been dealing with somebody about a mortgage loan? A. Yes.

10 Q. Who? A. I went to a number of title companies.

By Mr. Freund:

Q. How long an extension did Mr. Craven grant to you, if any? A. Three or four weeks.

Q. Did you receive from Mr. Craven a written extension? A. Yes, I received it.

Q. Where is it? A. I think——

20 Q. Your counsel has it?

Mr. Salisbury: I haven't got it.

(Witness continuing.) No. All the letters evidence it.

By Mr. Freund:

30 Q. I am speaking about the first conversation you had with Mr. Craven two or three days before January 15th. Did you at that time get a written extension of this closing? A. No.

By the Court:

Q. All you got was the conversation you told us before? A. Yes. Mr. Craven told me he would help me out.

By Mr. Freund:

40 Q. Now, two or three weeks after January 15, 1930, were you ready to close and pay the balance of the purchase price and take the property? A. No.

William F. Isbell, for Complainants—Cross.

The Court: If I understood what he said, he wasn't prepared then. He said he went to Mr. Craven and Mr. Craven gave him some assurance which warranted him in going out and continuing the work on the building, and he did continue working on the building.

10

By the Court:

Q. Is that the fact, that after you talked with Mr. Craven you went ahead and did more work on the building? A. Yes.

Q. And you say Mr. Steenland delivered some more material on the building? A. Yes, he did.

Mr. Freund: I want to find out if there was an extension, how far that extension was beyond January 15th.

20

The Court: Why should you bother yourself about that? According to his testimony there was nothing said as to the extent of the extension. I don't want to stop you from examining him in the way you want to.

By the Court:

Q. Did you ever have any letters from Mr. Craven or did you ever write any letters to Mr. Craven about further time, or write to Mr. Duffy about further time? A. I didn't write to them. I only called.

30

Q. You have no letters about further time? A. No, I haven't.

By Mr. Freund:

Q. Under the original agreement with Mr. Duffy, there were five or six lots which you had purchased, is that right? A. Yes.

40

William F. Isbell, for Complainants—Re-direct.

Q. And those lots had been excavated by you or your brother, is that right? A. They haven't been excavated.

Q. Well, trenches have been dug for the foundation? A. Trenches about six inches deep and about fourteen inches wide.

10 Q. That was done by either you or your brother? A. Yes, that was done by myself and a helper I had on the job.

Q. Nothing further has been done with reference to those five or six foundations? A. With the exception of the first building.

Q. How many others are there, five? A. I divided the lots into five parts. There are four more.

20 Q. So the other lots have excavations or trenches but nothing further has been done with reference to construction of a building on those four lots, is that right? A. Yes.

Mr. Freund: That's all.

Re-direct examination by Mr. Salisbury:

Q. Have all of those lots got excavations or trenches on them or only one?

30 The Court: He said all of them have.

A. There is a small footing six inches deep cut out.

By the Court:

Q. On each lot? A. Yes.

By Mr. Salisbury:

40 Q. But that is not a dug-in foundation? A hole in the ground?

William F. Isbell, for Complainants—Re-direct.

The Court: Yes, a trench is a hole in the ground.

By Mr. Salisbury:

Q. It is not a large hole?

The Court: He has given you the dimensions of it. 10

By Mr. Salisbury:

Q. Did you look at the notice which was referred to you before and marked Freund 1 for Identification? A. Yes, I did.

Q. How much property does the description in that notice refer to?

The Court: I cannot let him tell that. The paper speaks for itself. If you make use of it it will go in evidence. I don't know whether you realize what you are doing. 20

Mr. Salisbury: I will offer it in evidence.

The Court: Go ahead.

(Marked Exhibit C-4 in evidence.)

Mr. Salisbury: I desire to call your attention it is 150 feet if your Honor please.

The Court: No doubt about that? 30

Mr. Craven: Yes.

Mr. Salisbury: It applies to the first contract and not the second. It applies to Exhibit C-2.

Mr. Craven: Yes, that's right.

By Mr. Salisbury:

Q. Did you go to see Mr. Craven as a result of any conversation with Mr. Taufer before January 15, 1930? 40

George Taufer, for Complainants—Direct.

Mr. Freund: I object your Honor.

The Court: He can say yes or no. If he says no it will end it.

A. Yes, I did.

10

Mr. Salisbury: I think that's all.

The Court: You merely wanted him to say he went to Mr. Craven?

Mr. Salisbury: He went at the request of Mr. Taufer.

The Court: Nothing like that in the conversation.

Mr. Salisbury: As a result of a conversation with Mr. Taufer.

The Court: I don't know what you have in mind.

20

GEORGE TAUFER, being sworn.

Direct examination by Mr. Salisbury:

Q. What's your name, Mr. Taufer? A. George Taufer.

Q. And where do you reside? A. Demarest, New Jersey.

30

Q. What is your business? A. Manufacturer of concrete blocks.

Q. And how do you conduct that business?

Mr. Freund: I object.

The Court: It is not material but I will let him answer it.

A. Simply manufacture the material and sell it to the contractors.

40

George Taufer, for Complainants—Direct.

By Mr. Salisbury:

Q. I mean under what name? A. George Taufer, Inc.

Q. Is that a corporation? A. Yes, sir.

Q. About January, 1929, did you furnish materials to Mr. Isbell for the construction of a house in Ridgefield Park? A. Yes. 10

Q. Do you know where that house is located? A. Yes.

Q. Where? A. On the south side of Highland Place near Teaneck Road.

Q. Do you know what kind of a house it was he was constructing there? A. One story.

Q. What materials were furnished? A. I furnished the cement blocks for the foundation.

Q. And how much were they worth about? 20

Mr. Freund: I object.

The Court: What is the materiality of that? Are you trying to prove what the other witness was unable to prove? Is that so?

Mr. Salisbury: Going a little further, if your Honor please. To show how Mr. Taufer came to be interested in the property there.

The Court: All I am concerned with is whether there should be a specific performance of that contract. I will sustain the objection. 30

By Mr. Salisbury:

Q. Did you sign the contract which has been offered in evidence and marked Exhibit C-1? A. Yes, sir.

Q. Where was that signed Mr. Taufer? A. In Mr. Steenland's office, Palisades Park. 40

George Taufer, for Complainants—Direct.

Q. Do you know the closing date that is mentioned in that contract? A. Yes, sir.

By the Court:

Q. What is it? A. It was January 17th.

10 Q. You are wrong. You said you knew it and you don't know it. It is January 15th. A. Well, January 15th I guess is right.

By Mr. Salisbury:

Q. I show you a letter dated January 11, 1930, and ask you if you received that letter? A. Yes, sir.

Mr. Salisbury: I offer it in evidence.

20 (Marked Exhibit C-5 in evidence and read by counsel.)

Q. In reply to that letter did you do anything Mr. Taufer? A. I notified Mr. Isbell in regard to it and Mr. Isbell went to see Mr. Craven, as I understand, for an extension of time.

Mr. Freund: I object, your Honor, to what he is testifying to.

The Court: I will not let him testify to any more, but it is in.

30 By Mr. Salisbury:

Q. Did you reply to that letter? A. No, because Mr. Isbell had a contract to finish the house and sent me down there to see Mr. Craven.

Mr. Freund: I object.

The Court: He said he sent him there.

By Mr. Salisbury:

40 Q. I show you a letter dated January 18, 1930, and ask you if you received that letter? A. Yes, sir.

George Taufer, for Complainants—Direct.

The Court: Let it be marked.

(Marked Exhibit C-6 in evidence and read by counsel.)

By Mr. Salisbury:

Q. In reply to this letter did you do anything 10
Mr. Taufer? A. Yes.

Q. What did you do? A. I guess I was down to Mr. Craven one time. I don't know what time personally, but I asked him for advice as to what I could do, and I guess that's the answer to that. I guess I wrote him a letter but I couldn't swear to it, but I think I did write him a letter. It just brings me back in recollection I did answer.

Mr. Salisbury: Have you any letter in 20
reply to that letter of January 18th?

Mr. Freund: Surely.

By Mr. Salisbury:

Q. Is this your reply? A. Yes, sir, that is my reply.

Mr. Salisbury: That is evidently a reply to the first letter and I will offer it and read it if your Honor please.

(Marked Exhibit C-7 in evidence and 30
read by counsel.)

The Court: The date of that is what?

Mr. Salisbury: January 12, 1930.

Q. I show you a letter dated January 24th, Mr. Taufer, and ask you if you received that letter from Mr. Craven? A. Yes, sir, I did.

Mr. Salisbury: I offer it in evidence.

(Marked Exhibit C-8 in evidence and read 40
by counsel.)

George Taufer, for Complainants—Direct.

Q. Did you reply to that letter, Mr. Taufer? A. Not to my knowledge.

Q. I show you a letter dated March 17th, and ask you if you received that letter? A. Yes, sir.

Mr. Salisbury: I offer it in evidence.

10 (Marked Exhibit C-9 in evidence and read by counsel.)

Q. I ask you, Mr. Taufer, as to this letter that is referred to here, "That as I previously wrote you we gave Isbell until today to finish up the house and take title." Do you remember receiving any such letter as that? A. Yes, sir.

Q. You received this letter, but I mean the letter referred to in this letter? A. The other letter
20 I don't recollect if I received it.

Q. How much money have you advanced toward the finishing of this house, Mr. Taufer?

Mr. Freund: I object to it.

The Court: How is it material?

Mr. Salisbury: He is one of the vendees.

The Court: He may have advanced it but it may not have gone into the house. He may have given some money to somebody and it was not applied to the use it was intended.
30

Mr. Freund: I object to any testimony as to this man or anybody else putting it in the property.

The Court: It is claimed you ought not to be permitted to enforce an unequitable bargain. That is, if they benefitted this property to a considerable extent and if you do not have to convey the property to them you should pay them the value of what they put in. For that reason I will permit it.
40

George Taufer, for Complainants—Direct.

By Mr. Salisbury:

Q. Do you know how much money you have paid toward the construction of that house? A. Over \$5,200.

By the Court:

Q. What have you got to prove it? A. The Steenland Lumber Company furnished material to the amount of \$2,300.00. The mason and plasterer—

10

Mr. Freund: I object unless the men can produce the books.

The Court: He is stating the facts. You can ask him to produce the books.

(Witness continuing.) I paid out for the mason, for mason and plaster labor in the amount of over \$500.00. I paid out for labor for the plumber approximately \$175.00.

20

Q. Have you any records to show these various payments? A. I have the books home.

Q. This is the place to have them.

Mr. Freund: I insist that his testimony be stricken out unless he can offer better testimony.

The Court: I will strike out what he said about approximately, but one or two things he didn't say approximately.

30

The Witness: It is over \$500.00. I can produce the books from the mason.

Mr. Salisbury: It is evidential to what I put in.

The Court: If you expect any decree from me you won't get it on this class of testimony, assuming you are entitled to a decree.

40

George Taufer, for Complainants—Direct.

Mr. Salisbury: In a specific performance case the work has gone into the place and the house is erected and therefore we ask a decree for specific performance.

10 The Court: You might get a decree for specific performance, but if you are offering this testimony in the event of not getting specific performance and for a decree for money you won't get it on this line of testimony.

By Mr. Salisbury:

Q. When you say you paid money to the mason, who was that? A. William Schultz in Dumont.

20 Q. When you say you paid money to the plumber, who was that? A. One was Burns, but the other I don't recollect. Burns was the tin-smith and the other man I can't recall.

The Court: He is asking about the plumber.

The Witness: The plumber got \$175.00.

By Mr. Salisbury:

30 Q. Do you know who he was? A. I never saw the plumber.

Q. I mean his name? A. I made out the check but I don't recall the name.

Q. And the tinsmith you say was Burns? A. Yes. I paid all by check.

Q. I show you some photographs and ask you if they accurately show the house? A. Yes, sir.

Q. Which is the subject of this suit? A. Yes, sir.

40 Mr. Freund: I object unless he can specify the time.

George Taufer, for Complainants—Direct.

The Witness: Those pictures were taken Friday last. Thursday or Friday. I received them Saturday.

By the Court:

Q. Were you there when they were taken? A. Yes, I brought the man there. 10

Mr. Salisbury: I offer them in evidence.

The Court: Show them to counsel. Any objection to the photos? Do they depict it?

Mr. Craven: Outside.

The Court: All right, mark the outside ones.

Marked Exhibits C-10, C-11, C-12, C-13, C-14.)

By Mr. Salisbury: 20

Q. When you say, Mr. Taufer, you paid money to Mr. Steenland do you mean you paid him that amount or you were obligated to pay him? A. Mr. Steenland received notes from me. Two notes of \$500.00 each and another note for eleven hundred and some odd dollars which is partly paid. There is \$300.00 paid and there is still due \$800.00 to be paid on the materials supplied by Steenland.

Q. When you say Steenland what company do you mean? A. The Palisade Lumber Company—Steenland Brothers. 30

Q. And how much actual cash have you paid? A. In actual cash \$2,300.00. \$5,200.00 the lumber bill was. \$2,300.00, and the total amount I paid out is over \$5,000.

By the Court:

Q. Paid out in cash and by note? A. There is still \$800.00 due. The other is already paid. 40

George Taufer, for Complainants—Direct.

Q. That is embraced in the \$5,200.00 item? A. Yes.

By Mr. Salisbury:

10 Q. Do you know whether Mr. William Isbell was working on the house between January 15, 1930, and May, 1930? A. Yes, sir.

Q. Did you inspect the house from time to time? A. I came there once in a while, yes, sir.

Q. About how much work would you say has been done as regards the whole of the house to be completed?

Mr. Freund: I object.

The Court: What is the objection?

20 Mr. Freund: Because this man has not qualified as an expert to testify.

The Court: I suppose you had better qualify him.

Mr. Freund: He is a concrete man.

The Court: I will sustain the objection.

By Mr. Salisbury:

Q. How long have you been in the concrete block business, Mr. Taufer? A. Twenty-five years.

30 Q. Are you familiar with the construction of houses? A. Yes, sir, I built some myself.

By the Court:

Q. How many? One or two or a dozen or more? A. Five houses.

By Mr. Salisbury:

40 Q. Can you say about how much proportionate work has been done as to the whole work of completing this house? A. The steam radiators has

George Tauffer, for Complainants—Direct.

got to be connected, the bathroom has to be set and the doors has to be hung, which the photographs show is not hung, and of course the necessary paint to finish the house.

By the Court:

Q. Is the material there for those parts? Are the tubs there and the doors? A. The tubs is there, but the doors ain't. 10

By Mr. Salisbury:

Q. How much in percentage has been done as to the whole work? A. I would say more than three-fourths.

Q. How much would it cost to complete it? A. Eight or nine hundred dollars. 20

By the Court:

Q. How do you make that up? A. We have to put the cellar floor in.

Q. How long does it take to hang a door? A. A carpenter will hang one dozen in a day.

Q. How many would you say are to be hung? A. Six or seven anyway.

Q. How about the bath tubs? A. The bath tubs is there and has to be set and the tile work. The tile work cost about \$40.00. The setting of the toilet is a few days labor for the plumber. 30

Q. How about the painter? A. The painter had a contract of \$150.00.

Q. How much do you say for the radiator work? A. The radiator work I gave out to a contractor to furnish it.

Q. How many doors are to be hung? A. I wouldn't exactly say. One, two, three downstairs, and I imagine about eight or nine upstairs. 40

George Taufer, for Complainants—Direct.

Q. If they hang six a day it would be at the utmost three days' work? A. Yes.

Q. How do you figure \$800.00? Carpenters get how much a day, \$12.75? A. \$12.00 they have been getting, and the cellar of the first floor there is quite some work to be attached to it. It has to be excavated to get it to a certain height. That will take probably four or five days.

Q. For laborers? A. Yes.

Q. And laborers get \$6.00 a day? A. Yes, \$6.00 a day. The concrete floor I suppose in my estimation would cost about \$100.00. The connection for the out-let for the sewer and water and gas has not been done. That would be approximately \$100.00. The permit itself cost about \$30.00

20

By Mr. Salisbury:

Q. Up to what time, Mr. Taufer, was Mr. Isbell working on the house? A. Mr. Isbell wanted to get some more material and I insisted upon taking the deed. He always said Mr. Duffy was a nice man——

Mr. Freund: I object.

The Court: Answer the question and tell us up to what time the work was done.

30

A. (Witness continuing.) Up to May 27th Mr. Isbell worked on it.

By Mr. Salisbury:

Q. Did you tender the purchase price of this property to Mr. Craven or Mr. Duffy? A. Yes, sir.

Q. And who was with you when you tendered it?

40

George Taufer, for Complainants—Direct.

Mr. Craven: That is admitted.

The Court: When?

Mr. Craven: About that time.

The Court: Is that all you want to prove about that time?

Mr. Salisbury: Yes, approximately.

Mr. Craven: We will admit the tender was made but we would like to fix the date. 10

Mr. Salisbury: I can fix it by another witness.

The Court: Can you fix it by this witness?

By Mr. Salisbury:

Q. Do you remember the exact time that the tender was made of the purchase price of the property? A. I think it was possibly on the 28th, because I borrowed money on a mortgage in order to make a payment for these loans. 20

By the Court:

Q. The 28th of May? A. The 28th of May.

By Mr. Salisbury:

Q. Who was there at the time that the tender was made? A. Mr. Craven, Miss Thomas, Mr. Emil Isbell and William Isbell. 30

Q. Where was it made? A. In Mr. Craven's office.

Q. Any other place? A. After that we went to see Mr. Duffy in his office.

By the Court:

Q. What was said by Mr. Craven when the tender was made? A. He said our time has passed, and he wouldn't accept the money. 40

George Taufer, for Complainants—Cross.

Q. Then you went to Mr. Duffy's office after that? A. Yes.

Q. What did you do there? A. We made the same tender to Mr. Duffy.

Q. What did he say? A. He said the time was passed and that he is going to put insurance on the building, and the building is his.

Mr. Salisbury: That's all.

Cross-examination by Mr. Freund:

Q. Now, Mr. Taufer, you testified your estimate to do the painting work would be about \$150.00, is that right? A. Yes, sir.

Q. What painting work is to be done, do you know? A. Well, at the present time it will require two coats. The contract at that time was for two coats outside and the interior. That would cost \$150.00.

By the Court:

Q. But one coat has been already given? A. Yes.

Q. And you think there ought to be two coats more? A. Yes, there will have to be two other coats.

Q. That is because of lapse of time? A. Yes.

By Mr. Freund:

Q. What about the painting in the inside? A. That is included in the contract \$150.00.

Q. You have obligated yourself to pay Steenland \$2,300.00? A. Something like that.

Q. Do you know exactly what it is? A. It is over \$2,300.00.

Q. How much is it? A. I paid by notes and Mr. Steenland has the notes.

Q. You testified you have also obligated yourself to pay the mason \$500.00? A. Yes, sir.

George Taufer, for Complainants—Cross.

Q. And the plumber \$175.00? A. Yes, sir.

Q. And the tinsmith \$150.00? A. Yes, sir.

Q. Have you either paid or obligated yourself to pay for any other material or labor in the building? A. Everything paid except approximately one note to Mr. Steenland for about \$800.00.

Q. Those payments which you just recited aggregate about \$3,900.00. How do you account for the difference between \$5,200.00 and \$3,900.00? A. I loaned Mr. Isbell because he could not finish the building and had no money. I went to the bank and borrowed money and gave him \$1,200.00 so he could complete the building. 10

By the Court:

Q. What did he use that money for? In other words, how do you know it went into the building? A. I couldn't testify to that. He done some labor with it. 20

By Mr. Freund:

Q. How much was it you say you gave Mr. Isbell? A. \$1,200.00.

Q. Did you give it to him all in one payment? A. Yes.

Q. In check or cash? A. Check.

Q. Have you got the check? A. No. 30

By the Court:

Q. You have it home you said? A. Yes.

By Mr. Freund:

Q. You knew that under the terms of the contract mentioned in Exhibit C-1, that title was to pass January 15, 1930? A. Yes, sir. 40

George Taufer, for Complainants—Cross.

Q. Were you ready on that day to pay the balance of the purchase price and take a deed for the property? A. No, I was not.

The Court: It seems to be conceded nobody was ready at that time, isn't that so?

10

Mr. Salisbury: No, they weren't ready.

Mr. Freund: A notice to produce has been served on the attorney for Mr. Taufer to produce a letter to Mr. Taufer dated February 25, 1930.

The Court: Did you receive such a notice?

Mr. Salisbury: We say not. I received a notice to produce but I have no such letter.

20

Mr. Freund: I ask your Honor to file this notice.

Q. I show you what purports to be a copy of a letter dated February 25, 1930, addressed to Mr. George Taufer, and ask did you receive that letter? A. I imagine I did get this letter, but somehow I have not got it.

The Court: Do you want to offer that?

Mr. Craven: It is a carbon copy.

30

Mr. Freund: I offer it in evidence.

By Mr. Salisbury:

Q. Did you say you received it? A. I imagine I did. I always kept the letters except this one.

By the Court:

Q. But your recollection is you did receive it? A. Yes, something similar to it.

40

The Court: Any objection to it?

George Taufer, for Complainants—Cross.

Mr. Salisbury: Not if he says he received it.

The Court: You heard what he said. Any objection?

Mr. Salisbury: I think it ought to be proved a little more completely than it has been. I object at this time as not being definitely identified. 10

The Court: I suppose you will have to prove it then.

By Mr. Freund:

Q. Mr. Taufer will you say you did not receive the letter? A. I received so many and always put them aside and filed them.

By the Court: 20

Q. The original of this letter you gave to your attorney? A. No.

By Mr. Freund:

Q. On March 17, 1930, were you ready to pay the balance of the purchase price and receive a deed for the property; yes or no? A. No, I was not.

Q. You knew that the time had been extended until March 17, 1930, in which to close? A. Yes, sir. 30

By the Court:

Q. Was there work done on the house after March 17th? A. Yes.

Q. What work was done after March 17th, do you remember? A. Before March 17th?

Q. No, after. A. The plaster was done after that and the trim was put on in the inside and the painting was done on the outside. 40

George Taufer, for Complainants—Cross.

By Mr. Freund:

Q. Mr. Taufer, do you recall being in Mr. Craven's office on May 20, 1930? A. Around that time I was in Mr. Craven's office, yes, sir.

10 Q. For what reason were you down to see Mr. Craven on May 20, 1930? A. I think I was there at the time that I wanted to get the deed. I wanted to raise the money myself because Mr. Isbell fell down on getting the mortgage the way he expected he would. I said I would raise a \$6,000.00 mortgage and be able to take the deed but we were not ready at that time. That is, Mr. Isbell promised to get the mortgage but did not get it. I was not in a position at that time to get the cash. I had to raise a mortgage first and
20 on May 28th I raised a mortgage and tried to get the deed from Mr. Craven.

Q. You were in Mr. Craven's office on May 20th? A. Something around that time.

By the Court:

Q. What were you doing there at that time? A. I wanted to see what we could do in regard to getting a mortgage.

30 By Mr. Freund:

Q. Who was with you? A. One time I was in Mr. Craven's office alone and one time I think Mr. Isbell was with me.

Q. Isn't it not a fact Mr. Taufer you spoke to Mr. Craven on May 20, 1930, in reference to making a new contract for this property? A. No, I did not want to make a new contract.

40 Q. How would you expect to get a deed for the property on May 20, 1930? A. Mr. Isbell always said Mr. Duffy is a nice man and will accept the

George Taufer, for Complainants—Cross.

money at any time and under the conditions I did not push so much.

Q. Mr. Isbell was your partner, was he not? A. Yes.

Q. How would you expect to get a deed if Mr. Isbell was your partner?

The Court: You mean to himself?

Mr. Freund: Yes.

10

By the Court:

Q. Did you try to get a deed in your own name alone? A. Mr. Duffy said the property was his and he would sell it to anybody, and for that reason I went to the office and thought I might be able to buy it.

20

By Mr. Freund:

Q. How could Mr. Duffy sell the property to you when he had made a contract with you and Mr. Isbell? A. I had all the money and Mr. Isbell would be satisfied to take the profits on the house if it was sold.

Q. Who told you that you and Mr. Isbell were out? A. What do you mean out?

Q. Out of the contract. The contract no longer existed?

30

The Court: I didn't hear anything like that.

By Mr. Freund:

Q. But did you see Mr. Duffy on May 20, 1930?

The Court: He saw him on May 28th.

A. Yes. I also saw Mr. Craven on May 20th.

40

George Taufer, for Complainants—Cross.

By the Court:

Q. You saw Mr. Craven on May 28th also? A. Yes.

Q. And from him you went to see Mr. Duffy?

A. Yes.

10 By Mr. Freund:

Q. On May 20, 1930, the purpose of your going down to Mr. Craven was to get a deed for the property yourself? A. Mr. Isbell didn't have the money and I had to buy it in and put up all of the money.

20 Q. Isn't it the fact Mr. Taufer the purpose of your going down to see Mr. Craven on May 20, 1930, was for the purpose of making a new deal for the purchase of this property? A. No. Simply wanted to pay for the interest that was due and try to get a deed if possible from Mr. Duffy because I had too much money involved and didn't want to spend any more money.

Q. Did you offer to pay any interest? A. Yes, sir.

Q. How much? A. Whatever he asked. Whatever was due.

30 Q. Did you ask him how much was due for interest? A. We had that all figured out and tendered it in cash on May 28th.

By the Court:

Q. How much did you tender? A. Around eighteen hundred.

By Mr. Freund:

40 Q. We are now talking about May 20th. A. Oh, I simply said I was satisfied to pay the interest and whatever extra cost if Mr. Duffy would convey the property.

George Taufer, for Complainants—Cross.

Q. Did Mr. Craven tell you how much was due?
A. I don't think he did.

Q. What did Mr. Craven say to you on May 20th? A. Well, Mr. Craven said he wouldn't do it.

Q. He wouldn't do what? A. He couldn't give me a deed. 10

Q. Did he tell you why? A. Because he says the time is past.

By the Court:

Q. What time did he say was past? A. The time of taking a deed.

Q. What did he say to you in that regard? A. He simply put me off that I couldn't get a deed any more, and I went to my lawyer and stated the case to him and he promised to get a mortgage on the property so we could tender the cash money to Mr. Duffy. 20

Q. Then you did get the money and you went to Mr. Craven and from Mr. Craven you went to Mr. Duffy on the 28th? A. Yes, sir.

By Mr. Freund:

Q. Now Mr. Taufer, when did you first deliver concrete blocks for this particular lot? A. In January, 1929. 30

Q. Are you sure of that? A. Yes, sir.

Q. Did you deliver the blocks yourself personally? A. No, sir; my driver.

Q. When was the last work that you know of that was done on this house? A. They were working up to the time we tendered the money to Mr. Craven for the deed.

Q. May 28, 1930? A. Yes.

Q. How do you know that Mr. Taufer? A. I was there and anxious to get the deed and I was pushing Isbell to get a deed. 40

George Taufer, for Complainants—Cross.

Q. Do you know when the first excavation work was done on the property? A. I was not there when it was done. I sent the material down with my truck.

10 Q. How often was Mr. Isbell working on the building of this house? A. Well, on and off. I couldn't tell you. He worked from that time—practically from January or February. I think it was February when they put up the foundation.

Q. Then it is a fact that Mr. Isbell has been working on the construction work from January, 1929, to May, 1930, and the house is still uncompleted? A. Well, he stopped for two or three months at a time.

20 Mr. Freund: I ask that be stricken out.
The Court: He told you he stopped for two or three months at a time, but the work was not continuous.

By Mr. Freund:

Q. The real party in interest other than yourself is William Isbell and not Emil Isbell? A. When I started the contract it was for the furnishing of material and the concrete blocks was in January.

30 By the Court:

Q. To whom? A. To William Isbell.

By Mr. Freund:

Q. And he is the one you have always recognized as the owner of this house and lot? A. I inferred he owned the property.

40 Q. When you were in and about this building since January, 1929, to May, 1930, did you see a building permit posted in or around the property

George Taufer, for Complainants—Cross.

for the erection of this building? A. Yes, I paid for it.

Q. When and how much? A. I don't exactly know. I guess \$12.00 or \$13.00 for the permit. I paid by check.

Q. When was that? A. Well, it was after we made the contract in October. When we started out the first permit was past and the building inspector demanded another permit because it was over a year. 10

Q. Now Mr. Taufer, you have built houses similar to this house, have you not? A. No, not similar.

Q. Have you built one-family houses and two-family houses? A. Yes, I built four-family houses and stores.

Q. Now from your experience as a builder, in your opinion how long should it take a builder to complete the construction of a house similar to the house in question? 20

The Court: Does that question assume he had the money?

Mr. Freund: Yes.

A. It should not take more than three months.

By the Court: 30

Q. That is barring strikes and assuming the man has the money and could get the material?

A. Yes. The trouble is he couldn't get the material and had no money.

By Mr. Freund:

Q. Your original investment in that house by reason of furnishing the concrete blocks was \$400.00, is that right? A. Approximately, yes. 40

George Taufer, for Complainants—Cross.

Q. And you have put in \$5,000 to save \$400.00?

A. Yes, to save \$400.00.

Q. Just one more question. You knew that time was of the essence as of March 17, 1930, within which to complete the contract, do you not? A. I knew the essence was on January 15th and at that time I had sickness in the family and death and I could not attend to business.

Q. You have testified the time was extended from January 15th, 1930? A. Yes, sir.

Q. It was extended until March 17, 1930? A. Yes, sir.

Q. You knew that? A. Yes, sir.

Mr. Freund: That's all.

The Court: It was further extended because they continued to do work.

By Mr. Freund:

Q. Mr. Taufer, from March 17, 1930, until May 20, 1930, did you get in touch with Mr. Duffy or Mr. Craven either personally, or write them any letters? A. I testified to that previous that I saw Mr. Craven in regard to this affair.

Q. When? A. Sometime around the 20th.

Q. May 20th? That was the only time? A. No, I was previous in Mr. Craven's office.

Q. Between January 15, 1929, and May 20, 1930, the only time you saw either Mr. Craven or Mr. Duffy or wrote any letters to them was when you saw Mr. Craven on May 20, 1930, in his office? A. I was previous in Mr. Craven's office.

By the Court:

Q. What for and when? A. At the time when the first contract—that is the contract expired. I wanted to get——

George Taufer, for Complainants—Re-direct.

By Mr. Freund:

Q. Which contract? A. The deed should have been taken January 15th. I don't know what time I was there and told Mr. Craven I done the best I could but Mr. Isbell was very slack, and I asked him what I could do and he says I couldn't do anything.

10

Q. Now Mr. Taufer, to make it a little clearer, did you at any time from March 17, 1930, until May 20, 1930, either see or write any letters to Mr. Craven or Mr. Duffy? A. I don't think so, no.

Q. Either yes or no.

The Court: He said he didn't think so.

Mr. Freund: That's all.

Re-direct examination by Mr. Salisbury:

20

Q. Was a deed ever tendered to you for this property, Mr. Taufer? A. No, sir.

Q. Have you any recollection of a time and place being set when a deed would be tendered for this property calling upon you—

Mr. Freund: I object. The contract speaks for itself.

The Court: It isn't the contract you are alluding to. It is the extension?

30

Mr. Salisbury: The extensions are all in the letters offered in evidence.

The Court: I thought there was some paper that fixed March 17th.

Mr. Craven: They are the letters.

The Court: Are the originals in?

Mr. Craven: Yes.

Mr. Salisbury: There isn't any original letter fixing March 17th.

The Court: You say there is no letter of March 17th?

40

George Tauffer, for Complainants—Re-direct.

Mr. Salisbury: There is no original letter; no, sir.

The Court: Go right ahead.

By Mr. Salisbury:

10 Q. Did you receive a notice calling upon you that a deed would be ready and to be ready to pay the money at any time or place? A. I did not see the letter. Mr. Isbell had a conversation with Mr. Duffy and stated——

By the Court:

20 Q. He will have to speak for himself unless you were present. Did you hear the conversation between Mr. Isbell and Mr. Duffy? A. No, but I was in the office on that date and he agreed to give a deed.

Q. You cannot tell us what conversation was had between Mr. Isbell and Mr. Duffy unless you were there and heard it. A. Mr. Isbell told me we would get a deed. We was in the office and offered Mr. Duffy the money providing I could raise the money.

Q. When? A. Approximately May 20th.

Q. You went over that a good many times? A. Yes. Mr. Duffy stated——

30

By Mr. Freund:

Q. Who did Mr. Duffy state it to? A. To us in the presence of Mr. Craven, Isbell and himself. He stated that if we take the original agreement between Isbell and Mr. Duffy for the five lots that he would convey the five lots to us.

The Court: Where is this paper about March 17th? It is not in any of the originals, is it?

40

George Taufer, for Complainants—Re-cross.

Mr. Salisbury: No, sir.

Mr. Craven: There is a letter of March 17th in which it says his interest was null and void.

The Court: That is where you declare it null and void. I am asking for the one that fixes the time.

10

Mr. Craven: There aren't any.

By Mr. Salisbury:

Q. And you had in mind all the time this contract was still in force and effect up until May, 1930? A. Yes.

Mr. Freund: I object.

The Court: I will permit that. It cannot hurt you any. He may have had it in his mind.

20

Mr. Freund: It calls for a conclusion.

The Court: It only bears out he continued to do work until May 28th.

Mr. Salisbury: I would like to reserve the right to call him further as to the exact amount of money he put into the house. I didn't think it would come into question.

The Court: We will see. I will not specifically say you can call him.

30

Re-cross-examination by Mr. Freund:

Q. Mr. Taufer, when was the last you put any money into the building for either labor or material? A. It was sometime in April I paid for plumbing fixtures. I paid \$165.00 for material to be delivered.

By the Court:

Q. April of this year? A. Yes, sir.

40

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Mr. Freund: That's all.

By Mr. Salisbury:

Q. After that was any supplies ordered from Steenland, Mr. Taufer? A. Yes, practically up to May 20th.

10

Q. Were they delivered, if you know? A. Yes, sir, they were delivered.

By the Court:

Q. Were they used in the building? A. Yes, sir. There was trim supplies that was delivered.

Mr. Salisbury: That's all. I intend to get through with Mr. Steenland tonight.

The Court: All right.

20

ROLLO STEENLAND, being sworn.

Direct examination by Mr. Salisbury:

Q. Where do you live, Mr. Steenland? A. Grand Avenue, Palisade Park.

Q. Are you engaged with any company that is in the lumber and material business? A. Palisade Park Lumber & Supply Company.

30

Q. Where is that located? A. Palisade Park, New Jersey.

Q. Do you know about a house being erected on the southerly side of Highland Place in the Village of Ridgefield Park? A. Yes, sir.

Q. Who had charge of that house? A. William Isbell.

Q. Do you know about where it is located? A. Yes, right opposite the school on Teaneck Road.

40

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Q. That contract which was offered in evidence, Exhibit C-1, do you know where that contract was signed? A. It was signed in my office.

Q. Who was present? A. I am not sure. I know Mr. Isbell, Mr. Taufer, and the attorney for Mr. Duffy.

Q. Did your company deliver materials to this house? A. Yes, sir. 10

Mr. Freund: Just a moment. I object your Honor unless this witness can deliver receipts or can prove delivery.

The Court: This man is an experienced witness. I will receive it subject to your objection.

By Mr. Salisbury:

Q. Can you state the value of the material that was delivered to that house? 20

Mr. Freund: I object for the same reason.

The Court: The question is can he state the value.

A. About \$2,300.00.

By the Court:

Q. How do you fix that? A. I have bills here. 30

By Mr. Salisbury:

Q. Do those bills show the complete material that was delivered? A. These statements do. The last bill shows that. I haven't got it because it is paid by notes.

By the Court:

Q. The material was delivered by your concern? A. Yes, the Palisade Park Lumber & Supply Company. 40

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Q. Are you sure those materials were used in this building? A. Yes, sir.

By Mr. Salisbury:

10 Q. Can you refresh your recollection from anything of the last day that material was furnished on that house? A. Between May 1st and May 7th. In the month of May there was \$100.21 delivered.

By the Court:

Q. What was the item? A. White wood trim and some flooring.

By Mr. Salisbury:

20 Q. I show you what purports to be a copy of a bill or statement. Is that a copy of a bill delivered during April? A. Yes, in the month of April.

Q. And from that can you tell me how much was delivered and what was delivered? A. Yes, I can, from this bill. We started to deliver on the first of April. The first delivery was 2 ton of mortar.

30 The Court: Do you people question the fact these materials were furnished and put in the building?

Mr. Freund: Unless they can show deliveries were made.

The Court: Do you question it?

Mr. Freund: Yes, sir.

Mr. Craven: To the value of it we question it.

The Court: Do you question the fact the materials went in?

Mr. Craven: We don't know. He says \$2,300.00 worth went in.

40 The Court: He will have to describe what they were.

Rollo Steenland, for Complainants—Direct.

The Witness: I can't describe them all.
I only have the month of April.

The Court: Where are the rest of them?

The Witness: In my office.

The Court: What's the use of going on
with him? He has to come back.

Mr. Salisbury A subpoena *duces tecum* 10
was served on him, your Honor.

The Court: I suppose you will have to
prove the delivery tickets.

By Mr. Salisbury:

Q. How long have you been in the business of
material? A. I have been twenty years in the
building material and ten years contracting be-
fore. Thirty years altogether.

Q. Have you done contracting work yourself? 20
A. Yes, sir.

Q. I mean maker of the building? A. Yes, sir.

Q. Have you seen this building? A. Yes, sir.

Q. What in your opinion is the value of that
house at the present time? A. I value that house
today between \$6,000 and \$6,500.

By the Court:

Q. In its present condition? A. In its present 30
condition.

By Mr. Salisbury:

Q. Exclusive of the land? A. Yes, sir.

Q. Have you a letter there, Mr. Steenland,
dated March 17th from Mr. Craven? A. Yes, sir.

Mr. Salisbury: I offer it in evidence.

(Marked Exhibit C-15 in evidence and
read by counsel.) 40

Rollo Steenland, for Complainants—Direct.

Q. Did you do anything in regard to that when you received that letter? A. I answered him, I believe.

Q. Have you an original of a letter dated March 18th from Mr.— A. I answered this letter of March 17th on March 18th. I have another letter of March 18th, you mean?

By the Court:

Q. You have a copy of the letter there? A. Yes.

Mr. Freund: Let's see the copy and we may be able to identify it, Mr. Salisbury. No, we didn't receive it.

20 By Mr. Salisbury:

Q. Have you any other letters received from Mr. Craven, Mr. Steenland? A. One dated January 20th.

The Court: How about the copy of the letter?

Mr. Freund: I object to its admission unless it is proved.

By Mr. Salisbury:

30 Q. Do you remember dictating a letter on March 18th? A. I do.

By the Court:

Q. That particular letter he is calling your attention to? A. Yes.

By Mr. Salisbury:

40 Q. Can you say a letter like that was mailed? A. Yes.

Rollo Steenland, for Complainants—Direct.

Mr. Freund: We have the letter in another file, your Honor.

Mr. Salisbury: I offer it in evidence.

(Marked Exhibit C-16 in evidence and read by counsel.)

The Court: We will now take a recess. 10

(Further hearing continued to December 2nd.)

(Continuation of hearing, December 2, 1930.)

ROLLO STEENLAND, recalled.

Direct examination continued by Mr. Salisbury: 20

Q. Have you a letter written by Mr. Craven to you regarding this property dated January 20, 1930? A. January 20th.

Q. Have you an earlier one than that? A. January 11th.

Mr. Salisbury: I offer this letter of Mr. Craven's to Palisade Park Lumber & Supply Company dated January 11, 1930, and a reply by Mr. Steenland, representing Palisade Park Lumber & Supply Company, to Mr. Craven dated January 15, 1930. 30

(Marked Exhibits C-17 and C-18 in evidence and read by counsel.)

Q. Have you any others after that date, Mr. Steenland? Any others from Mr. Craven? A. One of January 20th.

Mr. Salisbury: I would like to offer these in evidence. I am offering a letter 40

Rollo Steenland, for Complainants—Direct.

of January 20th from Mr. Craven to the Palisade Park Lumber & Supply Company, and a reply dated January 21st.

(Marked Exhibits C-19 and C-20 in evidence and read by counsel.)

10

Q. Have you any further letters, Mr. Steenland? A. You must have the other letter of March 17th.

Q. You haven't anything further? A. No.

Q. Have you the others with you as to the amount of materials delivered and furnished for that house? A. Yes, sir.

20

Mr. Freund: I want to make objection as to the materiality of offering this record or any evidence as to material which was delivered on that job or which may have gone into this house.

The Court: Why?

Mr. Freund: This is a suit for specific performance.

30

The Court: I know it is. The principal question before me is as to whether or not you waived time as being the essence of the contract. All the way through that seems to be the evidence that is being presented.

Mr. Freund: We deny that.

The Court: I appreciate that, but they say you did, and they are not only undertaking to prove it by conversations and letters but facts and circumstances which you seemingly had knowledge according to them.

40

Mr. Freund: Suppose they put in \$10,000 worth of material in this house?

Rollo Steenland, for Complainants—Direct.

The Court: Suppose they did. Do you thing a Court of Equity would let you take advantage of it afterwards? This is a Court of Equity. There are lots of things to be considered. I will receive it subject to your objection.

Mr. Freund: We will admit, sir, that materials were delivered but we have no knowledge they went into the building. 10

The Court: If your purpose is only to show the delivery of the materials the necessity of that is obviated except for the dates of delivery.

Mr. Salisbury: I would like to find out whether under your Honor's idea that possibly you might grant a decree compelling them to pay us for the amount that went into it. 20

Mr. Freund: I want to object to that because the bill does not pray for that relief. They are seeking specific performance.

The Court: I don't know. Maybe at the end of the case I will grant them the privilege of amending their pleadings. Under Rule 60 relief other than that prayed for may be granted. I think I will hear the whole case and at the end of it I will hear you gentlemen. I will receive it subject to your objection Mr. Freund. 30

By Mr. Salisbury:

Q. Have you compared this statement with the delivery tickets, Mr. Steenland? A. Yes, I have.

Q. And have you the tickets? A. I have the tickets.

Q. Do all of those show receipts by Mr. Isbell? A. Except two tickets. They were not signed. The reason for that he wasn't on the job at the time. 40

Rollo Steenland, for Complainants—Direct.

Mr. Salisbury: I offer the tickets.

(Marked Exhibit C-20-A in evidence.)

The Court: They are conceding the delivery of the material. What are you trying to prove now?

10 Mr. Salisbury: The amounts of them.

The Court: I don't know whether I will have to deal with that but I think I had better receive it.

Mr. Freund: I want to renew my objection that there is no proof the material went into that building.

Mr. Salisbury: I can't prove it all at once.

20 Q. What is the amount Mr. Steenland that was delivered by your company? A. Separate I will give them to you. Mason material, \$619.93; hardware, nails, paint for roofing, sashweights and sash cord, \$97.21; Plumbing materials, \$127.63; framing materials, trim and oak flooring, \$1,319.97, making a total of \$2,164.74, of which \$1,300.00 has been paid by Mr. Taufer, and I received a note for \$664.74 which is not due at this time.

30 Q. Have you personally visited the building Mr. Steenland? A. I have personally.

Q. And how frequently have you been over to see it? A. I could see once in two weeks or twice a month.

Q. And can you say from your inspection of the house that the material has been used in it that your company has delivered?

Mr. Freund: I object unless he actually saw the material go into the building.

40 The Court: It is pretty hard to identify material. Whether he can truthfully say

Rollo Steenland, for Complainants—Cross.

is another question. Lumber is pretty much alike when it is cut. I think I will overrule that question just now. If he can say he saw the material being installed there.

By Mr. Salisbury:

Q. Can you say, Mr. Steenland, material of the firm of your's has gone in that building? A. I saw material of my own being nailed on that building. Nobody else. 10

Q. How can you identify it? A. I can identify it.

Q. How? A. Whitewood trim I know.

By the Court:

Q. Where do you buy it? A. Bristol Lumber Company. 20

Q. And others buy it from the same concern? A. They may not have the same pattern.

Q. They may not, but they might? A. I generally walk down the following day to see the trim. I saw it nailed on and I know the men that put it on. I also saw the timber being used and know the men that put it on.

Mr. Salisbury: That's all with this witness. 30

The Court: Any questions?

Cross-examination by Mr. Freund:

Q. I show you a letter addressed to Palisade Park Lumber & Supply Company dated March 17, 1930, and marked Exhibit C-15. You testified you received that letter? A. Yes, sir.

Q. After receiving that letter why did your company continue to furnish materials on this job? A. I had faith in counsel I was dealing 40

Rollo Steenland, for Complainants—Cross.

with—corresponding with. Being extended once I knew he would give the deed to the said property.

Mr. Freund: I object to the last part of that answer because it is not responsive.

The Court: Let it go and we will see.

10

Mr. Freund: It is not what his faith had been.

The Court: I will leave it stand. It isn't like trying a case before a jury. I can deal with it later.

By Mr. Freund:

20

Q. The letter just referred to states that we would not allow him any more time but would consider the contract at an end and null and void, and still you continued to furnish material in the face of that letter? A. Yes, we did.

Q. In your opinion how long would it take under ordinary conditions to complete or to do the work that has been done so far on this house? A. Three to four months if everything was running smoothly.

Q. Do you know how long the construction of this house has been under way? A. Yes. Over a year, I imagine.

30

Q. When did you start to deliver material? A. March 26, 1929.

Q. When was the last you furnished material? A. May 7, 1930.

Mr. Freund: That's all.

Mr. Salisbury: I would like to recall Mr. Taufer to prove the amount of money he paid for the erection of the building.

The Court: All right. Is this the proof that was lacking on the last day?

40

Mr. Salisbury: Yes.

George Taufer, for Complainants—Direct.

GEORGE TAUFER, recalled.

Direct examination by Mr. Salisbury:

Q. Have you cancelled checks with you showing the payments made upon this house? A. Yes, sir.

Mr. Freund: I object, your Honor, unless he has the receipted bills. 10

The Court: Receipted bills are not the best evidence.

Mr. Freund: The best evidence would be to produce all books or records of people from whom he purchased material.

The Court: It is pretty good proof if he can show what the checks were for.

Mr. Freund: It shows payment, but not what for. 20

The Court: I don't know how he is going to bring it out. I will overrule your objection just now. He is merely asking him whether he has checks showing payments, and he said he has. There may be something on the checks to identify the payment.

By Mr. Salisbury:

Q. I show you a check dated October 28, 1929, to one William Hoppe. Do you know who that is? A. That is the building inspector of Ridgefield Park. 30

Q. What was that for? A. For a permit for erecting the building in Ridgefield Park.

Q. Will you turn the check over and see who it was cashed by? A. William Hoppe.

The Court: Any objection to that one?

Mr. Freund: Yes. He said the house in Ridgefield Park. 40

George Taufer, for Complainants—Direct.

By the Court:

Q. Is it this house you are talking about? A. Yes.

Mr. Freund: I renew the same objection on the same grounds.

10 The Court: What are they?

Mr. Freund: As I stated before.

The Court: What are they now?

Mr. Freund: It is immaterial whether he made the payments or not, and that the checks do not show payment on that particular building. He stated several days ago he paid out money but he didn't know who they were paid to or how much.

20 The Court: He didn't know then but he is bringing in the checks now. I will overrule your objection and let it be marked.

(Marked Exhibit C-21 in Evidence.)

By Mr. Salisbury:

Q. I show you a check dated November 7th and ask you if you can identify that check for \$50.00?

A. H. Howard. It is part payment for metal work.

30 Q. The statement on the back of the check. Was that there at the time it was paid? A. Yes.

By the Court:

Q. Metal work for what purpose? A. For the building in Ridgefield Park.

Q. For the building we are talking about here? A. Yes, sir.

Mr. Salisbury: I offer the check.

40 (Marked Exhibit C-22 in Evidence.)

George Taufer, for Complainants—Direct.

Q. I show you another check dated November 12th, Mr. Taufer, to the order of H. Howard, and ask you if you can identify that check as being part payment on this house? A. Balance of metal work to Mr. Howard on the building on Highland Place in Ridgefield.

10

By the Court:

Q. Who is Mr. Howard? A. He is a tinsmith.

Mr. Salisbury: I offer the check.

(Marked Exhibit C-23 in Evidence.)

Q. I show you a check dated November 7th for \$25.00 to C. J. O'Brein and ask you if you can identify that? A. It is part payment for the plumbing in Ridgefield Park on the Highland Place house.

20

By the Court:

Q. Do all of these checks relate to the one house that we are talking about? A. Yes, the one house.

Mr. Salisbury: I offer the check.

(Marked Exhibit C-24 in Evidence.)

Q. Check of November 12th for \$25.00. Can you identify that? A. That was the same. O'Brien for plumbing and labor in the house in Ridgefield Park.

30

Mr. Salisbury: I offer it.

(Marked Exhibit C-25 in Evidence.)

Q. One for November 16th to Isbell for \$25.00? A. That was for carpenters' labor on the house in Highland Place.

40

George Taufer, for Complainants—Direct.

Q. Do you know which Isbell that is? A. Mr. William Isbell.

10 Mr. Freund: I object to the offer of that check, sir. The witness has testified it was for carpenter work. On the back of the check it says for wages.

By the Court:

Q. What do you mean by that? A. Carpenters' wages.

Q. Try and explain each time what it was for. A. I explained it was carpenters' wages.

Mr. Salisbury: I offer the check.

(Marked Exhibit C-26 in Evidence.)

20

Q. Check to C. J. O'Brien, November 23rd for \$25.00? A. That is Mr. O'Brien for labor on plumbing in the house.

Mr. Salisbury: I offer the check.

(Marked Exhibit C-27 in Evidence.)

Q. Check of November 23rd to Isbell for \$25.00. Can you identify that? A. Yes, sir. That was for carpenters' labor.

30

Q. Which Mr. Isbell? A. William Isbell.

Mr. Salisbury: I offer it.

(Marked Exhibit C-28 in Evidence.)

Q. One of December 6, 1929, to a man named Besser for \$40.00. Can you identify that? A. Bearer. That is Mr. O'Brien on account of the plumbing on the same house.

40 Q. What is on the check? A. "On account of labor and heating plant on Ridgefield Park house", and endorsed by C. J. O'Brien.

George Taufer, for Complainants—Direct.

Mr. Salisbury: I offer it.

(Marked Exhibit C-29 in Evidence.)

Q. One of December 17th for \$30.00 to C. J. O'Brien? A. It is also for labor on plumbing on the house in Ridgefield Park.

10

Mr. Salisbury: I offer it.

(Marked Exhibit C-30 in Evidence.)

Q. One of November 26, 1929, Jersey Supply Company? A. That was for material for the heating plant.

Q. How much is that Mr. Taufer? A. \$190.00.

Mr. Salisbury: I offer it.

(Marked Exhibit C-31 in Evidence.)

20

Q. December 17, 1929, Jersey Supply Company \$115.00? A. That was for payment for supplies on heating and plumbing.

Mr. Salisbury: I offer it.

(Marked Exhibit C-32 in Evidence.)

Q. One of December 23, 1929, for \$115.00? A. That's for the same people for plumbing supplies.

Q. Is it mentioned on the check what it is for? A. Jersey Supply Company.

30

Q. On the face of it? A. Payment for supplies to be furnished in Ridgefield Park. We had to pay in cash.

Mr. Salisbury: I offer it.

(Marked Exhibit C-33 in Evidence.)

Q. One of March 1, 1930, Jersey Supply Company \$165.75? A. That was also for supplies. I

40

George Taufer, for Complainants—Direct.

had to pay that in cash to the Jersey Supply Company.

Mr. Craven: What was it for?

The Witness: Plumbing supplies.

Mr. Salisbury: I offer it.

10 (Marked Exhibit C-34 in Evidence.)

Q. Check of February 26th for \$1,000 to Emil Isbell? A. Mr. Isbell had no money to carry on the job and as Mr. Duffy kind of pushed us I advanced the \$1,000 to Mr. Isbell to carry on the labor—to try and finish the building so we could get a deed for the property.

20 Mr. Freund: I object to that check. There is no proof——

The Court: He is telling you he advanced it for carrying out the contract. What is your objection?

Mr. Freund: There is nothing to show the money went into the building.

The Court: His turning the check over to Mr. Isbell won't prove that. Mr. Isbell may have turned it over to his wife for a fur coat. Mark it for identification.

30 (Marked Salisbury 1 for Identification.)

By Mr. Salisbury:

Q. I show you a check for \$318.05 to Palisades Park Lumber & Supply Company. Was that a payment for notes or material for this house?

A. Yes, sir.

Mr. Salisbury: I offer it.

(Marked Exhibit C-35 in Evidence.)

40

George Taufer, for Complainants—Direct.

Q. Have you any records of any other payments made Mr. Taufer? A. I supplied cash on December 1st and December 8th to pay for carpenters' labor \$25.00 each, which is \$50.00 that I paid out in cash.

Q. Who were those amounts paid to? A. To Mr. Isbell.

10

Mr. Freund: I object for the same reason I stated before.

The Court: I will receive it subject to his connecting it up.

By Mr. Salisbury:

Q. Have you any evidence of that payment in writing? A. I haven't got anything in writing. I paid that out in cash because the man needed the money on Saturday.

20

By the Court:

Q. What you mean you gave him some money? A. Yes.

By Mr. Craven:

Q. How much did you give him? A. \$25.00 each Saturday.

Q. How many times—twice? A. Yes, twice.

30

By Mr. Salisbury:

Q. What is this you hand me, Mr. Taufer? A. That is for mason work and plastering the foundation \$560.00 paid to Mr. Schultz for his labor.

Q. Have you any check to show for that? A. That was paid in cash.

By Mr. Craven:

Q. Who was that paid to? A. William A. Schultz of Dumont.

40

George Taufer, for Complainants—Direct.

Mr. Salisbury: I offer the receipt in evidence.

(Marked Exhibit C-36 in evidence.)

10 Q. Have you any other receipts Mr. Taufer?
A. I got a receipt for \$50.00 for labor putting on the first coat of paint on the house in Ridgefield Park.

Q. Who was that paid to? A. Vincenzo Perone.

Mr. Salisbury: I offer the receipt.

(Marked Exhibit C-37 in evidence.)

20 Q. Have you any other receipts Mr. Taufer?
A. That's all.

Q. Have you totalled these up? A. I have got an insurance bill. It is for \$29.25. That has to be paid to the fire insurance company.

Q. I show you an insurance policy of the New York Underwriters Insurance Company in the sum of \$6,000 payable to George Taufer and James Duffy, and ask you if that is it? A. Yes, sir. The insurance company wouldn't take it in any other way because I wasn't the owner of the property.

30 Q. And then you obligated yourself to pay the premium? A. Yes, sir.

Q. How much was that? A. \$29.25.

Mr. Salisbury: I offer it.

(Marked Exhibit C-38 in evidence.)

Q. How much do those checks total? A. \$4,183.05.

By Mr. Craven:

40 Q. Does that include the \$29.25? A. Yes, sir.

George Taufer, for Complainants—Direct.

Mr. Craven: I think he is adding all the notes Mr. Salisbury.

The Witness: Yes, sir.

By Mr. Craven:

Q. How much are the notes? \$505.25 and \$507.50. 10

Mr. Craven: We object to the amounts.

The Court: You are objecting to the total stated by him? I will strike out the total. He can't figure in his notes.

By Mr. Salisbury:

Q. I show you a note dated March 10th for two months, Mr. Taufer, to the Palisade Park Lumber & Supply Company. Was that part payment for material on the house? A. Yes, sir. That was paid April 21, 1930. 20

Mr. Craven: That would be a duplication then. If he paid by note it would be a duplication.

Mr. Salisbury: We can straighten that out. I offer the note.

(Marked Exhibit C-39 in evidence.)

Q. A note dated March 10, 1930, to Palisade Park Lumber & Supply Company. Was that paid Mr. Taufer? A. That was paid on June 10th to my knowledge. I have here it was paid on June 10th, \$507.50. 30

Q. Was that for materials that went into the building? A. Yes, sir.

Q. On the Highland Place house in Ridgefield Park? A. Yes, sir.

George Taufer, for Complainants—Direct.

Mr. Freund: We object for the same reason that the amount to Mr. Steenland is already in evidence and this is a duplication of the bill.

The Court: I will receive it. Your statement on the record will show us.

10

(Marked Exhibit C-40 in evidence.)

Mr. Salisbury: Is that agreed Mr. Craven, the approximate amount?

Mr. Craven: I have about \$3,800.00.

By Mr. Craven:

Q. How much do you say? A. \$4,183.05.

20

Mr. Craven: There is no use of arguing about it. An adding machine can do it better.

By Mr. Salisbury:

30

Q. After the tender of the amount due under the contract Mr. Taufer, did you see Mr. Duffy again? A. After we offered the cash money on May 26th a note came due the first part of June to Steenland's Company, and of course I didn't like to pay out this note without the possibility of getting a deed or something like that, so I went to Mr. Steenland and explained things to him, and Mr. Steenland offered himself to take me down to Mr. Duffy and try and induce him to give us the deed before we had to go to court. Mr. Duffy refused.

By the Court:

40

Q. What did he say to Mr. Duffy? A. He asked Mr. Duffy that we had so much expense on the house and while the time has expired he should

William F. Isbell, for Complainants—Direct.

extend to us the time and he thought it no more than right that he give us a deed, so we offered Mr. Duffy \$200.00 in excess of the amount. The property was estimated approximately \$600.00. We offered him \$5.00 extra a front foot if we didn't go to court, which Mr. Duffy also refused.

Q. When was that? A. That was before June 10th, before I started in court. 10

Mr. Salisbury: That's all. I would like to take a witness to prove the tender.

Mr. Craven: We admit that. We are admitting you made the tender.

Mr. Salisbury: I wanted to fix the exact date of it and what was said at that time.

The Court: He is admitting the tender having been made. When do you consider it was made? 20

Mr. Freund: In the latter part of May, 1930. The tender was made and we admit that.

Mr. Salisbury: I would like to call Mr. Isbell to prove all of the items.

The Court: All right, go ahead.

WILLIAM F. ISBELL, recalled. 30

Direct examination by Mr. Salisbury:

Q. Did you keep the records, Mr. Isbell, of your work done on the house on Highland Place in Ridgefield Park? A. I did.

Q. Of yourself and the other workmen on the place? A. I did.

Q. What record have you to show that work which was done? A. I have the time book of all 40

William F. Isbell, for Complainants—Direct.

the work and labor performed on the Highland Place house.

Q. Will you let me have it? A. I prepared a statement from that time book.

By Mr. Freund:

10 Q. Mr. Isbell, when was the last time you made any notations in the book? A. The last time we performed work on the building.

Q. When was that? A. Some time in May.

Q. Who made the notations in the book? A. I did myself.

Q. Anybody else? A. Only me.

Q. Where did you buy the book? A. In a stationery store.

20 Q. When? A. When I commenced the construction of the Highland Place building.

Q. What was your intention in making notations in the book? A. To keep a record of all the labor and the moneys I paid out on the building.

Q. When did you make the notations? A. Every day that the work was performed.

Q. Each day you made notations in the book? A. Each day; yes, sir.

Q. Was anybody else present? A. No, I just kept the records myself.

30 Q. On your other building enterprises do you keep a similar book? A. Yes, I do.

Mr. Salisbury: I think he has been cross-examined fully to offer it in evidence.

Mr. Freund: I object to it your Honor. The book on inspection by the Court will speak for itself.

Mr. Craven: The entries look pretty new to us.

40 The Court: He has sworn to it. I have to take his word for it. Possibly when I

William F. Isbell, for Complainants—Direct.

come to examine it you can address your remarks to me that it is not all that it is represented to be.

By Mr. Salisbury:

Q. Have you checked over the items in this book? A. I have. 10

Q. How much does the labor work amount to?
A. All labor that I performed on that building amounts to \$436.00. This hasn't been paid for.

Mr. Salisbury: I offer the book.

(Marked Exhibit C-41 in evidence.)

Q. Does that item include the amounts that Mr. Taufer has paid for labor? A. No, not this first paper. I have a statement here which shows how the money which Mr. Taufer paid to me was paid. 20

Mr. Freund: I object to the reading of that statement because the witness has already testified that this book was a complete record of all transactions.

By the Court:

Q. Are these items taken from the book? A. Yes. 30

The Court: We will take the statement subject to comparison with the book. He is doing it for the purpose of expediting it.

Mr. Freund: All right.

By Mr. Salisbury:

Q. What is the total? A. \$1,389.80.

The Court: Let the paper be marked.

(Marked Exhibit C-42 in evidence.) 40

William F. Isbell, for Complainants—Direct.

By Mr. Salisbury:

Q. Was all of this money that you have here represented in the book for labor on the job in Highland Place? A. Most of it with the exception of the stairway which included some material.

10 Q. The stair work included some material? A. Yes. That amounts to \$45.00.

Q. Is that all there? A. It shows it.

Q. You said there was an item of four hundred and some odd dollars which hadn't been paid for. Is that material which has gone into that building? A. Yes. That is shown by this statement here.

Q. And is that taken off from the book? A. It is.

20

Mr. Salisbury: I offer the statement in comparison with the book to show what labor has not already been paid for.

The Court: I will receive it subject to the objections made heretofore.

(Marked Exhibit C-43 in evidence.)

Mr. Salisbury: Now I offer in evidence the \$1,000 check which was given by Mr. Taufer to Mr. Isbell and which was marked for identification.

30

Mr. Freund: I object to the offer of the check. There is still no proof before the Court that the proceeds of that check was used in the building.

The Court: Did you prove that?

Mr. Salisbury: Yes, he says the amount of money which Mr. Taufer has paid was some thirteen hundred dollars.

The Court: Does he say that includes the \$1,000 check?

40

William F. Isbell, for Complainants—Cross.

Mr. Salisbury: Yes.

The Court: I didn't hear him say that.
You had better go into it more particularly.

By Mr. Salisbury:

Q. I show you a check, Mr. Isbell, for \$1,000 payable to your order, made by George Taufer, and ask you if that was received by you or your brother? A. Yes, I received the money for that.

10

Q. And was that for the labor on that house in Highland Place? A. Yes, as shown on the first statement I submitted.

Q. And the amount of that check is shown on the items included in that first statement? A. Yes.

Q. And they are also the items which are in the book of labor done? A. Yes.

20

The Court: I will receive it subject to your objection, Mr. Freund.

Mr. Freund: I still object.

The Court: I will give you a chance to cross-examine him right now.

Cross-examination by Mr. Freund:

Q. These various items shown on Exhibit C-42, how were they paid? A. These were paid in cash.

Q. You did all your business in cash? A. All the wages were paid in cash.

30

Q. Haven't you got a bank account? A. I have a bank account.

Q. Did you deposit the \$1,000 in your bank account? A. No, I cashed it.

Q. Where did you cash it? A. In Mr. Taufer's bank.

Q. Where was that? A. The Palisade National Bank.

40

William F. Isbell, for Complainants—Cross.

Mr. Taufer: The Palisade Trust.

Mr. Freund: Just a minute! The witness is testifying.

10 Q. This check marked C-42, where did you say you cashed it? A. At the Palisade Trust Company.

Q. You didn't know that until Mr. Taufer just told you? A. I cashed the check in the bank.

Q. Answer yes or no. You didn't know it until Mr. Taufer told you? A. Yes, I did know where I cashed it.

Q. Did you get the \$1,000 at one time in cash? A. I did.

20 Q. What did you do with the \$1,000? A. I used it to pay for wages for work performed on the building on Highland Place, as shown on my statement.

Q. And the entire \$1,000 went to pay these various items mentioned on Exhibit C-42? A. That \$1,000 together with some more money which I advanced.

Q. But you are sure the entire sum of \$1,000 went to pay for some of the items on Exhibit C-42? A. Yes, sir.

30 Q. Do you know when you received the proceeds of this check of \$1,000? A. The following day the check was made.

Q. Do you know that date? A. I don't remember exactly. February 26th or 24th.

Q. The check is dated February 26, 1930. Now did you carry the \$1,000 around in your pocket? A. I kept it in my home.

Q. Where did you keep it in your home? A. In my house.

40 Q. You had a bank account, didn't you? A. Yes, I did.

William F. Isbell, for Complainants—Cross.

Q. Why didn't you put it in the bank account?

A. Because I needed it for the wages.

Q. If you deposited it in a bank account it would be safer than home? A. I needed the money for wages and I wanted the cash.

Q. How much did you have to pay out each week? A. I don't remember offhand.

10

Q. The items shown by this statement of Exhibit C-42 show payments to have been made from March 24, 1929, to May 5, 1930, and you want the court to believe you kept this \$1,000 all or the greater part of this time to pay those items? A. I kept that \$1,000 until it was finished for wages.

The Court: Do you still think you have a right to object.

Mr. Freund: This is cross-examination.

20

The Court: I thought you were through.

By Mr. Freund:

Q. Mr. Taufer has testified he paid O'Brien and Howard. Were those payments made by you in addition to what Mr. Taufer made? A. Yes. The time book will show that.

Q. How did you come to pay the moneys shown by this statement prior to February 26, 1930? A. Some money I paid myself outside of the \$1,000 which Mr. Taufer gave me.

30

Q. Was that in cash also? A. In cash also, yes.

Q. How did you pay the item #266 to Howard, \$114.40? A. That was paid in cash.

Q. When? A. On the date shown in the time book.

Q. What work did Mr. Howard do that you paid him? A. Mr. Howard did some excavation work and afterwards he helped us on the carpenter work.

40

William F. Isbell, for Complainants—Cross.

Q. What work did he do that Mr. Taufer paid for? A. The same kind of work. There are two Howards. One is a tinsmith and one is a carpenter.

10 Q. Does this book represent all the labor that has gone into the construction of the building so far as it had gone, if you know? A. Not all.

Q. I thought you testified before this book was a complete record of all labor performed on this job? A. There is other work—odds and ends, and I have to pay these people for these different things.

Q. Did you testify before that this book was a complete record of all labor that went into this building? A. All labor that was paid that went into the building.

20 Q. You don't keep a record of labor that is not paid? A. Yes, that is there. But some people come in and help me out.

Q. What does this book show? A. That shows all the labor that was performed on that job.

Q. All the labor? A. Yes.

By the Court:

30 Q. But you say there were some people came and helped you out but you haven't them in the book? A. No.

By Mr. Freund:

Q. The items which Mr. Taufer paid for labor are they in this book also? A. Yes.

Q. Show me from the book the work that Charles Howard did paid by Mr. Taufer? A. Here it is here. That was paid by Mr. Taufer and this one also paid by Mr. Taufer. This was also paid by Mr. Taufer and that one here.

Ralph Mattocks, for Complainants—Direct.

Q. What is the total paid by Mr. Taufer? A. I don't know. The book shows. We can figure it out

Mr. Freund: That's all.

The Court: Let that book be marked now.

(Marked Exhibit C-44 in evidence.)

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RALPH MATTOCKS, being sworn.

Direct examination by Mr. Salisbury:

Q. Where do you live, Mr. Mattocks? A. Weston, New Jersey.

Q. What is your business? A. Law clerk.

20

Q. With who? A. With Mr. Salisbury.

Q. Did you search the title to the premises on the southerly side of Highland Place in Ridgefield Park? A. I did.

Q. When did you make that search? A. I made it November 24, 1930.

Q. How long have you been searching titles? A. Oh, about five years.

By the Court:

Q. Where? A. Hackensack.

30

Q. In the Court House in Hackensack? A. Yes, sir.

By Mr. Salisbury:

Q. Have you with you a memorandum of a search made on that property?

Mr. Freund: I object unless they show what the purpose is.

The Court: I am wondering what the purpose is.

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Ralph Mattocks, for Complainants—Direct.

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Mr. Salisbury: The purpose is, if your Honor please, to show that at no time up to the present time, even on January 15th or March 17th or any other date, have they been ready, able and willing to comply with the terms of our contract which calls for a delivery of deed free and clear of encumbrances.

The Court: You are going to show record encumbrances?

Mr. Salisbury: Yes.

The Court: Maybe they will concede it. What are they?

20

Mr. Salisbury: Three mortgages against this premises and other premises adjacent to it which is covered in the first contract—150 feet.

The Court: Do you want to concede that?

Mr. Craven: We admit that.

The Court: I think I will overrule the objection. Go on with your proof.

By Mr. Salisbury:

Q. When did you make this search, Mr. Mattocks? A. November 24th.

30

Q. Of the year 1930? A. 1930.

Q. What did your search reveal as to the condition of the title of these premises? A. There are three mortgages against it and also a lien claim filed June 11, 1929, and a notice of *lis pendens*.

By the Court:

40

Q. A notice of *lis pendens* filed when? A. June 27, 1930.

Ralph Mattocks, for Complainants—Direct.

Q. Tell us what the three mortgages are? A. A mortgage made by James Duffy to Wallace MacNeill for \$2,500.00, dated October 8, 1926, and recorded October 14, 1926.

Q. Is that mortgage open and uncanceled of record? A. Yes.

10

By Mr. Craven:

Q. What is the book and page? A. Book 880, page 657. That was assigned.

By the Court:

Q. When? A. August 1, 1927, and recorded August 2, 1927, in Book 164 of Assignments, page 563.

Q. What is the next one? A. A mortgage for \$1,650.00 made by James Duffy and Mary, his wife, to Thomas Corrigan, dated October 8, 1926, recorded October 14, 1926, in Book 885, page 236.

20

Q. Is that open and unpaid? A. That is still open, and then a mortgage for \$1,000 made by James Duffy but not his wife—just James Duffy to John Borea dated October 8, 1926. This mortgage was re-recorded subsequently on March 13, 1930, in Book 1233, page 284.

Q. Does it say why it was re-recorded? A. It was a purchase money mortgage and the second mortgage recited that fact. This mortgage was assigned at various times but is now held—it was assigned back to John Borea again. The last assignment of record to John Borea is dated May 11, 1929, and recorded June 9, 1930.

30

Q. What about the lien claim? Give us the particulars of that lien claim. A. A lien claim by George Taufer, Inc., a corporation of New Jersey, against William Isbell, builder, and James Duffy and Mary Duffy, his wife, owners. It was

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Ralph Mattocks, for Complainants—Cross.

filed June 11, 1929, in Book XI, page 141 of Lien Claims.

Q. What about the *lis pendens*? A. The contract would come before the *lis pendens*. Do you want the particulars of that?

Q. I don't know.

10

Mr. Salisbury: No, I think not. It has been offered in evidence.

By the Court:

Q. What about the *lis pendens*? A. A *lis pendens* made by Emil Isbell and George Taufer complainants against James Duffy and Mary Duffy, his wife, defendants, recorded June 27, 1930, in Book 17, page 162.

20

By Mr. Salisbury:

Q. Will you look over the description in the contract Exhibit C-2 and compare it with the descriptions in the mortgages and see if that covers the same—

Mr. Craven: We admit that.

The Court: They concede that.

Mr. Salisbury: That's all.

30

Cross-examination by Mr. Freund:

Q. Did you look for discharges or satisfactions of lien claims? A. Yes, I did.

Q. Did you find any reference to the lien claim which you testified to? A. I couldn't find any at all.

Q. Did you look in the jacket of the particular matter? A. Yes, I did.

40

James Duffy, for Defendants—Direct.

By the Court:

Q. You now only looked in the index but you also looked in the jacket? A. A little separate book.

Q. In the envelopes? A. Yes. There weren't any papers there.

10

By Mr. Freund:

Q. You are sure of that? A. Yes.

Mr. Freund: That's all.

Mr. Salisbury: That's the complainants' case if your Honor please.

The Court: All right. Proceed.

20

DEFENDANTS' CASE.

JAMES DUFFY, being sworn.

Direct examination by Mr. Freund:

Q. Mr. Duffy, I show you Exhibit C-2, where it mentions that title is to close on September 24, 1928. Was Mr. William Isbell ready on that date to pay the consideration and receive a deed for the property?

30

The Court: I will overrule that question in the way it is asked. That calls for a conclusion. You asked him whether he was ready.

By Mr. Freund:

Q. Did Mr. Isbell make any appointment pursuant to that agreement to close? A. No.

40

James Duffy, for Defendants—Direct.

Q. I show you Exhibit C-1 where it mentions title to close on January 15, 1930. Was any appointment made to close pursuant to that agreement? A. Never no appointment made.

By the Court:

10

Q. There was some talk about it, wasn't there?

A. After the time had expired your Honor.

By Mr. Freund:

Q. Did Mr. Taufer or Mr. Isbell on January 15th tender the balance of the purchase price to you? A. No, sir.

20

Q. Were you ready with your deed signed by you and your wife? A. Yes, sir. Mr. Craven had the deed from the time the contract was made.

Q. When was that? A. October, I believe.

By the Court:

Q. Signed by you and your wife? A. Yes, sir.

Q. Dated what date? A. I can't recall the date.

By Mr. Freund:

30

Q. I show you what purports to be a deed dated October 14, 1929, made by James Duffy and Mary Duffy, his wife, as grantors, to Emil Isbell and George Taufer, for the premises in this suit and ask you if that is the deed? A. Yes, sir; that's the deed.

Q. And you were ready and willing to deliver that deed to the grantees on January 15, 1930? A. Yes, sir.

The Court: Let it be marked.

(Marked Exhibit D-1 in evidence.)

40

James Duffy, for Defendants—Direct.

By Mr. Freund:

Q. Did you see Mr. Isbell or Mr. Taufer at any time after January 15, 1930? A. Mr. William Isbell saw me around the 15th of May in my office.

Q. What did he say? A. He wanted to make a new contract.

Q. What did you say? A. I referred him to Mr. Craven, my counsel.

Q. Did he have anything further to say? A. He called me up the following Monday and told me there was an appointment with my attorney and to be there.

Q. What date was that? A. That was the 20th of May, I believe.

Q. And did you go down to Mr. Craven's office? A. Yes.

Q. And who was there? A. Mr. William Isbell and Mr. Taufer.

Q. And you and Mr. Craven? A. Yes, in his office.

Q. And what did Mr. Taufer or Mr. Isbell have to say? A. They wanted to give me \$100.00 to make a new contract.

Q. And what did you say? A. I refused to make any other contracts with them.

By the Court:

Q. Why did you refuse to give them the property at that time? A. They didn't make any tender.

By Mr. Freund:

Q. Did they offer to pay you the balance of the consideration? A. No, sir.

Q. Did they say anything to you about wanting to pay the balance of the consideration? A. Not at that time.

James Duffy, for Defendants—Direct.

Q. Did you say anything else to them? A. I refused to enter into any other contract with them. I entered into two already.

Q. Did you tell them that? A. Yes.

By the Court:

10

Q. With them? A. With Mr. William Isbell first and he and his partner afterwards. There were two contracts, one made in September, 1928, with William Isbell. This contract he had Mr. Watson of 15 Exchange Place search the property and to close it but it was never closed.

By Mr. Freund:

20

Q. In the contract marked C-1, dated October 15, 1929, it is mentioned that time is of the essence? A. Yes, sir.

Q. Why was that put in there Mr. Duffy? A. Because they had dragged the other contract along and I couldn't use the other property because they had sheds on them and foundations. The other contract had been fifteen months from the time they made the first contract until the second one and nothing was done about it.

30

Q. What is your business? A. Real estate and insurance broker.

Q. Anything else? A. I am a speculator and builder also.

Q. You have built houses? A. Oh, yes.

Q. How many have you built? A. Oh, about fifteen houses.

Q. For what period of time have you been building those houses? A. During the last fifteen years.

40

Q. Have you made a personal inspection of the house in this matter? A. Yes, I went to the house several times.

James Duffy, for Defendants—Direct.

Q. When was the last that you saw it? A. Within the last two weeks.

Q. Tell us briefly what is the condition of this property? A. Well, it is a one family house with no cellar whatever dug. The foundation is on top of the ground about twelve or fourteen inches above the curb. The cellar has not been closed yet. There are three side walls and a rear wall. There is a steam boiler sitting in the mud with a few pipes attached to it.

10

Q. What else? A. The house has been standing under construction for almost over two years now. It had one coat of paint or whitewash.

Q. Do you own the adjoining lots? A. Yes, sir.

Q. How many? A. There was 150 feet front in the entire tract.

Q. What is their condition? A. There is so-called foundations dug under them three feet in depth but no cellars, and there is strewn over with bags of cement which got wet, and broken brick and shingles and other building blocks scattered over.

20

Q. Are you familiar with the neighborhood? A. Yes, sir.

Q. What is the general condition of the immediate neighborhood where this property is located?

A. There are nice one family houses with a high school across the street.

30

Q. In your opinion does this dwelling and the condition of the lots benefit the neighborhood?

Mr. Salisbury: I object to that.

The Court: I will have to sustain that.

That clearly calls for a conclusion. It is not evidential.

By Mr. Freund:

Q. Has this house in any way threatened the value of your lots?

40

James Duffy, for Defendants—Cross.

Mr. Salisbury: I object to that.

The Court: I will sustain the objection thus far on the ground there is no foundation laid for that question.

Mr. Freund: He has qualified as an expert, sir.

10 The Court: Not in that respect.

By Mr. Freund:

Q. From your inspection of this house, Mr. Duffy, what do you think would be a fair sum which that house at the present time represents?

Mr. Salisbury : I don't think he is qualified to tell.

20 The Court: He has built houses. I will give you a chance to cross-examine him. He is in the real estate business also.

Cross-examination by Mr. Salisbury:

Q. Where are you in the real estate business?
A. 52 Jackson Avenue, Jersey City.

Q. And where have you built the houses you have testified to? A. In Jersey City.

Q. Any in Bergen County? A. No.

30 Q. What type of construction were those houses which you built? A. Frame and brick.

Q. The same type as this house? A. Nobody ever seen anything like that.

Q. When was the last of those houses constructed? A. This year. I finished a house in July.

Q. And when previous to that? A. 1927.

Q. None from 1927 until this year? A. No, sir.

40 Q. When you say you constructed them what do you mean? A. I bought the material and hired men and built the house and paid for it and have it still.

James Duffy, for Defendants—Cross.

Q. Did you inspect this house? A. Yes.

Q. Do you know the materials in it? A. Yes, I do.

Q. Were they one family houses? A. No, sir. The last was a six family.

Q. And the others? Any one family? A. Two family and one family.

10

The Court: I guess you will withdraw your objection now.

Mr. Salisbury: It seems to me the conditions in Bergen and Hudson County are different.

The Court: Brick is brick and lumber is lumber wheresoever situate. I will overrule your objection as to his not being qualified.

20

By the Court:

Q. The question is, did you inspect the property and from your inspection what would you say as to its present market value? A. In the present condition?

By Mr. Freund:

Q. Yes. A. Do you mean the value of the land and building together?

30

Q. Just the building. A. The value of the building is about \$1,500.00 in its present condition.

By the Court:

Q. What do you base that on? A. The cost of completing and what you would get for it after it was completed.

Q. To find that out, you will have to know the cubic contents of the building? A. Not necessarily on a small building like that.

40

James Duffy, for Defendants—Cross.

Q. Give me some estimation on what you base that on. What are the items that go into the cost?

A. The items are \$200.00 for blocks.

Q. \$200.00 for what kind of blocks? A. Cement blocks for foundation.

10 Q. How many blocks? A. I would say 150 blocks.

Q. 150 blocks you say would cover that foundation? A. Yes.

Q. How big are the blocks? A. 24 x 8.

Q. And how much a block would you say if you were to purchase them? A. I haven't figured it out.

20 Q. The Court has a right to find out whether you are right. That depends on whether you know what the substantial contents of the building is and the prices. A. I am not interested in what it cost. I am interested in what I could get for it.

Q. What would you say was the cost for each one of those blocks? A. The cost of a block of that size would be twenty-four cents.

Q. When did you buy any blocks like that for twenty-four cents? A. In April of this year.

Q. From whom? A. A concern in Bayonne. I can't recall the name.

30 Q. How much would you say would be the cost of labor attending the laying of those blocks? A. The labor for the entire brick work and plaster?

Q. The blocks. A. The contract is always let to the one party.

Q. How many blocks would you say would go into that? A. Possibly 200 blocks. It might be more or less, your Honor.

40 Q. How many men would it take to lay those blocks and how much time would be consumed? A. Three men would lay those blocks in a day with three laborers.

James Duffy, for Defendants—Cross.

Q. You mean masons? A. Yes, sir.

Q. How much would be allowed to a mason per day? A. You can hire a mason for \$10.00 a day.

Q. Where can you get any for \$10.00 a day? A. Anywhere in Hudson County, your Honor.

Q. At \$10.00 a day? A. Yes, sir.

Q. How much for the laborers? A. \$5.00 a day. 10
You can get them for less if you want to.

Q. That is \$15.00. Now, then, what material goes into the laying of them? A. Cement.

Q. How much cement would you say? A. I would say twenty bags of cement.

Q. How much a bag? A. Sixty-seven cents a bag for credit. For cash, sixty-two cents.

Q. What else goes in there? A. Sand. \$2.25 a yard.

Q. How many yards? A. Five yards would be 20
plenty to spare.

Q. What else? A. You need lime.

Q. How much would you allow for lime? A. About two barrels of lime at \$2.25 a barrel.

Q. Is that all that would go into it now? A. That's all that would go into the blocks.

Q. How much do you say the value of those blocks would be in the building as it is? A. I allow \$200.00.

Q. Your figures only aggregate \$133.40. A. 30
That is possibly right, your Honor.

The Court: I will let counsel examine you now.

By Mr. Freund:

Q. Have you sold houses in Bergen County?
A. Yes.

Q. And rented houses? A. Yes.

James Duffy, for Defendants—Cross.

Q. Is there any market for either the sale or renting of this particular kind of a house? A. Oh, yes; there is a market.

Q. Is this house marketable at the present time? A. No, sir.

10 By the Court:

Q. Why not? A. Because of the condition it is in. It is only half finished.

Q. Why do you say that? You heard the testimony as to why it was left incomplete. What do you say was incomplete? I am only trying to find out what the facts are. A. The house is not connected with the sewer or water yet. There is no cellar there. The front of the building is not enclosed yet.

20

Q. They may have lattice work? A. No, there is no front wall in yet. There is one coat of paint on the outside. There are no fixtures in the rooms.

Q. What do you mean by that? A. There is no bath tub there.

Q. They said the bath tub is there and the fixtures? A. There may be a bath tub lying in the building but there is none in the bathroom. There is no tile in the bathroom and no doors and no shades.

30

Q. Somebody is doing a lot of lying if what you say is true. I think I will send somebody up to look at it. A. I will pay for an expert if your Honor will send some one to look at it.

By Mr. Freund:

Q. Is the land surrounding the building graded? A. No, sir.

Q. Does the house in its present condition in any way affect the neighborhood?

40

James Duffy, for Defendants—Cross.

Mr. Salisbury: I object to that.

The Court: I will receive it. I don't know what the purpose is.

A. (Witness.) Last year I was notified by the police department of Ridgefield Park to tear the building down.

10

By the Court:

Q. There is a building inspector up there. The building inspector passed it. Why do you say it is a detriment? A. Because of its present condition. There is a high school there and the children are in and out of the building.

By Mr. Freund:

Q. Does this house conform with the other houses in the neighborhood? A. No, sir. You couldn't tell whether it was a store or a house, so far.

20

Q. Mr. Duffy, it has been testified to there are three mortgages on the property? A. That is correct.

Q. Have you made any arrangements with reference to those mortgages? A. Those mortgages are overdue and I was waiting to see what happened here.

30

Q. Were you ready on January 15, 1930, to dispose of those mortgages? A. Yes, sir.

By the Court:

Q. You mean by payment? A. Yes.

By Mr. Freund:

Q. Were you, on March 17, 1930, ready to pay and discharge the mortgages? A. Yes; I am now.

40

James Duffy, for Defendants—Cross.

By the Court:

Q. You mean you have the money in bank to pay them? A. Yes.

Q. You pay six per cent. on them and allow the money to be in the the bank? A. I need all the money I can get in my buildings.

10

By Mr. Freund:

Q. At that time, January 15th and March 17th? A. Yes. I didn't want to pay them off if there was no title passing.

By the Court:

Q. What is your objection to passing title now? Has the property enhanced in value? Is there anything like that in this case? A. No, the land hasn't enhanced in value.

20

Q. What is your objection now? In view of the fact that these people put the building on that plot and the land hasn't enhanced in value what is your objection? A. My objection is they had two years and made appointments and they never kept any of the appointments and I wanted it to end some time.

30

Q. There is some correspondence between the parties? A. Not with me.

Q. With Mr. Craven acting for you? A. Yes.

By Mr. Freund:

Q. You gave them until January 15, 1930, within which to take title? A. Yes.

Q. And until March 17, 1930? A. Yes.

Q. And on either of those occasions were the complainants ready to take title?

40

The Court: I will overrule that.

James Duffy, for Defendants—Cross.

By Mr. Freund:

Q. Did the complainants or any one for them make any appointment by which to pay the balance of the purchase price and accept a deed from you? A. No, sir.

By the Court:

10

Q. What about Mr. Taufer's statement he went to you and exhibited the cash to you and even offered to pay you \$200.00 more? A. On May 28th that happened.

By Mr. Freund:

Q. May 28, 1930? A. Yes. That was after they made the tender.

Q. When did they tender the additional \$200.00? A. Some time after they made the tender.

20

By the Court:

Q. When was it? A. In the month of May. Possibly the 28th of May as they testified to. I don't remember the exact date.

By Mr. Freund:

Q. Was that agreeable to you? A. No.

30

By the Court:

Q. Why not, if the land did not enhance in value? What was your real grievance? A. Your Honor, I thought I had some rights in the matter after waiting two years.

Q. If it enhanced in value I could see it. Were you awaiting a condition where it would enhance in value and they erected a building on it such as it was? A. The land decreased in value.

40

James Duffy, for Defendants—Cross.

Q. If it did you ought to be glad to get rid of it. A. It was the loss of time.

By Mr. Freund:

Q. Your original contract was for five lots? A. Six lots.

10 Q. Being all of your land in that locality? A. Yes.

Q. And this later contract, October 17th, that was just for the end lot on which this house is erected? A. A lot and five feet of an adjoining lot.

Q. Has this house or the excavations on the other lots enhanced the value of this property? A. Decreased.

20 By the Court:

Q. Why? A. Because the foundations have been dug and the material thrown over the rest of the land, and the two sheds. They must have put all the labor in the two sheds. They have two sheds on the property I think to build a 100 family apartment.

Q. You would be put to the expense of taking those sheds off the property? A. Yes. And for that reason I can't sell them.

30

Mr. Freund: Take the witness.

By Mr. Salisbury:

Q. I show you contract marked Exhibit C-2, Mr. Duffy, and ask you if you can tell me how much land that was to convey? A. 150 feet.

Q. I show you contract, Exhibit C-1, and ask you if you can tell me how much land that was to convey? A. 30 feet.

40

James Duffy, for Defendants—Cross.

Q. What is the price or consideration in contract C-2 for the 150 feet?

Mr. Craven: It speaks for itself.

The Court: I will let him state it.

(Witness) A. \$8,000. Nothing was paid down.

10

By Mr. Salisbury:

Q. And the price of C-1? A. \$1,736.00.

Q. How was that price of \$1,736.90 arrived at?

A. You will have to ask Mr. Craven that.

Q. You don't know yourself?

The Court: What's the difference? 17 times 5 would be \$8,500.00, and he said the price was \$8,000.

Mr. Salisbury: I want to show by the lapse of time he hasn't lost anything because the contract calls for an adjustment on the date of closing.

20

Q. You knew at the time you entered into this contract Mr. Isbell wanted to put up five houses there? A. He told me he did.

The Court: Let us keep to the one house now.

30

By Mr. Salisbury:

Q. Do you remember the date of the contract C-1? A. The 17th of October.

Q. And the deed by which you were ready to convey title is dated what? A. They had been negotiating with Mr. Craven to get a deed. They were negotiating three months before the contract was made and that's the reason why the deed was made before the contract.

40

James Duffy, for Defendants—Cross.

Q. Had you any agreement with the mortgagees to divide up their mortgages as stated in the deed which is offered in evidence? A. It doesn't say it was divided up.

10 Q. It says here, "First to the proportionate share of the first mortgage amounting to \$1650.00; to the proportionate share of the second mortgage amounting to \$500.00, and to the proportionate share of the third mortgage amounting to \$435.00, subject to a purchase money mortgage in the amount of \$1736.90." Does that conform to the contract?

The Court: What is the fact, does it?

Mr. Salisbury: No, it doesn't.

20 By Mr. Salisbury:

Q. I show you a photograph which purports to be a photograph of the house erected on the premises. Is that substantially a picture of it? A. From the exterior I would say yes.

The Court: What exhibit is that?

Mr. Salisbury: Exhibit C-10.

30 Q. From that wouldn't you say that that foundation was practically finished? A. Yes. I said there was three walls and a rear wall.

Q. Might that not be completed by doors for a car to enter? A. It might.

Q. And isn't the modern type of construction for a garage to be an integral part of the house?

Mr. Freund: I object.

The Court: I will overrule the objection.

A. I don't know what you mean by modern.

James Duffy, for Defendants—Cross.

By Mr. Salisbury:

Q. In recent constructions. Isn't it quite general to make a garage in a house? A. No, sir.

By the Court:

Q. In the country places? A. No, sir.

10

By Mr. Salisbury:

Q. With a lot that is shown there would it be possible to put a driveway in for a garage? A. I don't know. I didn't survey it.

By the Court:

Q. You saw it yourself? A. Yes.

Q. In your opinion is there room enough? A. Yes.

20

By Mr. Salisbury:

Q. Wouldn't you say it was intended to be a garage? A. That is a mere guess. It might be a store with an open front.

The Court: I don't think you ought to lose much time on the pictures. They show on their face what the condition is.

By Mr. Salisbury:

30

Q. When was it you were out to the property, Mr. Duffy? A. Last week some day.

Q. And you say these grounds there show evidence of excavation? A. Yes, sir.

Q. Does it show it on that photograph? A. Yes, you can see some of the material that is lying on that property. You didn't take a picture that showed the other lots. You have a picture which is to your advantage. You had a good photographer.

40

James Duffy, for Defendants—Cross.

Q. How big are those excavations on the other lots? A. About three foot.

Q. Just footing trenches? A. You might call them that.

Q. And has the weather obliterated them so there is no evidence of them? A. No, it looks worse. The weather has helped to make it in a worse condition.

Q. Did you measure the foundation when you were out there as to the length and width and height? A. No, sir.

Q. Then it is only a guess on your part as to the number of blocks which it would take to building that foundation, is it not? A. Yes.

Q. How many rooms are in the house, Mr. Duffy? A. I don't know. Possibly six. They are very small except two rooms. They look like good big closets.

Q. It would only be a comparatively small matter to complete them, would it not? A. If you do complete it you won't have anything.

By the Court:

Q. Aside from that, having in mind it might be completed, what would you say it would cost to complete it? A. Oh, ten or twelve hundred.

Q. What would you say that was for? The reason I am concerned in asking is because there is some testimony there are only a few things to be done there. A. The plumbing is not finished.

Q. How much would it cost to make the connections? A. \$50.00 to put in sewer and water.

Q. Do you know whether the pipes are actually in the street and the connection not made? A. There is a sewer in the street but no connection from the sewer into the house.

Q. Are you sure of that? A. Yes.

James Duffy, for Defendants—Cross.

Q. And the water? A. No water either. I wouldn't swear to the water part.

Q. What else do you say has to be done? A. The cellar has to be excavated and cemented and steam fittings put in.

Q. They say they are all there and just ready to be connected up. If they are how much would it cost? A. There are no radiators there unless they were delivered last week. There is a boiler there which they can put up which is broken down. The electric wiring is in the same condition. 10

By Mr. Salisbury:

Q. How much would the radiators cost to put in? A. I don't know. I would have to see the contract for the plumbing. 20

Q. The contract, Exhibit C-1, I ask you if that doesn't require you to deliver a deed free of encumbrance? A. I never said we wouldn't.

By the Court:

Q. Do you appreciate it does? A. Oh, yes, your Honor.

By Mr. Salisbury:

Q. I would also like to call your attention that time is to be considered as of the essence of the contract. Was that in there when you signed it, Mr. Duffy? A. Yes. 30

Q. Where was this contract signed by you? A. In my office.

Q. And who was it delivered to? A. To Mr. Craven.

Q. Wasn't that added as an afterthought? A. No. 40

James Duffy, for Defendants—Cross.

By the Court:

Q. If it was not tell me then why it was written in the way it was? A. Mr. Craven will have to answer that. He drew the contract.

10 Q. It was that way when you signed the contract? A. Yes, your Honor.

By Mr. Salisbury:

Q. Does this contract call for the adjustment of interest and taxes as of the date of the contract? A. If it says so it is correct.

Q. You didn't stand to lose anything by the time running over?

20 The Court: He doesn't say so. He takes the position he had a bargain to close at a particular time and it didn't close.

By Mr. Salisbury:

Q. Before January 15, 1930, did Mr. Isbell see you regarding the extension of that contract? A. No.

Q. All the dealings were with Mr. Craven? A. That's correct.

By the Court:

30 Q. Did Mr. Craven report to you about their having been to see him at times? A. Yes.

By Mr. Salisbury:

Q. Whatever he did was with your sanction and consent? A. Yes. I got tired dealing with Isbell myself and I turned him over to my attorney.

Mr. Salisbury: I think that's all.

40

John D. Craven, for Defendants—Direct.

JOHN D. CRAVEN, being sworn.

Direct examination by Mr. Freund:

Q. Mr. Craven, you are a member of the Bar?

A. Yes, sir.

Q. You have passed mortgage loans on real estate? A. I have.

10

Q. And you make appraisals on property? A. For mortgage loan purposes, yes.

Q. And you own property yourself? A. I do.

Q. For how long a time have you been appraising property for mortgage loan purposes? A. About ten years.

Q. This mechanics' lien suit which has been referred to, did you represent Mr. Duffy in that matter? A. I did.

Q. Who instituted the suit? A. The suit was instituted by Mr. Taufer. George Taufer against James Duffy and Isbell.

20

Q. What happened in that suit? A. The suit was instituted and we tried to arrive at some agreement whereby Mr. Taufer wouldn't lose his money. I explained to Mr. Taufer he directed the suit against Mr. Duffy, and inasmuch as there wasn't any consent in writing by Mr. Duffy for the erection of this building that the mechanics' lien wasn't any good, and I served him with a notice to strike out his mechanics' lien.

30

Q. What happened to that? A. That matter was held in abeyance pending the making of a contract with Mr. Isbell and Mr. Taufer. Acting under instructions from Mr. Duffy we didn't want to see anybody lose any money on material provided the building was finished, and I was advised that the building was about half finished and we made arrangements to meet at Mr. Steenland's office of the Palisade Park Lumber & Supply Com-

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John D. Craven, for Defendants—Direct.

pany to arrange for the furnishing of materials for the finishing of this building. At that time I was out there twice if I recall, and I made arrangements with Mr. Isbell and Mr. Taufer and Mr. Steenland to draw certain contracts. I had the originals and the contracts were all ready for execution and the mechanics' lien suit was ready to be discharged and we were to give him a deed. If I can have my file I can refresh my memory.

10 Q. What papers were you to prepare pursuant to your conversation with Mr. Taufer and Mr. Isbell? A. Pursuant to conversation with Mr. Taufer, Mr. Isbell and Mr. Steenland, I prepared an agreement between the Palisade Park Lumber & Supply Company and Mr. Taufer and Mr. Duffy whereby Palisade Park Lumber & Supply Company was to furnish money and supplies to Mr. Isbell and Mr. Isbell to finish the building. At that time the contract stated it was necessary to furnish at least \$2,600.00. Taufer was to advance \$700.00 cash and the Palisade Park Lumber & Supply Company was to supply all the necessary materials and supplies except electrical fixtures to the amount of \$2,600.00. I also prepared a discontinuance of the lien claim and also a discharge of the lien claim to be signed by Mr. 20 Taufer and by myself. I went out a couple of days later pursuant to an appointment made to execute the papers and the Palisade Park Lumber & Supply Company backed out of the deal. They wouldn't guarantee the payment of \$2,600.00.

30 Q. Where did this conference take place? A. In the Palisade Park Lumber & Supply Company's office.

Q. Who gave you notice of this conference? A. I believe Mr. Isbell got in touch with me and we agreed to meet a few days later.

40

John D. Craven, for Defendants—Direct.

Q. And who was present in Mr. Steenland's office at the conference? A. Mr. William Isbell, Mr. Taufer and Mr. Steenland and myself.

Q. And you had the papers prepared at that time for the various parties to sign them? A. That's right.

Q. And why were they not signed? A. Because 10
the Palisade Park Lumber & Supply Company wouldn't agree to furnish the rest of the material.

By the Court:

Q. You can tell what Mr. Steenland said. A. He told me they weren't going to guarantee the payment of \$2,600.00. They didn't know where the money was coming from.

By Mr. Freund: 20

Q. Did Mr. Isbell or Mr. Taufer say anything? A. No. Mr. Isbell was always talking about getting a mortgage loan of \$6,000, and he expressed himself as being able to get a mortgage loan of \$6,000 and thereby pay for the material.

Q. Can you fix the time when this conference took place in Mr. Steenland's office? A. Just before the contract C-2. Just previous to C-1. When the other agreement didn't go through we drew the contract which is known as C-1. 30

By the Court:

Q. In this contract C-1 the words about the essence of the contract were clearly written in after the paper was prepared. After the word "covenants" there was a period and that period was entirely obliterated and then the words "And time to be considered as of the essence of this agreement", added subsequently. A. That was 40

John D. Craven, for Defendants—Direct.

put in in my office before it left my office, before execution.

The Court: Do you say it was in or out?

Mr. Salisbury: If he says it was in.

The Witness: It was there before execution.

10

The Court: That can be a matter of argument.

By Mr. Freund:

Q. Up to the time of the conference in Mr. Steenland's office the mechanic's lien claim of Mr. Taufer was still pending? A. That's right.

20 Q. And when the negotiations fell through in Mr. Steenland's office what did you do with reference to the lien claim of Mr. Taufer? A. I arranged for that in this contract known as C-1. It is provided in there that the contract shall in no way affect the status of the mechanic's lien suit and the hearing shall be adjourned until further notice. The contract provided it wasn't to be a waiver of any of our rights to strike out.

30 Q. Did you do anything then to strike out the lien claim? A. On March 17th I believe I wrote to Mr. Taufer to the effect that the contract was at an end and it would be therefore necessary to argue the lien claim. I told him we would have to argue it at a certain time. Mr. Taufer wrote me a letter in which he said his counsel, Judge Mattocks, would not be in a position to argue it at that time. By telephone calls and correspondence I arranged with Mr. Taufer and Judge Mattocks' office to argue it, I think, on June 6, 1930, which time it was argued and the Court signed an order striking out the lien claim which order was

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subsequently filed.

John D. Craven, for Defendants—Direct.

Q. Who filed the order discharging the lien claim? A. I filed it myself in the Bergen County Clerk's Office.

Q. And paid the filing fee? A. And paid the filing fee.

By the Court:

10

Q. The contract calls for a conveyance free and clear of encumbrances—Exhibit C-1? A. Yes, sir.

Q. Now the deed Exhibit D-1 doesn't purport to convey free and clear of encumbrances, does it? A. That was made up in pursuance of this first agreement C-1.

Q. That is the only deed you had ready for delivery? A. Yes.

Q. And that was made subject to encumbrances? A. Yes, sir.

20

By Mr. Freund:

Q. Did any one in behalf of Mr. Taufer or Mr. Isbell make any appointment with you for the closing of the title on January 15, 1930? A. No. I might say at that time that William Isbell was the only one whom I knew in this contract. His brother I had not seen until the time he made the tender. Mr. Isbell treated the property as his own and talked about it as his own and never mentioned his brother and what his brother was doing. Just previous to January Mr. Isbell came down and told he he wouldn't be ready to take title at that time because he had not obtained his mortgage loan.

30

Q. By that time you mean January 15th? A. Yes. He was applying for a mortgage loan of \$6,000.

Q. Did he ever get the mortgage loan of \$6,000?

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John D. Craven, for Defendants—Direct.

The Court: I will strike that out.

By Mr. Freund:

Q. Did he ever tell you he had gotten a mortgage for \$6,000? A. No.

10 Q. I show you what purports to be a copy of a letter dated February 25, 1930.

Mr. Freund: A demand is made for the production of the original letter.

Mr. Salisbury: I haven't got it.

By Mr. Freund:

Q. Did you dictate the letter Mr. Craven? A. I did.

20 Q. And was that letter mailed under your supervision? A. It was.

The Court: What do you mean? He may have told a clerk to go and do it.

The Witness: In the regular routine of our office.

The Court: I am asking counsel. What do you mean to comprehend?

By M. Freund:

30 Q. Did you do it yourself or some one under your direction? A. The girl in the office is supposed to do it under my direction.

The Court: You are not disputing the receipt of the letter are you?

Mr. Salisbury: I haven't seen it.

The Court: Take a look at it.

Mr. Salisbury: No objection.

Mr. Freund: I offer it in evidence.

40 The Court: Is this the letter that fixes it as of March 17th? The letter is dated February 25th, as I recall.

John D. Craven, for Defendants—Direct.

Mr. Freund: That's right.

(Marked Exhibit D-2 in evidence and read by counsel.)

The Court: We will now take a recess until two o'clock.

10

AFTERNOON SESSION.

JOHN D. CRAVEN, recalled.

Direct examination by Mr. Freund (continued):

Q. I show you a copy of a letter purporting to be dated February 27, 1930, to Mr. Isbell. Did you dictate that letter? A. I dictated this letter to Mr. Isbell and signed it. This was filed in my papers and according to the practice in our office the letter went out.

20

Mr. Salisbury: I can't very well consent to it.

By Mr. Freund:

Q. Mr. Craven, did Mr. Isbell come in to see you shortly after February 27th? A. Yes, I recollect he came in to see me between February 27th and the 17th of March, and told me at that time he wouldn't be in a position to take title on March 17th. He gave me the old stall.

30

The Court: Don't say that.

(Witness continuing). He told me he was still working on the premises; that he was working steadily, but he wasn't near finished and there was still more work to be done. That he still hadn't

40

John D. Craven, for Defendants—Direct.

gotten his mortgage loan although he had applied for it and he wouldn't be prepared to take title on the 17th of March and he wanted further time. I told him "No, that was the last time he had. We wouldn't extend the time any further because he had been working on it two years."

10

By Mr. Freund:

Q. So that he knew that as a result of a conversation between you and——

The Court: I will strike that out.

By Mr. Freund:

20

Q. Did Mr. Isbell say he received the letter addressed to him of February 27th? A. I don't know.

Q. On March 17, 1930, the time mentioned for the closing in the contract marked Exhibit C-1, were you in your office on that date? A. I was.

Q. And did Mr. William Isbell and George Taufer appear at your office on that day? A. They did not, and no one appeared representing them, and no one got in touch with me with reference to this contract of title.

30

Q. Did any one make any appointment with you for the closing of this title? A. Never from the time of the execution of this contract until the time they made the tender. They came into my office without any forewarning at all.

40

Q. What did you do on March 17, 1930? A. When nobody came I wrote letters to Mr. Isbell and Mr. Steenland and Mr. Taufer advising them so far as we were concerned they had lost any interest in the property and so far as we were concerned the contract was null and void. I wrote to Mr. Steenland because I knew he had been giv-

John D. Craven, for Defendants—Direct.

ing them materials and I didn't think he should be furnishing any more knowing their rights under the contract had ceased.

Q. I show you Exhibit C-9 and C-15, each dated March 17, 1930, addressed to Mr. George Taufer and Palisade Park Lumber & Supply Company, respectively, and ask you if they are the letters which you wrote and sent to the respective parties? A. They are. I also sent a letter to Mr. William Isbell. 10

By the Court:

Q. Did you send a letter to Mr. William Isbell on the same date, March 17th? A. Yes, sir.

By Mr. Freund:

Q. I show you what purports to be a copy of a letter dated March 17, 1930, addressed to Mr. William Isbell, and ask you if that is a copy of the letter you dictated? A. It is. I sent out letters to all three, to Mr. Isbell, Mr. Taufer and Mr. Steenland, and I recollect signing them and they all went off together. 20

Mr. Freund: A demand has been made for the production of that letter and also letter of February 27, 1930, addressed to Mr. William Isbell. Have you the originals of those letters? 30

Mr. Salisbury: I haven't got them. He says he doesn't remember seeing the one of February 27th. I didn't ask him about the one of March 17th.

Mr. Freund: I offer both of them in evidence.

The Court: I will admit them.

(Marked Exhibit D-3 and D-4 in evidence.) 40

John D. Craven, for Defendants—Direct.

By Mr. Freund:

10 Q. After March 17, 1930, did you hear anything further from George Taufer or William Isbell or Emil Isbell? A. The next time I heard from Isbell was around the middle of May wherein he called me up and wanted to make an appointment to talk over the situation with me. I told him over the 'phone that I didn't think it was at all necessary to talk anything over with him; that he was out in regard to the contract as far as we were concerned, and I thought it would be just a waste of time. I nevertheless consented to make an appointment with Mr. Duffy for May 20th, and Mr. 20 Taufer, Mr. Isbell and Mr. Duffy and myself had a conference at the office, and to the best of my recollection they wanted to make further propositions to take the property. They offered at that time the sum of \$100.00 deposit provided we made a new contract with them. At that time Mr. Duffy would not consent to the making of a contract. He said he had fooled enough with them and wouldn't deal with them any longer.

Q. That was May 20, 1930? A. Yes.

30 Q. What was the next time you saw either one of the parties? A. The next time was without any communication or 'phone call that Mr. William Isbell and Mr. Taufer, and Miss Thomas of Judge Mattocks' office came in and made a tender.

Q. What did you say in response to their tender? A. I told them they didn't need to make a tender; they had lost all their rights under their contract and it wouldn't do them any good to make a tender.

40 Q. Was there anything else said at that time? A. No, except I told them we wouldn't give them

John D. Craven, for Defendants—Direct.

a deed for the property and they just walked out. It was just merely a formality.

The Court: I will strike that last statement out.

By Mr. Freund:

Q. Why did Mr. Duffy make March 17, 1930, the last date on which they were to take title? A. The matter had been going on——

10

The Court: You are asking him about the mental operation of the mind of Mr. Duffy. I will have to overrule that question.

By Mr. Freund:

Q. In the deed marked Exhibit D-1 there is recited after the description "Subject to three mortgage", stating the respective amounts. Why were those amounts put in there?

20

The Court: How is that material? It is a condition that confronts us and not a theory.

The Witness: I prepared the deed. I would like to have an opportunity——

The Court: Do you object to it?

Mr. Salisbury: No.

30

A. This deed was prepared in pursuance to the original plan.

The Court: I will strike that out.

The Witness: It has been testified to already.

The Court: But don't you say it.

The Witness (Continuing): Mr. Isbell had come to me and told me, that is, William Isbell I am referring to, and told me

40

John D. Craven, for Defendants—Direct.

10 in regard to the three mortgages on the property that they could be released from the lien of the mortgage in reference to this one particular lot for the sums mentioned in the deed, and that deed was prepared on the basis of the first arrangement made up in Mr. Steenland's office. That also had the amounts I put into the deed. He had told me he had been in communication with each one of the mortgagees and these were the amounts he could get this one particular lot released from the lien of the mortgage.

By the Court:

20 Q. Did you inspect this house, Mr. Craven? A. I did.

Q. When? A. Yesterday—Sunday afternoon. I rode up to the property and inspected the place—the inside and outside.

Q. Have you a memorandum as a result of your inspection? A. I have.

Q. Did you find the house completely constructed? A. I did not.

30 Q. Did you find that it was necessary to do any work or furnish any material to complete the finishing of the house? A. The neighborhood is a very nice residential neighborhood. There is a house to the east near Teaneck Road—a very large one family house. This house sits away up in the air. I might describe it. The cellar is concrete block and the house proper sitting up on top of it. It looks out of place with the rest of the houses around there. The outside has one priming coat of paint on it. The extension to the cellar is open to the elements on one part.
40 the windows downstairs were boarded up. The

John D. Craven, for Defendants—Direct.

cellar proper in the rear is still the way it was in its original state—mounted up. There is a boiler in there and no concrete on the earth. The windows are boarded up. There are no doors on the house or closets or connecting rooms. There are no radiators in the house. There are no electric light fixtures of any type. The wires are there. There is no paint in any part of the house inside. None of the woodwork is painted, and none of the plaster is painted. In the kitchen is no tubs or sink or no range. In the bathroom the side is finished from half way up to the ceiling with plaster. There is a tub there still uncrated. There is no sink there or medicine closet or bowl and no flooring finished in the bathroom. There are no screens of course and no windows in the bathroom. The land adjoining which is on this tract the sheds are still on there. The furrows, or what looked like furrows, where the foundation has been cut for the other houses are still there, and if you didn't watch your step you would fall into them and stumble over them, and still require a large amount of time and money and material to fix up this house and make it complete.

Q. What did you find as to the size of the rooms? A. On the first floor there is supposed to be a living room and an alcove. There is a very large stairway leading upstairs, twice as large as they need, and the rooms on the top floors are very small, and particularly so back of the sloping eaves. The house is very poorly planned.

The Court: I will strike that last out.

John D. Craven, for Defendants—Direct.

By Mr. Freund:

Q. Mr. Craven, for mortgage purposes at what would you appraise——

The Court: Why are we concerned for mortgage purposes?

10 Mr. Freund: I want to get a value as to this property.

The Court: There is a different value as to sale purposes and mortgage purposes.

By Mr. Freund:

Q. Mr. Craven, in your experience in appraising property what in your opinion is the value of this house as it stands?

20 Mr. Salisbury: I object to that.

The Court: I will receive it subject to your objection. He has stated a lot of things which qualified him. He built houses.

The Witness: No, I didn't build houses.

The Court: You bought and sold?

The Witness: Yes.

The Court: For ten years.

30 The Witness: Yes. I say at the present time that the house would be worth \$4,000. That it would take about another thousand dollars to fix it up, and when finished with the land and everything it would not be worth more than \$5,000.

The Court: You ought to be thankful to have this testimony, Mr. Salisbury. It is different from what Mr. Duffy stated.

The Witness: That's my opinion.

John D. Craven, for Defendants—Cross.

By Mr. Freund:

Q. What do you say as to how this house stands in connection with other houses in the neighborhood?

The Court: I will overrule that. If it was violative of the restrictions in so far as municipal actions could be controlled they would take care of that. It might be a cheaply put up house, but that is the business of the man who built it. 10

Mr. Freund: Take the witness.

Cross-examination by Mr. Salisbury:

Q. You never gave any notice to Mr. Emil Isbell, did you, Mr. Craven? A. What kind of a notice? 20

Q. To take title or the contract to be entered into? A. No, sir.

The Court: You mean a notice somewhat like this letter of March 17th?

Mr. Salisbury: Yes.

(Witness continuing.) All my dealings were with William Isbell, who told me he was acting for his brother. 30

By Mr. Salisbury:

Q. So that the original date in C-2 wasn't urged in the subsequent agreement of C-1? A. No, not at all.

Q. How was this March 17th arrived at for the absolute completion of the house? A. Mr. Isbell had been in to see me a number of times and as shown by the letters I had written to him and to Mr. Taufer. He would always put me off a couple of weeks and told me it was going to be finished 40

John D. Craven, for Defendants—Cross.

by the last of February. I told him instead of doing that we would give him until the middle of March—to March 17th to finish up, and it was then fixed that was the last time he would have.

By the Court:

10 Q. If he was to finish up by March 17th when was the title to close? There was nothing stated about that in your letter? A. He was to take title by March 17th.

20 Q. The letter doesn't say so. The letter indicates he was so slow in the building operations he was to take title by March 17th. Does it say anything about taking title on March 17th? A. Isbell had been falling behind in his work and if he was not finished by March 17th we would not give him any more time and it would be declared null and void. That was the gist of it. Then we sent a letter to Mr. Taufer stating we are taking the stand that he has defaulted and we will argue the motion previously scheduled for the 5th of July at the Court House in Hackensack.

By Mr. Salisbury:

30 Q. After that time further material was furnished and further work done? A. I do not know if there was or not.

By the Court:

Q. Didn't you look at it? Months elapsed between that and May when the last material was delivered. Do you mean to say you didn't go near the property since that time? A. I didn't see it until last Sunday.

40 Q. Did you ever look at it during building operations? A. No, sir. Last Sunday I was curious

John D. Craven, for Defendants—Cross.

to see it myself. The question came up as to how far it was finished.

By Mr. Salisbury:

Q. Did you take any steps yourself to take possession of the property? A. Did I? No, sir. So far as I was concerned, no.

10

Q. Either you or Mr. Duffy? A. You are asking me did I? I had no rights in the property.

By the Court:

Q. You were representing Mr. Duffy. He wants to know if you in behalf of Mr. Duffy took any steps to be in possession of the property? A. We had always been in possession of it.

Q. But you knew these people were in actual physical possession because they were building on it? A. Yes.

20

By Mr. Salisbury:

Q. Was it Thanksgiving Day or last Sunday you were out? A. Sunday.

Q. Did you find a lock on the door? A. Yes.

Q. It was locked, wasn't it? A. There was a lock on the door with two nails which I pulled without much pressure and it came open. I was on Mr. Duffy's property. I didn't know who put the lock on.

30

Q. There was never any further deed prepared by you except the one you have offered in evidence, was there? A. No, sir, because they weren't ready to take title.

Q. Was there any arrangement made by you about cancelling the mortgages on the property at all? A. No, sir.

Q. Have you any releases or anything from the mortgagees that would enable your client to de-

40

John D. Craven, for Defendants—Cross.

liver a deed free of encumbrances? A. Mr. Duffy advised me——

By the Court:

Q. Have you? A. No.

10 Q. You yourself made no arrangements? A.
As far as I am concerned, no.

By Mr. Salisbury:

Q. In the letter of January 20th you said to the Palisade Park Lumber & Supply Company their time had expired on January 15th. There wasn't any definite ending at that time, was there? A. We admit that.

20 Mr. Freund: It was extended to March 17th.

The Court: When?

Mr. Freund: By the letters of February 25th and February 27th. The letters marked in evidence.

By Mr. Salisbury:

Q. Those two letters are not any stronger than the other one, are they?

30 The Court: I will overrule that question. You can make such comment as you please on those letters when you are arguing your case.

By Mr. Salisbury:

40 Q. This letter to Mr. Taufer refers to finishing the house, does it not? A. That letter speaks perfectly plain—"Please be advised that unless he finishes up by this time that we will declare this contract at an end and that his interest in the land will cease."

William F. Isbell, for Complainants—Direct.

Q. Two days later you wrote to Mr. Isbell? A. That was to the same effect—"We will give you until March 17th to take title", because Isbell came to me at that time and I called up Mr. Duffy and Mr. Duffy told me he wouldn't extend the time after March 17th. That is why I wrote that letter which is perfectly plain.

10

Q. You had already said that to him and to Mr. Taufer? A. Absolutely, yes.

Q. As to the bathroom, Mr. Craven, is that to be tiled? A. I don't know. I never saw the plans.

Q. If it was to be tiled it wouldn't be finished any more than at the present time? A. It might have the rough coat on it. It would have to have something to stick the tiles on if I recollect the way it is done.

20

Mr. Salisbury: That's all, if your Honor please.

Mr. Freund: That's all. That's the defendants' case.

Mr. Salisbury: I have a little bit more to offer, your Honor.

The Court: All right.

WILLIAM F. ISBELL, recalled.

30

Direct examination by Mr. Salisbury:

Q. I show you the blue prints and ask you if those are the blue prints from which this house in this case was to be constructed? A. Yes, these are the blue prints from which I constructed the house.

Q. What do those blue prints show as to the front of the house? A. It shows the entrance on the right side.

40

William F. Isbell, for Complainants—Direct.

Mr. Freund: I object. Let him offer the blue prints in evidence and they will speak for themselves.

The Court: Yes, and you can comment on them in your argument.

10

(Blue prints consisting of 4 sheets marked Exhibit C-45 in evidence.)

By Mr. Salisbury:

Q. How is the bathroom to be finished? A. Tub on the floor and the walls up to a height of five foot six.

20

Q. The cellar or garage in the house front? A. The ground is to be built over and four inches of rough concrete to be put over that and a finishing coat of one inch.

Q. Is part of this house intended to be a garage? A. Yes, the front part on the left side.

Q. From December, we will say, of 1929, was it an advantageous time to do this work of concret-ing? A. No.

Mr. Freund: I object.

The Court: He said no before you got your objection in. If you think it is harmful, I will strike it out.

30

Mr. Freund: I don't think so.

By Mr. Salisbury:

Q. I show you a letter of February 27, 1930, addressed to you, or a copy purporting to have been sent by Mr. Craven, and ask you if you remember receiving the original of such a letter?

Mr. Freund: I object. The letter has been marked in evidence.

40

The Court: I admitted it in evidence. I will sustain the objection.

George Taufer, for Complainants—Direct.

By Mr. Salisbury:

Q. The plot to the west of this lot that the house is on, what is the condition of that, Mr. Isbell? A. You mean the land on the west side?

A. Yes.

The Court: Why am I concerned about that? 10

Mr. Salisbury: All right, I withdraw it. I think that's all.

Mr. Freund: No questions.

GEORGE TAUFER, recalled.

Direct examination by Mr. Salisbury: 20

Q. At the time that the contract C-1 offered in evidence was signed was there an agreement between you and the Palisade Park Lumber & Supply Company for the furnishing of material?

Mr. Freund: I object. It is immaterial what agreement he had with the Palisade Park Lumber & Supply Company.

The Court: I will permit it subject to your objection. This is the second contract we are speaking about? 30

Mr. Freund: Yes.

The Court: There is some testimony about him being up there talking with Mr. Craven about it so I will admit it.

By Mr. Salisbury:

Q. Was there a contract entered into? A. Yes, between Mr. Steenland and myself.

Q. Have you that contract with you? 40

George Taufer, for Complainants—Direct.

Mr. Salisbury: That contract fell through. I want to show there was a contract entered into for the same amount Mr. Craven has testified to.

The Court: That had not fallen through.

Mr. Salisbury: Yes.

10

Q. Did you see Mr. Steenland sign it? A. Yes.

Q. And is that your signature, too? A. Yes, sir.

The Court: We are not concerned with the particulars of the contract. Just that there was a contract relating to that building.

By Mr. Salisbury:

20

Q. Was it under this contract that the materials were furnished, Mr. Taufer? A. Yes, sir.

Q. And how much did Mr. Steenland agree to furnish the materials for? A. Not to exceed \$2,600.00.

Mr. Salisbury: I offer that.

Mr. Freund: We object. Mr. Craven never saw that contract.

30

The Court: I will admit it not as to your clients, but there was a contract existing between the parties. Mr. Craven testified when he went up there something to the effect it had fallen through. They tried to make a new contract and for that reason I will admit it.

(Marked Exhibit C-46 in evidence.)

By Mr. Salisbury:

40

Q. How many blocks, Mr. Taufer, did it take to make the foundation for that house? A. Al-

George Taufer, for Complainants—Cross.

most 900 blocks. 850 blocks would about complete the foundation.

Q. Of what size? A. 8 x 10 x 16.

By the Court:

Q. Cement blocks? A. Yes, sir.

10

By Mr. Salisbury:

Q. Do you know the size of the building? A. It is approximately 18 x 40. I couldn't state positively; I haven't measured it. The plan will show that.

Mr. Salisbury: I think that's all.

Cross-examination by Mr. Freund:

20

Q. Mr. Taufer, you were in Mr. Steenland's office on October 15th, 1929, when Mr. Craven was there? A. Yes, sir.

Q. And do you know why you and Mr. Isbell and Mr. Steenland and Mr. Craven were there? A. Mr. Duffy made an affidavit that he didn't know that Mr. Isbell was putting up a building and he was contesting my lien and I was afraid I would fall through with the lien, and then they made the suggestion if I put in \$700.00 more cash money that Mr. Isbell would be in a position to get the mortgage and buy the building and be able to pay for the deed, but the conditions was so bad we couldn't get the mortgage at that time.

30

Q. And you were putting your money in when you knew that you didn't own the property and Mr. Isbell didn't own it, isn't that the fact? A. On the strength of the contract.

Q. The negotiations which took place on October 15, 1929, in Mr. Steenland's office fell through?

40

George Taufer, for Complainants—Cross.

A. They did not fall through. They kept on building.

Q. Did Mr. Steenland sign the papers which had been prepared? A. I don't think so. That's the reason they made a contract with me so they could secure his money.

10 Q. Mr. Craven didn't know anything about that contract? A. Mr. Craven was there. That contract was signed by Mr. Steenland.

Q. The contract which is marked C-46 was signed on October 17th, and you and Mr. Craven and Mr. Isbell was in Mr. Steenland's office previously on the 15th of October? A. I don't say anybody was there except Mr. Steenland and myself.

20 Q. The negotiations which were taking place in Mr. Steenland's office on October 15th fell through, didn't they? A. I don't see why.

Q. Why did Mr. Craven go up to Mr. Steenland's office on October 15th, do you know?

The Court: How can he answer for the operation of somebody else's mind? A. I overrule that.

Mr. Freund: He knows the reason.

30 The Court: Suppose he made a statement that is against your interest you wouldn't like it.

Mr. Freund: I don't think he will.

The Court: I will overrule it.

By Mr. Freund:

40 Q. Do you know whether certain papers were prepared by Mr. Craven to be signed by you and Mr. Steenland on October 15th in the office of Mr. Steenland? A. Mr. Steenland I understand refused to sign them.

George Taufer, for Complainants—Cross.

The Court: That isn't the question.

(Last question read by stenographer.)

A. That was the contract, yes.

By the Court:

Q. What contract? Exhibit C-1, of October 15, 1929? A. Where Mr. Duffy would give us a deed on January 15th. 10

By Mr. Freund:

Q. Mr. Steenland refused to sign the papers, didn't he? A. Yes.

Q. Do you know why? A. I don't know his reason, no.

Q. Isn't it the fact that Mr. Steenland refused to sign the papers because Mr. Steenland was to furnish materials on this job and he wouldn't guarantee to furnish the materials? 20

Mr. Salisbury: I object to it.

The Court: What is the objection?

Mr. Salisbury: It goes into the operation of somebody else's mind as to why some one else refused.

The Court: I will overrule the question on the ground it is argumentative. 30

By Mr. Freund:

Q. When you were in the office of Mr. Steenland on October 15, 1930, you testified that Mr. Steenland refused to sign the papers, isn't that right?

The Court: You don't mean October 15, 1930?

Mr. Freund: October 15, 1929.

A. (Witness.) I couldn't answer that. 40

George Taufer, for Complainants—Cross.

Q. You spoke to Mr. Craven prior to October 15, 1929, in reference to the conference to take place in Mr. Steenland's office on October 15, 1929? A. I don't recall that. I don't think I had anything to do before that contract was signed with Mr. Craven.

10 Q. Why were you in the office of Mr. Steenland on October 15, 1929, when Mr. Craven and Mr. Isbell were there? A. I tried to save my money I had invested on the lien claim on the foundation.

The Court: He testified to that before.
Do you want him to repeat it?

Mr. Freund: No.

20 By the Court:

Q. That's the time they asked you to put up \$700 more? A. Yes.

By Mr. Freund:

Q. How much do the concrete blocks cost per block? A. Twenty cents.

Q. The blocks that went into this house were you paid for at the retail price or wholesale price?

A. It is twenty cents per block retail price.

30

By the Court:

Q. And you said there were 900. That would be \$180.00? A. Approximately.

By Mr. Freund:

Q. Did you set the blocks in the foundation?
A. No, sir.

40

By the Court:

Q. Were you the mason contractor? A. No.

George Taufer, for Complainants—Cross.

By Mr. Freund:

Q. You just delivered them on the job? A. That's all.

Q. How much did all the blocks cost that went in that job at the rate of twenty cents per block?

A. There was more blocks delivered for the simple reason that Mr. Isbell had a contract for five foundations.

10

Q. How many blocks did you deliver altogether? A. Approximately the bill was \$278.00 for the amount of the blocks.

Q. How many blocks did you deliver? A. I don't know.

Q. You instituted your mechanic's lien suit claiming there was due you \$400.00? A. No, sir; two hundred and seventy-eight and some odd cents was the lien claim.

20

Mr. Freund: That's all.

Mr. Salisbury: That's all.

The Court: All right, I will hear you gentlemen.

Mr. Freund: Mr. Craven has attended to this matter over the two years it is running——

30

The Court: And he wishes to argue it?

Mr. Freund: Yes, sir.

The Court: All right, I will hear you first, Mr. Salisbury.

(After oral argument of counsel.)

Oral Conclusions.

The Court: The proofs in this case evidence that there were dealings between the defendant and some others respecting the property in question, which dealings were not consummated. That subsequently on October 17, 1929, a contract was entered into between the defendant James Duffy and Mary Duffy, his wife, as parties of the first part, and Emil Isbell and George Taufer, as parties of the second part, whereby the defendants contracted to sell to Emil Isbell and Georg Taufer the premises in question for \$1,736.90. The title was to pass on January 15, 1930. The contract contains a provision which, as indicated by counsel for complainants, was apparently an after thought in the mind of some of the parties—
10 I mean from the time the contract itself was originally prepared—as to making time the essence of the contract. In Exhibit C-1, which is the contract bearing date October 17, 1929, as originally prepared, it provided for the delivery of a deed which shall contain a general warranty and the usual full covenants. It stopped there and a period followed the word *covenants*. Thereafter at some time, and counsel for the defendants in his testimony said it was before the execution of the contract by the parties, the period was partly
20 obliterated and a comma inserted instead following the word *covenants*, and then the words “and time to be considered as of the essence of this agreement” were added. So I will take it for granted in this case those words were in the contract at the time the contract was executed by the parties. There is no proof to the contrary, and the proof is those words were contained in that instrument prior to its execution. Now the
30 proofs throughout indicate that the parties to the
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Oral Conclusions.

contract did not strictly adhere to that covenant. The covenant was clearly waived by the parties. January 15, 1930, came and went without either party considering that the failure to consummate the agreement at that time was to be regarded as detrimental to either one of them. The proofs disclose that from time to time there was correspondence between Mr. Craven, an attorney at law representing the defendant Mr. Duffy, and some persons in behalf of the complainants. A man named Steenland, representing a building material concern, testified in the case as to materials furnished to the property in question between March 26, 1929, and May 7, 1930. Not only were those materials delivered to the premises but he testified he knew they were actually installed upon the premises and affixed thereto by mechanics. The question of the value of the building as it stands is controverted by the parties. A great disproportion in value appears between Mr. Duffy, the defendant, and his counsel, Mr. Craven, and the witnesses for the complainants. Mr. Duffy, who seemingly from the qualifications established by him ought to be very competent to testify as to the present value of that building, testified the present value of that building as it stands was in his judgment not more than \$1,500.00. Mr. Craven, who is equally qualified according to the testimony to testify as to buildings, and a building particularly such as the one in question, testified in his judgment the value of that building was \$4,000, and he examined it last Sunday, and if I remember it right it is the only time he saw it, and it was upon that inspection he based his value. The complainants' witnesses indicate by their testimony that materials and labor to the extent of \$6,000 or thereabout went into this

Oral Conclusions.

building. The character of the building has been criticised by Mr. Duffy, and Mr. Craven has somewhat spoken of it, too, as being hardly a building suitable to that locality in which it was erected, but I cannot see that that characterization or criticism is in anywise evidential in this case or to be regarded by me as of any consequence in my determination of this matter. The building is apparently built according to plans and specifications—blue prints of the plans have been admitted in evidence—and in pursuance of a building permit issued by the municipal authorities of the municipality in which the building is situate. An unusual length of time was consumed in the erection of this building. It was testified that all things being considered, and all the materials being readily ascertainable, and the parties had the money to go on with the building and if no unforeseen difficulties were experienced the building ought to be completed within three or four months. Apparently a year or more was consumed in the building operations. The lapse of time was occasioned apparently by the shortage of money upon the part of the builders and difficulty in obtaining credit and materials. The plot of land upon which the building is erected I do not recall distinctly except it was a thirty-foot frontage. It appears from the proofs that originally one Emil Isbell and one George Taufer contracted to buy a plot of 150 feet frontage from Mr. Duffy. Excavation was made on all of the lots evidently with the intention of building upon it. No building operations were followed up on any of the property except the one that was called the corner lot to which the contract of October 17, 1929, relates. William Isbell appears to be the one who had the building operations for his

Oral Conclusions.

brother Emil, who is one of the contractees in this matter, to whom was committed by his brother Emil the authority to look after the building operations and to deal with Mr. Duffy and Mr. Craven and others with respect to whatever matters should be negotiated or dealt with respecting the property. It is claimed by defendants that because of the persistent delay of the vendees Taufer and Emil Isbell in completing the building which was situate upon the lands which are in question, that Mr. Duffy become somewhat perplexed and indicated to his lawyer he should take some definite action in the matter, and Mr. Craven, his lawyer, thereupon wrote a letter to Mr. George Taufer, who is one of the vendees, bearing date February 25, 1930, wherein Mr. Craven said, "Isbell was in again today and made some more promises. I told him we would not wait any longer than March 17th for him to finish his work, as he has had plenty of time to finish. Please be advised that unless he finishes up by this time we will declare this contract at an end and that his interest in the land will cease, and we will take steps to finish the house and cancel the contract of Isbell to purchase the said land." Now why that letter was written in that way to Mr. Taufer without declaring that they intended to put an end to Mr. Taufer's interest in the land must be left open for conjecture so far as I can see at the present moment, because it will be observed that not one word was stated in that letter to indicate to Mr. Taufer that his interest was to be in anywise affected. The letter deals particularly with the interest of Isbell. Referring again to the letter, Mr. Craven said, "I told him (meaning Isbell) we would not wait any longer than March 17th for him (meaning Isbell) to fin-

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Oral Conclusions.

ish his work, as he (Isbell) has had plenty of time to finish. Please be advised that unless he (Isbell) finishes up by this time we will declare this contract at an end and that his interest (meaning Isbell's interest) in the land will cease, and we will take steps to finish the house and cancel the contract of Isbell to purchase said land." 10 Now that letter in my mind is not a specific declaration upon the part of the vendor Mr. Duffy that on March 17, 1930, the rights of Mr. Taufer and Mr. Emil Isbell were to cease in that contract. The letter to me clearly indicates there was some subsequent action to be taken by Mr. Duffy or someone in his behalf, because as I indicated to counsel for the defendant when he was arguing the matter to the Court, the letter says, "we will 20 declare this contract at an end", indicating in my mind some further action was to be taken by the defendant. My judgment in this respect is further strengthened by the subsequent language of the letter in which it is said after saying, "we will declare this contract at an end," wherein it is said, "and that his interest in the land will cease, and we will take steps to finish the house and cancel the contract of Isbell to purchase the said land." Now that language is clear and em- 30 pratic that some further steps were to be taken to cancel that contract of Isbell to purchase the land. As I believe I indicated a moment ago, whenever a person undertakes to divest one of a right in property the action relating thereto should be unequivocal, specific and well understood. Now two days following the writing of this letter of February 25th, another letter was written to Mr. Steenland, if I remember right, in which counsel for the defendant called Mr. Steenland's 40 attention to the delay that had been experienced

Oral Conclusions.

in the prosecution of the work on the building, and yet, notwithstanding, Steenland continued to furnish materials on the building up to and including May 7, 1930. Now it is inconceivable to me that Mr. Duffy, appreciating as the testimony shows, that these vendees were dilatory in the prosecution of the work on this building would not have taken upon himself to meander up to the vicinity where the building was located to find out what further progress was being made, if any. If he did go up to the premises he would have observed that these parties were having new material delivered to the building, and that this building was in course of progress after March 17, 1930. It seems to me that these complainants had in mind and realized that there was no sincere purpose upon the part of Mr. Duffy to put their rights in the contract at an end on March 17, 1930. They appreciated that he had been tolerating their derelictions and delays for a considerable period of time, and if it was the purpose of Mr. Duffy to put an end to those derelictions and delays it appears to me within the purview of the law it was the duty of Mr. Duffy to put an end thereto by a proper notice to the vendees unmistakeable and emphatic in its terms. Vice Chancellor Leaming in some case to which counsel for the defendants adverted to, the name of which I do not now recall, indicated that just an hour's time set for the closing of a contract made in that particular case was sufficient to warrant the Court in denying their right to perform the contract in writing which they sought in the matter. I, in the case of *Merlis v. G. & M. Corporation*, 143 Atl. 139, made a similar finding in the matter that was then before me. In the case of *Rapps v. Tulenko*, 102 N. J. Eq. 207, I had occa-

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Oral Conclusions.

sion to deal with a contract as to time being of the essence of the contract. I think it can be stated without doubt that the general rule, and I want to emphasize the word *general*, is that one seeking performance of land contract must show himself ready, desirous, prompt, and eager to perform contract on his part. Unreasonable delay in doing those acts which are to be done by him will justify and require a denial of relief. But in connection with that it is a clearly established rule of law as stated in the case of *Meidling v. Trefz*, 48 N. J. Eq. 638, at page 644, that no rule respecting the length of delay which will be fatal to relief can be laid down, for each case must depend on its peculiar circumstances. In the Merlis case to which I have adverted I therein stated that in that case time is not to be held as of the essence of the contract unless the parties have expressly so stipulated or unless it follows by necessary implication from the nature of the transaction. Having in mind as I do that the clause in the contract which bears date October 17, 1929, that time was to be considered of the essence of the contract was waived by the defendants, and clearly regarded as having been waived because of subsequent action between the parties in regard to the contract and correspondence, I am of the opinion that nothing was done by the defendants subsequently by which they made time the essence of the contract notwithstanding it is urged by counsel for the defendants that it was sought to have been by this letter of February 25, 1930, to which I have adverted. It appears to me in this case that it would be highly inequitable and in fact unconscionable for the Court to divest the vendees of their rights in and to the land upon which is now erected a building

Oral Conclusions.

estimated in value at either \$1,500.00, \$4,000 or \$6,000, and by such act enrich the defendants by giving to them a building the money was in. I believe the proofs in this case warrant me in believing that the building erected upon that property is at least \$4,000 in value, as stated by Mr. Craven, and more likely in my judgment of the value of \$6,000, as stated by the witnesses for the complainants, because it has been stated in details what materials and labor has gone into that building. Statements have been offered in evidence which show the valuation to be approximately \$6,000. This case is not one in which the defendants seek to be relieved from the performance of their contract to convey because the value of the land in question has enhanced since the making of the contract or since the date of the alleged default by the complainants. Occasionally the court is met with instances where parties are desirous of recanting from the contract if they made on account of defaults alleged to have been committed, because the property has enhanced in value, but in this particular case Mr. Duffy says the land is not now in his judgment of as much value as at the time he sold it. He says he considered it has depreciated in value. His testimony is clearly to that effect. If the building is the nuisance as depicted by Mr. Duffy, and somewhat by Mr. Craven, because of his inspection on last Sunday, Mr. Duffy ought to be glad to rid himself of it. There has been some testimony in this case, particularly through Mr. Duffy, about diminution in value of real estate adjoining the land in question, which real estate was embraced in the original contract made by Mr. Duffy with other parties, which contract preceded the one of October, 1929, which followed and was substituted for. I am not concerned in this case with that

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Oral Conclusions.

question. I cannot in this case give any consideration in change of value of that property notwithstanding what Mr. Duffy says in his testimony that there has been a shed or sheds and some building materials of various kinds placed upon these other parcels of land which may serve to diminish the value of the land. Witnesses for the complainants say that the building in question is substantially complete. Very few things are required to be done to make the completion entire if the testimony is believable. They say the water connection has not been made in the front, but that will be a trifling matter to attend to. According to Mr. Duffy, it would not cost more than \$150.00 to make the connection for both water and the sewer. They say that the fixtures for the bathroom are there and ready to be installed. They say other fixtures are there ready to be installed. Mr. Duffy indicates by his testimony that there is a considerable amount of work necessary to be done in order to complete the building. Mr. Craven has likewise testified there is a considerable amount of work necessary to be done to complete the building. But be that as it may, and it seems to me it is quite aside from the question I am obliged to consider and determine here, I fail to appreciate, in view of the proofs submitted here, why Mr. Duffy is disinclined to convey the lands in question to the vendees. As I stated before, I could appreciate certain instances which would warrant a man not to convey subsequent to a time in which he says a default has been sustained. But in this case he would be getting rid of a nuisance, and he would be getting rid of a piece of land which is not worth as much today as when he contracted to sell it. In equity it is not ordinarily regarded as of the essence of a contract (speaking of time now), and

Oral Conclusions.

therefore a specific performance may be decreed in cases where justice requires it even though literal terms of stipulation as to time have not been observed. I so stated in the Merlis case, reported in 143 Atl. at page 141. It has been repeatedly held that relief rests not upon what the court itself does, but rather upon what, in view of all the circumstances, the court ought to do. Now the proofs disclose here that the property was to be conveyed free and clear of encumbrances, and the deed that was offered clearly shows it was not being so conveyed. The proofs show that there were three mortgages open as liens against the property. There is also a mechanic's lien open against it and also a *lis pendens*, which, of course, affects the present suit. I appreciate that Mr. Craven has either testified or a statement made in this case that the lien claim was discharged by order of the Circuit Court of Bergen County, but the searcher who appeared here has testified there is nothing to indicate such was the fact. Counsel for the defendants asked him if he opened the jacket of the docket relating to lien claims, and he said he did. I presume counsel's purpose in making that interrogation was to ascertain whether or not an order had been made and entered in conformity with the judgment of the Circuit Court which was alluded to by counsel as having been dispositive of the lien claim suit against the defendant Duffy. The deed which has been offered in evidence is dated the 14th day of October, 1929. The contract between the parties bears date October 17, 1929. This deed, however, as has been testified to by Mr. Craven, was made for the purpose of showing Mr. Steenland, and perhaps others, that they were to be somewhat secured in their furnishing of materials for the erection of this building by knowledge of

Oral Conclusions.

the fact that a deed had already been executed by the vendors to the vendees and held in escrow by Mr. Craven. This deed evidences not only that the property is not being conveyed free and clear of encumbrances, but it is expressly made subject to encumbrances. At the end of the recital of the description of the premises it reads: "Subject to the proportionate share of a first mortgage amounting to \$625.00; to the proportionate share of a second mortgage amounting to \$500.00, and to the proportionate share of a third mortgage amounting to \$425.00. Subject also to a purchase money mortgage in the amount of \$1736.90." It is clear to me from the proofs in this case, to some of which I have alluded, that the vendor was not in a position to convey the property to the vendees in accordance with the contract at any time even up to the present time. I appreciate that there are instances in which the mortgages which may be liens against property may be paid at the time of closing the contract. It may be possible in this given case here that such might have been acceptable, but there is no proof before me that such is the fact. It is true that Mr. Duffy said they were open mortgages and the time is past within which they were to be paid, but there is nothing in the case to indicate that is the fact, and there is nothing to indicate the vendors would have a right to pay off these mortgages at the time of the passing of the title other than his statement to which I referred. But whatever might be said in that respect I fail to appreciate why the vendors undertook to assert in that deed that the conveyance of the property was to be made subject to the proportionate amounts of three mortgages. Surely there is no proof before me to warrant the vendors in so doing. So that deed on its face is violative of the

Oral Conclusions.

covenants of the contract made by the vendors to the vendees. Now it is said that the complainants sought to have this property conveyed to them. It has been testified that in May, 1930, they made a tender both to Mr. Craven and to Mr. Duffy alternatively. They say they tendered the cash required to be paid, and I think the proofs are clear that tender was made, and my recollection is it was conceded by the defendants in this case, and the tender was disregarded because defendants emphatically stated they would not convey. Defendants' testimony indicates that the complainants, after March 17, 1930, sought the making of a new contract and offered to pay the sum of \$100.00 additional for the consideration for the making thereof. That is denied by the complainants. The complainants, on the other hand, and some of their witnesses, testified that as an additional inducement for Mr. Duffy to convey the property to the complainants they offered to pay him five dollars a front foot extra, which amounted, as I remember it, to \$200.00 additional. They say Mr. Duffy refused this offer. Not only was there a tender made in May, 1930, as testified to, but on June 10th, if I remember the date, there was a subsequent tender to Mr. Duffy himself, and he likewise refused to accept it, and said he considered the contract to be at an end. Now, as I think I indicated before, the status of the vendors in this case has not been changed materially to their disadvantage, so they can suffer no loss by the Court making a decree against them requiring the specific performance of the contract whereby they should convey these lands to the complainants. The status of the defendants was not changed by the delay in taking title on March 17, 1930, and when the defendants suffer no appreciable wrong, when they suffer no money

Oral Conclusions.

loss, when, as it appears in this case, there is no change in status as between them and the complainants whereby they may be prejudiced in money, property or otherwise, I deem it to be of no disadvantage to them and would not manifest any inequity to them to require them to perform their contract for the sale of this land. I do not find anything established by the proofs in this case that will justify me in holding that the time limit prescribed by the vendors was, in view of all the facts and circumstances manifested by the proofs in this case, of the essence of this contract. I will advise a decree dismissing the counterclaim and requiring the defendants to perform the contract for the conveyance of the lands in question. I have in mind, too, and might say before I close, I regard that no possible inequity can be done to the defendants in such respect, because he will get everything in the way of purchase price plus six per cent on the money that has been withheld from them for the period of time which it has been withheld, and in estimating the amount of money required to be paid by the complainants to the defendants I will provide in the decree that the complainants will be obliged to pay any taxes or assessments that have been charged against that property since the time when the contract was said to have been closed, which, I think, was January 15, 1930. No costs or counsel fees to be allowed to either party in this matter because I consider it was a fair case to bring into court and have determined.

Mr. Craven: Will your Honor make some comment upon the three letters?

The Court: I didn't have them before me. If you will give them to me I will comment upon them so you will have the benefit of what I say. Counsel has called my attention to letters and ex-

Oral Conclusions.

pressed the wish that I comment thereon. The letters, respectively, are Exhibits C-9, C-15 and D-4. Exhibit C-9 is a letter addressed to Mr. George Taufer, signed John Craven, and reads: "As I previously wrote you we gave Isbell until today to finish up the house and take title. But this was not done and we therefore have taken the stand he has defaulted in his contract and that it is at an end and null and void. This means that we have to argue the motion previously scheduled for the 5th of July on the 4th of April, 1930, at 9:45 at the Court House in Hackensack." As to that letter, I will say that letter cannot in any wise bind Emil Isbell for the reason that no such letter was written to him. I take it from what was stated in the letter of February 25, 1930, Exhibit D-2, to which I have already referred, that the Isbell mentioned in the letter of March 17th is William Isbell, the one who was in charge of the managerial part of the work with respect to this real estate. As to the letter dated March 17, 1930, to Palisade Park Lumber & Supply Company, which reads: "In regard to Isbell and Taufer, as I previously advised you Isbell has been falling behind in his work and I advised him if he was not finished by March 17th that we would not allow him any more time but would consider the contract at an end and null and void. He did not appear or offer any explanation and I thought to advise you that we are taking the position that neither he nor Taufer have any further rights in regard to this property." My view of that is that the letter of February 25, 1930, indicates to me that no such notice was given thereby or can be possibly comprehended by the language of that letter which would warrant Mr. Craven in incorporating in the letter of March 17th, Exhibit C-15, it was dispositive of the rights of either Taufer

Oral Conclusions.

or Emil Isbell in and to the lands in question. Now, Exhibit D-4, dated March 17, 1930, addressed to Mr. William Isbell reads: "When you did not take title today to the Duffy property we considered the contract at an end and will not consider you in any way as we have taken the position that you have forfeited all your interest in this property. I have instructed Mr. Duffy to that effect and he will, of course, disregard you and Mr. Taufer in this matter." Now, clearly that letter, in my judgment, can have no reference whatever to Emil Isbell. Mr. William Isbell, as stated, did not have any interest in the contract, that is, any proprietary or contractual interest, and the statement therein that Mr. William Isbell forfeited all his interest in the property is a matter of inconsequence, because Mr. William Isbell, according to the proofs, had no interest in the property which could be declared forfeited against him, and when the letter says: "I have instructed Mr. Duffy to that effect and he will, of course, disregard you and Mr. Taufer in this matter", I also comment that that is not in any wise effective as against the interest of Mr. Emil Isbell, and I again reiterate that if it was intended to divest Mr. Emil Isbell of any right in this contract in question, or any right of Mr. Taufer in and to his right in this contract in question, the language should have been unequivocal, positive and clearly understandable. A court of equity, as we well know, does not favor forfeitures, and it certainly does not favor a deprivation of one's rights in or to property. It would be unthinkable from an equity standpoint, it seems to me, for this court to refuse to grant to the complainants the relief sought in this case, because a refusal to grant the relief would, according to the pleadings and proofs as they are now before the Court, be giv-

Oral Conclusions.

ing to Mr. Duffy a building of the value of either four or six thousand dollars merely because of the fact it has been built upon his land. Is there anything else counsel wishes me to comment on?

Mr. Craven: I understand the building on the land is assessed for taxes for 1929. I don't see why we should bear the burden.

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The Court: You shouldn't. I said in my remarks taxes and assessments. The complainants to pay all taxes and assessments chargeable against that property subsequent to January 15, 1930, when the title was supposed to be closed originally, and if the municipal authorities have without lawful right made an assessment against that property because of the building situate thereon, then the complainants must defray that expense. Of course, we know that property is assessable for taxes as of October 1st of each year. If that property was assessed as of October 1, 1929, because of the building erected upon it the complainants must pay that tax because the defendants have no interest whatever in that building, as I regard it.

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New Jersey State Library

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Stipulation as to Exhibits.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	Between EMIL ISBELL and GEORGE TAUFER, Complainants-Appellees, <i>and</i> JAMES DUFFY and MARY DUFFY, his wife, Defendants-Appellants.	} Appeal from Court of Chancery. } Stipulation as to Exhibits.
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20 It is hereby stipulated and agreed by and between the attorney for the complainants-appellees and defendants-appellants, that the following exhibits which have been lost or mislaid are as follows:

Exhibit C-38 was a policy of insurance in the sum of \$6,000. in the New York Underwriters Insurance Company payable to George Taufer and James Duffy, the premium of which was \$29.25.

30 Exhibit C-41 was a book kept by William F. Isbell being a record of all the labor and moneys that he put into the building.

Exhibit C-45 consisted of four sheets of blue-prints giving the plan of the house.

FRED N. MATTOCKS,
Solicitor and of Counsel with
Complainants-Appellees.

JOHN D. CRAVEN,
Solicitor and of Counsel with
Defendants-Appellants.

Exhibit C-1.

ARTICLES OF AGREEMENT, made and entered into the seventeenth day of October, in the year one thousand nine hundred and twenty-nine, BETWEEN, JAMES DUFFY and MARY DUFFY, his wife, of Jersey City, New Jersey, parties of the first part, and EMIL ISBELL, of West New York, New Jersey, and GEORGE TAUFER, of Demarest, New Jersey, parties of the second part, in manner following: The said parties of the first part, in consideration of the sum of ONE THOUSAND SEVEN HUNDRED AND THIRTY SIX DOLLARS AND NINETY CENTS (\$1,736.90), to them duly paid by the said parties of the second part, hereby agree to sell unto the said parties of the second part, ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Village of Ridgely Park, in the County of Bergen and State of New Jersey.

BEGINNING at a point in the southerly line of Highland Place, distant thereon four hundred and fifty-three (453) feet easterly from its intersection with the easterly line of Gibson Street, as shown on a certain map entitled "Map of Property of Mamie H. Kelly, Haselton Heights, Ridgely Township, Bergen Co., N. J.", filed in the Bergen County Clerk's Office, September 10, 1890 as Map No. 471, and running thence (1) southerly parallel with the easterly line of Gibson Street one hundred (100) feet, more or less, to the southerly line of the property shown on the above mentioned map and the northerly line of the property now or formerly of Charles Enders, Jr., thence returning to the point of beginning and running (2) easterly along the southerly line of Highland Place thirty (30) feet, more or less, to a point distant along the southerly line of High-

Exhibit C-1.

land Place one hundred and thirteen (113) feet westerly from the corner formed by the intersection of the southerly line of Highland Place and the westerly line of Teaneck Road; thence (3) southerly at right angles to the southerly line of Highland Place one hundred (100) feet, more or less, to the southerly line of property shown on said map and the northerly line of property now or formerly of Charles Enders, Jr.; and thence (4) westerly along said southerly line thirty (30) feet, more or less, to the end of the first course.

Being part of the same premises conveyed to James Duffy by Wallace MacNeill, by deed dated October 8, 1926, and recorded in Book 1430 of Deeds for Bergen County on page 633.

For the sum of one thousand seven hundred and thirty-six dollars and ninety cents (\$1,736.90), which sum is to be paid at the time of passing of title.

The parties of the second part hereby agree to pay all the taxes and interest on the unpaid purchase price of one thousand seven hundred and thirty-six dollars and ninety cents (\$1,736.90) from this day to the time of taking title.

It is hereby further agreed that the property is not subject to any assessment of any kind.

It is also agreed between the said George Taufer and James Duffy, that this agreement is in no way to affect the status of the lien claim suit in the Bergen County Circuit Court between the said parties, and it is hereby agreed between the said parties that the hearing on the motion shall be adjourned until further notice, until after the 15th day of January, 1930, and this agreement is not to be considered as a waiver of any reasons to strike out the lien claim so filed.

Exhibit C-1.

And the said parties of the first part, on receiving such payment at the time and in the manner above mentioned, shall at their own proper cost and expense execute, acknowledge and deliver to the said parties of the second part, or to their heirs and assigns, a proper deed for the conveying and assuring to them, the fee simple of the said premises, free from all encumbrances. 10

The balance of said purchase price to be paid, and the deed therefor to be given at the office of JOHN D. CRAVEN, on or before the 15th day of January, 1930, at the hour of o'clock in the noon of said day, which deed shall contain a general warranty and the usual full covenants, and time to be considered as of the essence of this agreement. 20

And it is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators of the respective parties.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals the day and year first above written.

JAMES DUFFY	(L. S.)	
MARY DUFFY	(L. S.)	
EMIL ISBELL	(L. S.)	
GEORGE TAUFER	(L. S.)	30

Sealed and delivered in
the presence of

CATHERINE MURPHY
as to 1st party.

WM. F. SCHUBERT
as to 2nd Parties

Exhibit C-1.

STATE OF NEW JERSEY }
COUNTY OF HUDSON } ss.:

10 BE IT REMEMBERED, that on this seventeenth day of October, in the year one thousand nine hundred and twenty-nine, before me, the subscriber, a Notary Public of New Jersey, personally appeared, JAMES DUFFY and MARY DUFFY, his wife, who, I am satisfied, are two of the parties mentioned in the within Indenture named, and I having first made known to them the contents thereof, they did severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

20 CATHERINE MURPHY
Notary Public of New Jersey

STATE OF NEW JERSEY }
COUNTY OF BERGEN } ss.:

30 BE IT REMEMBERED, that on this seventeenth day of October, in the year one thousand nine hundred and twenty-nine, before me, the subscriber, a Notary Public of New Jersey, personally appeared, EMIL ISBELL and GEORGE TAUFER, who, I am satisfied, are two of the parties mentioned in the within Indenture named, and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

WM. F. SCHUBERT
Notary Public of N. J.

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[NOTARY SEAL]

Exhibit C-2.**CONTRACT OF SALE**

THE OBSERVANCE OF THE FOLLOWING SUGGESTIONS
WILL SAVE TIME AND TROUBLE AT THE
CLOSING OF THIS TITLE.

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THE SELLER:

First: Should bring with him all insurance policies and duplicates.

Second: He should also bring the tax receipts, leases, deeds, and agreements relating to the premises.

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Third: If there are mortgages on the premises to be conveyed, the seller should produce receipts showing to what date the interest has been paid; and if the principal has been reduced, evidence of such reduction must be produced.

THE PURCHASER:

Should be prepared with money or a certified check drawn to his own order or that of the seller. This certified check may be for an approximate amount, and money may be provided for the balance of the settlement.

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AGREEMENT, made and dated July 24th, 1928, between JAMES DUFFY and MARY DUFFY his wife, of the City of Jersey City in the County of Hudson and State of New Jersey; hereinafter described as the seller, and WILLIAM F. ISBELL of the Township of West New York in the County of Hudson and State of New Jersey; hereinafter described as the purchaser:

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Exhibit C-2.

WITNESSETH, that the seller agrees to sell and convey, and the purchaser agrees to purchase all that lot or parcel of land, with the buildings and improvements thereon, in the described as follows:

10 ALL that certain tract or parcel of land and premises situate lying and being in the Village of Ridgefield Park, in the County of Bergen and State of New Jersey:

20 BEGINNING at a point in the southerly line of Highland Place, distant therein three hundred thirty-three (333) feet easterly from its intersection with the easterly line of Gibson Street as shown on a certain map entitled "Map of Property of Mamie H. Kelly, Haselton Heights, Ridgefield Township, Bergen Co., N. J." filed in the Bergen County Clerk's Office September 10, 1890 as Map #471 and running thence (1) Southerly parallel with the easterly line of Gibson Street, one hundred (100) feet more or less to the southerly line of the property shown on the above mentioned map and the northerly line of property now or formerly of Charles Enders, Jr., thence returning to the point of beginning and running (2) Easterly along the southerly line of Highland Place one hundred fifty (150) feet more or less to a point distant along the southerly line of Highland Place, one hundred thirteen (113) feet westerly from the corner formed by the intersection of the southerly line of Highland Place and the easterly line of Teaneck Road; thence (3) southerly at right angles to the southerly line of Highland Place, one hundred (100) feet more or less to the southerly line of property shown on said map and the northerly line of property now or formerly of Charles Enders, Jr., and thence (4) Westerly

30

40

Exhibit C-2.

along said southerly line one hundred fifty (150) feet more or less to the end of the first course.

This sale covers all right, title and interest of the seller of, in and to any land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining said premises, to the centre line thereof.

10

The price is EIGHT THOUSAND and 00/100 (\$8,000.00) Dollars payable as follows: the sum of Two Thousand Eight Hundred and Fifty (\$2,850.00) Dollars in cash on the delivery of the deed as hereinafter provided.

SUBJECT to a first mortgage for an amount of Two Thousand Five Hundred Dollars (\$2,500.00) now a lien thereon, which said mortgage becomes due and payable on October 8th, 1929.

20

SUBJECT to a second mortgage for an amount of One Thousand Dollars (\$1,000.00) now a lien thereon, which said mortgage becomes due and payable on October 8th, 1929.

SUBJECT to a third mortgage for an amount of Sixteen Hundred Fifty Dollars (\$1,650.00) now a lien thereon, which said mortgage becomes due and payable on October 8th, 1928, but the party of the first part hereto guarantees that the mortgage can remain until January 2nd, 1929.

30

The deed shall be delivered upon the receipt of said payments at the office of JAMES DUFFY REALTY Co., #52 Jackson Avenue, Jersey City, at Two P. M. o'clock, on or before September 24th, 1928.

Taxes, rents, insurance, water rents, and interest on mortgages, if any, are to be apportioned, as of September 24th, 1928.

The deed shall be in proper form for record, shall contain the usual covenants and warranty, and shall be duly executed and acknowledged by

40

Exhibit C-2.

the seller, at the seller's expense, so as to convey to the purchaser the fee simple of the said premises, free of all encumbrances except as herein stated.

10 It is understood and agreed that any assessment confirmed and entered prior to the date of closing, shall be paid by the seller in full.

The risk of loss or damages to said premises by fire until the delivery of the deed is assumed by the seller.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

The seller agrees that brought about this sale and agrees to pay the broker's commission therefor.

20 WITNESS the signatures and seals of the above parties.

JAMES DUFFY (L. S.)

MARY DUFFY (L. S.)

WILLIAM F. ISBELL (L. S.)

Signed, sealed and delivered
in the presence of

30 CATHERINE MURPHY

Exhibit C-2.

[ENDORSEMENT]

CONTRACT OF SALE

 JAMES DUFFY, *et ux.*

10

to

WILLIAM F. ISBELL.

Dated July 24th, 1928.

 JAMES DUFFY REALTY Co.
 52 Jackson Avenue
 Jersey City, N. J.

20

Exhibit C-3.

Dec. 26, 1929

 Mr. John Craven,
 Jersey City, N. J.

30

Gentleman:

We are now working on heat. Plastering will
 be started within a week or so.

I am pushing the work through as fast as I can.

Respectfully,

WM. F. ISBELL.

WM. F. ISBELL.

40

Exhibit C-4.

RETURN RECEIPT

10 Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

WILLIAM F. ISBELL
(Signature or name of addressee.)

MISS B. ISBELL
(Signature of addressee's agent.)

Date of delivery, _____, 192

20	Post Office Department	(Stamped)
	Official Business	West New York
	_____	12 30 PM
	Registered Article	Jan 16
	No. 23553	1929
	Insured Parcel	N. J.
	No. _____	

Return to James Duffy Realty Co. (Name of Sender.)

30 Street and Number, or Post Office Box, 52
Jackson Ave. Jersey City, New Jersey.
16149

Jersey City, N. J., January 15th, 1929

To William F. Isbell,
140-21st Street,
West New York, N. J.

40 You are hereby notified that unless you attend at the office of the James Duffy Realty Co., 52 Jackson Avenue, Jersey City, N. J., on Friday,

Exhibit C-4.

January 25th, 1929, at the hour of ten o'clock in the forenoon, and pay the balance of the purchase price and accept a deed for the property known as:

"ALL that certain tract or parcel of land and premises, situate, lying and being in the Village of Ridgefield Park, in the County of Bergen and State of New Jersey.

10

BEGINNING at a point in the southerly line of Highland Place, distant therein three hundred thirty-three (333) feet easterly from its intersection with the easterly line of Gibson Street as shown on a certain map entitled "Map of Property of Mamie H. Kelly, Haselton Heights, Ridgefield Township, Bergen Co., N. J." filed in the Bergen County Clerk's Office September 10, 1890 as Map #471 and running thence (1) Southerly parallel with the easterly line of Gibson Street one hundred (100) feet more or less to the southerly line of the property shown on the above mentioned map and the northerly line of property now or formerly of Charles Enders, Jr., thence returning to the point of beginning and running (2) Easterly along the southerly line of Highland Place one hundred fifty (150) feet more or less to a point distant along the southerly line of Highland Place, one hundred thirteen (113) feet westerly from the corner formed by the intersection of the southerly line of Highland Place and the westerly line of Teaneck Road; thence (3) Southerly at right angles to the southerly line of Highland Place, one hundred (100) feet more or less to the southerly line of property shown on said map and the northerly line of property now or formerly of Charles Enders, Jr., and thence (4) Westerly along said southerly line one hundred

20

30

40

Exhibit C-4.

fifty (150) feet more or less to the end of the first course.”

10 in accordance with your agreement with me, dated July 24th, 1928, which called for the passing of title on September 24th, 1928, that I will cancel the said contract and will cause suit to be instituted against you for such damage as I may suffer by reason of your default.

JAMES DUFFY L. S.

One Copy—Registered—Personal receipt requested.

One Copy—Delivered by Mr. MacDonald personally.

20 This Copy—For our file.

30

40

Exhibit C-5.

JOHN D. CRAVEN
 COUNSELLOR AT LAW
 15 Exchange Place
 Jersey City, N. J.
 ———
 Montgomery 1836

10

January 11, 1930.

Mr. George Taufer,
 Hardenberg Avenue,
 Demarest, N. J.

Dear Sir:

On October 17th last, Mr. Duffy made an agree-
 ment with you and Isbill, whereby you were to
 complete the house on Highland Place, and you
 were to take title on or before January 15th,
 1930, time to be considered as of the essence of
 the contract. I understand that considerable work
 has been done on the house since that time, but
 that nevertheless work has been stopped for five
 or six weeks, and that the outside has not been
 given even the priming coat of paint, and plaster
 has not been put on over the laths. I have not
 received any satisfactory information from Isbill
 as to whether you would be in a position to take
 title as of January 15th. Would you kindly ad-
 vise me whether you will be in a position to take
 title at that time, and if not, just what the status
 of the matter is, and when you will expect to fin-
 ish it, so that I may take it up with Mr. Duffy.

20

30

Yours very truly,

JOHN D. CRAVEN.

40

JDC/EJH

Exhibit C-6.

JOHN D. CRAVEN

COUNSELLOR AT LAW

15 Exchange Place
Jersey City, N. J.

10

Montgomery 1836

January 18, 1930.

Mr. George Taufer,
Hardenberg Avenue,
Demarest, N. J.

Dear Sir:

20

I cannot advise you what to do in this matter, as it is entirely up to you, as you are now in default of the contract. It would be advisable for you I think, to get in touch with Mr. Isbill and find out when he is going to finish up his work, as any proposition to have Mr. Duffy convey to you must come from you. I think we have been very patient with Mr. Isbill, and unless some prompt action is taken, Mr. Duffy might not be willing to convey when you are ready.

30

Yours very truly,

JOHN D. CRAVEN.

JDC/EJH

40

Exhibit C-7.

GEORGE TAUFER, INC.

Manufacturers of
CEMENT PRODUCTS
HOLLOW BUILDING BLOCKS AND
ROOFING TILES A SPECIALTY

Demarest, New Jersey

10

Jan 17—1930

Mr. John D. Craven
15 Exchange Place
Jersey City.

Dear Sir:

Your 2 letters received. I called Mr. Isbel up, and he said I need not answer, as he would attend to this. I had advanced \$75.00 to him for Labor, as he had no money. I also discounted the Plumbing Material, which was not in my agreement with him, now he claims that he had no money to go ahead, he was working in Order to save some money so he could finish up, he told me that the Party which promised him \$6000.00 Mortgage was sick, but he thinks that he will be able to finish the Building soon. He is very unreliable and I am sorry I went in with him on that.

20

30

Now of course we will have to pay Interest on this until he gets Mortgage. I think that should be satisfactory, if not advise me what to do in this matter by return mail, as I intend to go away for a few weeks.

Yours very truly

GEORGE TAUFER

40

Exhibit C-8.

JOHN D. CRAVEN

COUNSELLOR AT LAW

15 Exchange Place
Jersey City, N. J.

10

January 24, 1930.

Mr. George Taufer,
Hardenberg Avenue,
Demarest, N. J.

Dear Sir:

20

Mr. Isbill was in and desired me to write to you the substance of my conversation with him. He told me that he would positively have the building finished by the end of February, but from his past performances, unless you prod him along, I do not think he will have it finished. However, we will be willing to wait for him until that time, and if he has his building finished by the end of February we will convey to him, provided he complies with the terms of the contract. We cannot be expected to wait forever for him, and I think you should push him and see that he does more work than he has done so far.

30

Yours very truly,

JOHN D. CRAVEN.

JDC/EJH

40

Exhibit C-9.

JOHN D. CRAVEN

COUNSELLOR AT LAW

15 Exchange Place
Jersey City, N. J.
Montgomery 1836

10

March 17, 1930.

Mr. George Taufer,
Hardenburg Avenue,
Demarest, N. J.

Dear Sir:

As I previously wrote you, we gave Isbill until today to finish up the house and take title, but this was not done and we have, therefore, taken the stand that he has defaulted in his contract and that it is at an end and null and void. This means that we will have to argue the motion previously scheduled for the 5th of July, on the 4th day of April, 1930, at 9:45 at the Court House in Hackensack.

20

Yours very truly,

JOHN D. CRAVEN.

JDC/MFJ

30

40

Exhibit C-10.

(Opposite) 



Exhibit C-11.

(*Opposite*) 



195

Exhibit C-12.

(Opposite) 



Exhibit C-13.

(*Opposite*) 



Exhibit C-14.

(*Opposite*) 



Exhibit C-15.

March 17, 1930.

Palisades Park Lumber & Supply Co.,
Commercial Avenue,
Palisades Park, N. J.

10

Gentlemen:

20

In regard to Isbill and Taufer, as I previously advised you, Isbill has been falling behind in his work and I advised him if he was not finished by March 17th that we would not allow him any more time but would consider the contract at an end and null and void. He did not appear or offer any explanation and I desire to advise you that we are taking the position that neither he nor Taufer have any further rights in regard to this property.

Yours very truly,

JOHN D. CRAVEN.

JDC/MFJ

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40

Exhibit C-16.

PALISADES PARK LUMBER & SUPPLY CO.

SASH, DOORS & MILLWORK

Commercial Avenue
Palisades Park, N. J.

Mar. 18/30. 10

Mr. John D. Craven,
15 Exchange Pl.,
Jersey City, N. J.,

Dear Sir:

We received your letter of March 17th.

We delivered lath and nails the past few days.

Mr. Taufer will be disappointed as he is a man 20
who means well and is anxious to finish this job.

We are sending a copy of your letter and of this
letter to Mr. Taufer and Mr. William Isbell.

Very truly yours,

ROLLO STEENLAND, Pres.

PALISADES PARK LBR. & SUPPLY CO.

30

40

Exhibit C-17.

JOHN D. CRAVEN

COUNSELLOR AT LAW

15 Exchange Place
Jersey City, N. J.

10

January 11, 1930.

Palisades Park Lumber & Supply Co.,
Commercial Avenue,
Palisades Park, N. J.

Gentlemen:

20

You might recall back in October we made an arrangement whereby you were to supply Mr. Taufer and Mr. Isbill with material to finish the house which Isbill had started. I represent Mr. Duffy, the owner of the property, and according to the arrangement we made, Mr. Isbill and Mr. Taufer were to take title from Mr. Duffy on January 15th, 1930, time being of the essence of the contract. I understand that while considerable work has been put on the house since our last conversation, there still remains a great deal to be done, as there is no plaster work done, nor has the outside been given even a priming coat. It would be appreciated if you could advise me what you know in reference to the finishing of this house.

30

Yours very truly,

JOHN D. CRAVEN.

JDC/EJH

40

Exhibit C-29.

Pay to the Order of
 Any Federal Reserve Bank
 Prior Endorsements Guaranteed
 CENTRAL HANOVER BANK AND TRUST Co. N. Y.
 1-33 New York 1-33

Pay Any Bank 10
 Banker or Trust
 Co. or Order
 Prior
 Endorsements
 2 Guaranteed B
 Dec 7 1929
 FEDERAL RESERVE BANK
 OF NEW YORK
 1-120

20
 Pay
 Trust Company of N. J.
 Town of Union Branch
 Union City, N. J.
 or Order
 THE MONITOR TRUST COMPANY
 West New York, N. J.

Pay to Empire Trust Co.
 New York 30
 or Order
 Prior Endorsements Guaranteed
 Dec 6 1929
 THE TRUST COMPANY OF NEW JERSEY
 Town of Union Branch

Exhibit C-30.

No. 1877

GEORGE TAUFER
Concrete Blocks and Roofing Tiles

Demarest, N. J. Dec. 17 1929

10 Pay to the order of C. J. O'Brien.....\$30.00
Thirty 00/Dollars

GEORGE TAUFER
GEORGE TAUFER, Treas.

TO PALISADES TRUST & GUARANTY Co.
55-247 Englewood, N. J.

[ENDORSEMENT]

C. J. O'BRIEN
JERSEY SUPPLY Co.

20

Pay to the Order of
Central Hanover Bank and Trust Co. N. Y.
EMPIRE TRUST COMPANY, N. Y.
Prior Endorsement Guaranteed
Dec 19 1929

Pay to the Order of
Any Federal Reserve Bank
Prior Endorsements Guaranteed
CENTRAL HANOVER BANK AND TRUST Co. N. Y.
1-33 New York 1-33

30

Pay to Empire Trust Co.
New York
or Order
Prior Endorsements Guaranteed
Dec 18 1929
THE TRUST COMPANY OF NEW JERSEY
Town of Union Branch

40

Pay Any Bank
Banker or Trust
Co. or Order

Exhibit C-30.

Prior
 Endorsements
 2 Guaranteed B
 Dec 19 1929
 FEDERAL RESERVE BANK
 OF NEW YORK
 1-120 10

 Pay
 Trust Company of N. J.
 Town of Union Branch
 Union City, N. J.
 Dec. 18 or Order 1929
 West New York, N. J.
 PAID
 12 20 29 20

Exhibit C-31.

Englewood, N. J. Nov. 26 1929 No.....
 PALISADES TRUST & GUARANTY COMPANY
 55-247
 Pay to the order of Jersey Suply Co.....\$190.00
 One hundred and ninty 00/Dollars 30
 as payment for Suply to be furnished.
 GEORGE TAUFER, Treas.
 Accepted by New York Banks at par
 SAFE DEPOSIT
 VAULTS
 AND STORAGE
 PAID
 12 2 29 40

Exhibit C-31.

[ENDORSEMENT]

For Deposit
JERSEY SUPPLY Co.

[STAMPED]

10

Pay
Trust Company of N. J.
Town of Union Branch
Union City, N. J.
Nov 29 or Order 1929
THE MONITOR TRUST Co.
West New York, N. J.

20

Pay Any Bank
Banker or Trust
Co. or Order
Prior
Endorsements
2 Guaranteed B
Nov 30 1929
FEDERAL RESERVE BANK
OF NEW YORK
1-120

30

Pay to Empire Trust Co.
New York
or Order
Prior Endorsements Guaranteed
Nov 29 1929
THE TRUST Co. OF NEW JERSEY
Town of Union Branch
Union City, N. J.
R. R. SIEVERT, Vice-Pres.

40

Pay to the Order of
Central Hanover Bank and Trust Co. N. Y.
EMPIRE TRUST COMPANY, N. Y.
Prior Endorsement Guaranteed
Nov 30 1929

Exhibit C-31.

Pay to the Order of
 Any Federal Reserve Bank
 Prior Endorsements Guaranteed
 CENTRAL HANOVER BANK AND TRUST Co. N. Y.
 1-33 New York 1-33

10

Exhibit C-32.

GEORGE TAUFER
 Concrete Blocks and Roofing Tiles

No. 1940

Demarest, N. J. Dec. 17 1929

Pay to the order of Jersey Suply Co.....\$115.00
 One hundred and fifteen 00/Dollars
 payment for suply furnished
 at Ridgefield Park

20

GEORGE TAUFER
 GEORGE TAUFER, Treas.

TO PALISADES TRUST & GUARANTY Co.
 55-247 Englewood, N. J.

PAID
 12 20 29

30

[ENDORSEMENT]

JERSEY SUPPLY Co.

[STAMPED]

Pay
 Trust Company of N. J.
 Town of Union Branch
 Union City, N. J.
 Dec. 18 or Order 1929
 THE MONITOR TRUST Co.
 West New York, N. J.

40

Exhibit C-32.

- 10 Pay Any Bank
Banker or Trust
Co. or Order
Prior
Endorsements
2 Guaranteed B
Dec 19 1929
FEDERAL RESERVE BANK
OF NEW YORK
1-120
- 20 Pay to Empire Trust Co.
New York
or Order
Prior Endorsements Guaranteed
Dec 18 1929
THE TRUST COMPANY OF NEW JERSEY
Town of Union Branch
- 30 Pay to the Order of
Central Hanover Bank and Trust Co. N. Y.
EMPIRE TRUST COMPANY, N. Y.
Prior Endorsement Guaranteed
Dec 19 1929
- 30 Pay to the Order of
Any Federal Reserve Bank
Prior Endorsements Guaranteed
CENTRAL HANOVER BANK AND TRUST Co. N. Y.
1-33 New York 1-33

Exhibit C-33.

No. 1885

GEORGE TAUFER
Concrete Blocks and Roofing Tiles

Demarest, N. J. Dec. 23 1929

10

Pay to the order of Jersey Suply Co.....\$115.00
Exactly One Hundred Dollars
O. K. Exactly One Hundred Fifteen Dollars No
Cents Dollars
payment for Suply to be furnished at Ridge-
field Park

GEORGE TAUFER
GEORGE TAUFER, Treas.

20

TO PALISADES TRUST & GUARANTY Co.
55-247 Englewood, N. J.

PAID
12 26 29

[ENDORSEMENT]

JERSEY SUPPLY Co.

[STAMPED]

30

Pay
Trust Company of N. J.
Town of Union Branch
Union City, N. J.
Dec 23 or Order 1929
THE MONITOR TRUST Co.
West New York, N. J.

40

Exhibit C-33.

Pay to Empire Trust Co.
New York
or Order

Prior Endorsements Guaranteed
Dec 23 1929

THE TRUST COMPANY OF NEW JERSEY
Town of Union Branch

10

Pay Any Bank
Banker or Trust
Co. or Order
Prior

Endorsements
2 Guaranteed B
Dec 24 1929

FEDERAL RESERVE BANK
OF NEW YORK
1-120

20

Pay to the Order of
Central Hanover Bank and Trust Co. N. Y.
EMPIRE TRUST COMPANY, N. Y.
Prior Endorsement Guaranteed
Dec 24 1929

Pay to the Order of
Any Federal Reserve Bank
Prior Endorsements Guaranteed
CENTRAL HANOVER BANK AND TRUST CO. N. Y.
1-33 New York 1-33

30

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Exhibit C-34.

No. 2080

GEORGE TAUFER
Concrete Blocks and Roofing Tiles

Demarest N. J. Mar. 1 1930

10

Pay to the order of Jersey Suply Co.....\$165.75
One hundred and sixty five 75/.....Dollars
payment for Suply to be furnished at Ridge-
field Park

GEORGE TAUFER
GEORGE TAUFER, Treas.

TO PALISADES TRUST & GUARANTY Co.
55-247 Englewood, N. J.

20

Paid 5-5-30

[ENDORSEMENT]

JERSEY SUPPLY Co.

[STAMPED]

Pay
Trust Company of N. J.
Town of Union Branch
Union City, N. J.
May 2 or Order 1930
THE MONITOR TRUST Co.
West New York, N. J.

30

40

20

30

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Exhibit C-35.

No.....

PALISADES TRUST & GUARANTY Co.,
Englewood, N. J.

Sept. 30, 1920

10

Pay to the order of Palisades Park Lumber &
Supply Co.\$318.05/100
Three Hundred Eighteen & 05/100.....Dollars

GEORGE TAUFER, Treas.

PAID
10 4 30

[ENDORSEMENT]

20

Palisades L. S. Co.
ROLLO STEENLAND Pres
Credit this
to Shepard & Morse
Lumber Co
A STEENLAND

[STAMPED]

Pay any Bank Banker or Trust Co.
Federal Reserve Bank
or Order

30

Prior Endorsements Guaranteed
Oct 2 1930

THE FIRST NATIONAL BANK
5-39 of Boston 5-39
Old Colony Trust Co.
American Trust Co.

For Deposit Only
to the Credit of
Shepard & Morse Lumber Co.

40

Exhibit C-35.

10 Pay any Bank
Banker or Trust
Co. or Order
Prior
Endorsements
2 Guaranteed B
FEDERAL RESERVE BANK
Oct. 3 1930
OF NEW YORK
1-120

Exhibit C-36.

20 Phone: Dumont 846-M
Dumont, N. J., May 28, 1930.

Mr. Emil Esbell & George Taufer, for work on
Highland Place, Ridgefield Park
To WILLIAM A. SCHULTZ, Dr.
General Contractor
Mason & Builder
Res.: 101 E. Quackenbush Ave.

Moving & Trucking Office: 136 Cortlandt Ave.

30

Plastering as agreed.....	\$380.00
Plastering attic	80.00
Extra brick work.....	68.00
Plastering foundation	32.00
	\$560.00

Paid by George Taufer
May 28, 1930
W. A. SCHULTZ.

Exhibit C-37.

Bergenfield, April 12, 1930.

Estimate for painting house on Hyland Place,
Ridgefield Park, N. J. Two coats of paint on out-
side of house for labor and material, \$150.00.

Received on account for labor on first coat of 10
paint, \$50.00.

\$864.16—22

12.96—23

29.25

\$906.37

VINCENZO PIRRONE.

20**Exhibit C-39.**

\$500.00

Mar 10 1930

5.25 Interest

\$505.25

Two months after date I promise to pay to the
order of Palisades Park Lumber and Supply Co.
Five hundred 00/100.....Dollars 30
At Palisades Trust and Guaranty Co., Englewood,
N. J., with interest.

Value Received—For material furnished on 111
Highland Place, Ridgefield Park, N. J.

No. Due May 12

Paid 5-12-30

GEORGE TAUFER

40

Exhibit C-39.

[ENDORSEMENTS.]

For value received, we and each and all of the
 endorsers hereon make ourselves jointly and sev-
 erally liable for the payment of the within obliga-
 tion, as and when the same shall become due,
 10 whether on the said original due date or any ex-
 tention thereof in whole or in part, accepting all
 its provisions, authorizing the maker without no-
 tice to us or any one of us to obtain an extension
 or extensions in whole or in part and waiving pre-
 sentment for payment, demand, protest and notice
 of protest and non-payment; also agreeing that
 in case of non-payment of the within obligation
 when due, suit may be brought by the holder of
 20 this note against any one or all of us, at the option
 of said holder, whether such suit has been com-
 menced against the maker or not and that in any
 such suit, the maker may be joined with one or
 more or all of us at the option of the holder; and
 that in the event of collection after suit the owner
 shall be entitled to receive the amount of the prin-
 cipal, interest and statutory costs, if any, and in
 addition thereto a sum equal to 15 per cent. of
 said principal and interest for attorney's fees in
 making said collection.

30 PALISADES PARK LUMBER & SUPPLY Co.
 ROLLO STEENLAND Pres
 ROLLO STEENLAND

Pay to the Order of
 ANY BANK, BANKER OR TRUST Co.
 All Prior Endorsements Guaranteed
 May 12 1930

THE CITIZENS NATIONAL BANK
 AND TRUST COMPANY
 40 55-246 Englewood, N. J. 55-246

Exhibit C-39.

Pay to the Order of
 PHILADELPHIA NATIONAL BANK
 Philadelphia
 SHEPARD & MORSE LUMBER Co.
 By C. B. SHEPARD Pres
 Apr 21 1930

10

Pay to the Order of
 ANY BANK, BANKER OR TRUST COMPANY
 All Prior Endorsements Guaranteed
 For Collection and
 Immediate Remittance
 THE PHILADELPHIA NATIONAL BANK
 O. HOWARD WOLFE, Cashier.
 Apr 22 1930

Please
 Report
 By No.

59638 20

30

40

Exhibit C-40.

\$500.00
7.50

Mar 10 1930

\$507.50

- 10 Three months after date I promise to pay to the order of Palisades Park Lumber and Supply Co. Five hundred 00/100.....Dollars At The Palisades Trust and Guaranty Co., Englewood, N. J., with interest.

Value Received—For material furnished on 111 Highland Place, Ridgefield Park, N. J.
No. Due June 10

Paid 6-10-30

20

GEORGE TAUFER

[ENDORSEMENTS.]

- 30 For value received, we and each and all of the endorsers hereon make ourselves jointly and severally liable for the payment of the within obligation, as and when the same shall become due, whether on the said original due date or any extension thereof in whole or in part, accepting all its provisions, authorizing the maker without notice to us or any one of us to obtain an extension or extensions in whole or in part and waiving presentment for payment, demand, protest and notice of protest and non-payment; also agreeing that in case of non-payment of the within obligation when due, suit may be brought by the holder of this note against any one or all of us, at the option of said holder, whether such suit has been commenced against the maker or not and that in any such suit, the maker may be joined with one or more or all of us at the option of the holder; and
- 40

Exhibit C-40.

that in the event of collection after suit the owner shall be entitled to receive the amount of the principal, interest and statutory costs, if any, and in addition thereto a sum equal to 15 per cent. of said principal and interest for attorney's fees in making said collection.

PALISADES PARK LUMBER & SUPPLY CO. 10
 PALISADES PARK LUMBER AND SUPPLY CO.
 ROLLO STEENLAND Pres
 ROLLO STEENLAND

Pay to the Order of
 ANY BANK, BANKER OR TRUST CO.
 All Prior Endorsements Guaranteed
 Jun 10 1930

THE CITIZENS NATIONAL BANK
 AND TRUST COMPANY 20
 55-246 Englewood, N. J. 55-246

Pay to the Order of
 PHILADELPHIA NATIONAL BANK
 Philadelphia
 SHEPARD & MORSE LUMBER CO.
 By C. B. SHEPARD Pres

Pay to the Order of
 ANY BANK, BANKER OR TRUST COMPANY
 All Prior Endorsements Guaranteed 30
 For Collection and
 Immediate Remittance
 THE PHILADELPHIA NATIONAL BANK
 O. HOWARD WOLFE, Cashier.
 May 20 1930

Please
 Report 99093
 By No.

Exhibit C-42.

Statement of payments made to workmen by William Isbell for work performed on building situated on the Southern side of Highland Place east of Teaneck Road, Ridgefield Park, N. J.

Time Book
Page Number

10	# 8	Paid to Thomas Valentino week of Mar.	4/29.....	\$ 4.00
	# 8	" " " " " " Mar.	18/29.....	2.00
	# 8	" " Michael " " " Mar.	18/29.....	16.50
	# 8	" " Thomas " " " Mar.	25/29.....	6.00
	# 8	" " Michael " " " Mar.	25/29.....	20.00
	#10	" " " " " " Apr.	1/29.....	20.00
	#10	" " " " " " Apr.	8/29.....	21.00
	#10	" " " " " " Apr.	15/29.....	8.50
	#12	" " " " " " Apr.	22/29.....	8.00
20	#12	" " Frank " " " Apr.	29/29.....	2.00
	#14	" " Thomas " " " May	6/29.....	12.00
	#14	" " Frank " " " May	20/29.....	22.00
	#14	" " " " " " May	27/29.....	14.00
	#16	" " " " " " Nov.	11/29.....	2.00

Total..... \$158.00

	#20	Paid to James O'Brien week of Feb.	24/30.....	\$ 66.00
	#20	" " Charles Steno " " Feb.	24/30.....	44.00
	#22	" " James O'Brien " " Mar.	3/30.....	66.00
30	#22	" " Charles Steno " " Mar.	3/30.....	44.00
	#22	" " James O'Brien " " Mar.	10/30.....	66.00
	#22	" " Charles Steno " " Mar.	10/30.....	44.00
	#22	" " John Cordo " " Mar.	17/30.....	24.40
	#24	" " James O'Brien " " Apr.	7/30.....	66.00
	#24	" " Charles Steno " " Apr.	7/30.....	44.00
	#24	" " Wm. Moody " " Apr.	14/30.....	48.00
	#24	" " Charles Stein " " Apr.	14/30.....	48.00
	#24	" " James O'Brien " " Apr.	21/30.....	36.00
40	#24	" " Howard Steinman " " Apr.	21/30.....	48.00

Exhibit C-42.

#24	"	"	James O'Brien	"	"	Apr. 28/30.....	18.00
#24	"	"	Howard Steinman	"	"	Apr. 28/30.....	36.00
#26	"	"	Harold Corse	"	"	May 5/30.....	66.00
#26	"	"	Jim Williams	"	"	May 5/30.....	33.00

Total..... \$797.40

10

#26	Paid to Charles Howard for work shown on pages number 4 and 6 of time book.....	114.40
#26	Paid to Jim Eufemia for work shown on page 10 of time book	125.00

\$ 158.00

797.40

114.40

125.00

Total..... \$1,194.80

20

#28	Paid to Joe Spafra and George Endrigo for foundation work as shown on page #6 of time book.....	\$150.00
#28	Paid to New Jersey Stair Building Co. for stair work as shown on page #28 of time book.....	45.00

\$1,194.80

150.00

45.00

Total Cash Paid..... \$1,389.80

30

Exhibit C-43.

Statement of labor performed by William Isbell and Emil Isbell on building situated on the Southerly side of Highland Place east of Teaneck Rd., Ridgefield Park, N. J.

Time Book
Page Number

10	# 8	Emil Isbell	week of Mar.	4/29.....	\$ 44.00
	# 8	Wm. Isbell	" " "	4/29.....	8.00
	# 8	Emil Isbell	" " "	18/29.....	11.00
	# 8	Emil Isbell	" " "	25/29.....	20.00
	# 8	Wm. Isbell	" " "	25/29.....	20.00
	#10	Emil Isbell	" " Apr.	1/29.....	20.00
	#10	Wm. Isbell	" " Apr.	1/29.....	20.00
	#10	Emil Isbell	" " Apr.	15/29.....	8.50
	#10	Wm. Isbell	" " Apr.	15/29.....	8.50
20	#12	Emil Isbell	" " Apr.	22/29.....	16.00
	#12	Wm. Isbell	" " "	22/29.....	8.00
	#12	Emil Isbell	" " Apr.	29/29.....	4.00
	#14	Emil Isbell	" " May	20/29.....	44.00
	#14	Wm. Isbell	" " May	20/29.....	8.00
	#14	Emil Isbell	" " May	27/29.....	28.00
	#16	Emil Isbell	" " Nov.	4/29.....	44.00
	#16	" "	" " "	11/29.....	44.00
	#16	" "	" " "	18/29.....	44.00
	#20	" "	" " Feb.	24/30.....	8.00
	#22	" "	" " Mar.	3/30.....	16.00
30	#22	" "	" " "	10/30.....	12.00
Total.....					\$436.00

Exhibit C-44.

No. 2032

GEORGE TAUFER
Concrete Blocks and Roofing Tiles

Demarest, N. J. Feb. 26 2030

10

Pay to the order of Emil Isbell.....\$1000.00
One thousand 00/Dollars

GEORGE TAUFER
GEORGE TAUFER, Treas.

TO PALISADES TRUST & GUARANTY CO.
55-247 Englewood, N. J.

[STAMPED]
CASH

20

Feb 27 1930
No. 1

PAID
*2 27 30

[ENDORSEMENT]

EMIL ISBELL

30

40

Exhibit C-46.

INDIVIDUAL FORM

CONTRACT

THIS AGREEMENT, made and concluded at Palisades Park, Bergen County, New Jersey, this 17 day of October in the year of our Lord One Thousand Nine Hundred and twenty nine
 10 BETWEEN

PALISADES PARK LUMBER & SUPPLY COMPANY,
 a corporation of the State of New Jersey, having its principal office in the Borough of Palisades Park, Bergen County and State of New Jersey, hereinafter known and designated as the "Materialman";
 20 AND

Emil Isbell and George Taufer
 Emil Isbell of West New York, N. J. and
 George Taufer of Damerest, N. J.

who resides at _____ in the County of _____
 and State of _____ hereinafter
 known and designated as the "Owner";

Said terms "Materialman" and "Owner" are to be construed to include the heirs, successors, assigns, administrators and/or executors of the respective parties;
 30

WITNESSETH, That the said Materialman, in consideration of the promises and agreements of the said Owners promises and agrees to furnish material to the said Owners according to said Materialman's estimate number _____ which estimate is dated _____ 19____, and which estimate is made a part of this contract, which material is to be used in the construction and erection of a
 40

Exhibit C-46.

building or buildings to be located on the following described premises:

ALL That certain lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Village of Ridgefield Park in the County of Bergen and State of New Jersey:

10

Beginning at a point in the southerly line of Highland Place, distant thereon four hundred and fifty feet easterly from its intersection with the easterly line of Gibson St. as shown on a certain map entitled "Map of Property of Mamie H. Kelly, Haselton Heights, Ridgefield Township Bergen Co., N. J." filed in the Bergen County Clerks office Sept. 10, 1890 as map No. 471 and running thence southerly one hundred feet more or less to the southerly line of the property shown on the above mentioned map and the northerly line of the property now or formerly of Charles Enders Jr. thence returning to the point of beginning and running easterly along the southerly line of Highland Pl. thirty feet more or less, ~~to the point or place of beginning~~ to a point distant along the southerly line of Highland Place one hundred and thirteen feet westerly from the corner formed by the intersection of the southerly line of Highland Place and the westerly line of Teaneck Rd. thence southerly at ~~right an~~ right angles to the southerly line of Highland Pl. one hundred feet more or less to the southerly line of the property shown on said map and the northerly line of property now or formerly of Charles Enders Jr. and thence westerly along said southerly line thirty feet more or less to the end of the first course.

20

30

40

Exhibit C-46.

Being part of same premises conveyed to James Duffy by Wallace MacNeill by deed dated Oct. 8, 1926 and rec. in Book 1430 of Deeds for Ber. County on page 633.

for the sum of _____ DOLLARS to be
 10 paid by the said Owner to the said Materialman as follows:

(TERMS OF SALE)

Said Pal. Park Lumber and Supply Co. agrees to deliver material to the extent of \$2,600.00 to be paid on or about April 1, 1930.

Should the mortgage loan be placed before April 1, 1930 then payment must be made at closing of loan.

20 It is understood that the material already delivered is included in the \$2,600.00

~~It is understood that the Said Emil Isbell and George Taufer mentioned as owners in this agreement hold the land now by contract only the deed to be delivered when building is completed.~~

It is understood that the Said Emil Isbell and George Taufer mentioned herein as owners, hold the land mentioned by contract only.

All extra material to be paid for as follows:

30 Provided however, that all payments must be made in full on or before 19 .

The said Owner hereby authorizes

or any other mortgage company which may grant a loan on said premises to make payments from the proceeds of such loan direct to the said Materialman according to the terms of this Agreement.

40 In order to more fully protect the said Materialman the said Owner hereby agrees to execute and deliver to the said Materialman a first mort-

Exhibit C-46.

gage on the above described premises in the
 amount of DOLLARS,
 to become due and payable 19 .

The said Owner hereby certifies and affirms that
 all the facts set forth in the affidavit signed by
 himself, which affidavit is attached hereto, are true
 and that this affirmation is made with the express
 intention to induce the said Materialman to enter
 into this contract.

10

The said Materialman enters into this contract
 and the terms hereof are made subject expressly
 to delays brought about by accidents, strikes, fires
 or other causes beyond its control.

IN WITNESS WHEREOF, The said parties have
 hereunto set their hands and seals the day and
 year first above written.

20

PALISADES PARK LUMBER & SUPPLY
 COMPANY

ROLLO STEENLAND
 Pres.

ATTEST:

 Sec'y.

GEORGE TAUFER
 (L.S.)

30

WITNESS:
 WM. F. ISBEN

40

Exhibit C-46.

GUARANTY

10 I, George Taufer of Demarest N. J. who reside
at Hardenburg Ave. in the town of Demarest
County of Bergen and State of New Jersey,
hereby guarantee the payment of the above men-
tioned several sums of money to be paid by the
said Owner to the said Materialman, and hereby
waive notice of non-payment by said Owner.

IN WITNESS WHEREOF, I have hereunto set my
hand and seal this 17 day of April 1929.

GEORGE TAUFER
(L.S.)

WITNESS:
WM. F. ISBEL

20 (Endorsement)

CONTRACT No. 23

Dated..... 19.....
Amount \$.....

PALISADES PARK LUMBER
& SUPPLY COMPANY

and

30 George Taufer & Emil Isbell

Estimate No.

Dated..... 19.....

Credit Limit \$.....

Property Value \$.....

40 PALISADES PARK
LUMBER & SUPPLY COMPANY
Commercial Avenue
Palisades Park, New Jersey

Exhibit D-1.

THIS INDENTURE, made the Fourteenth day of October in the year one thousand nine hundred and twenty-nine.

BETWEEN JAMES DUFFY and MARY DUFFY, his wife, of the City of Jersey City in the County of Hudson and State of New Jersey party of the first part, hereinafter known as the GRANTORS; AND EMIL ISBELL, of the Town of West New York, County of Hudson and State of New Jersey, and GEORGE TAUFER, of the Town of Demarest in the County of Bergen and State of New Jersey party of the second part, hereinafter known as the GRANTEES;

10

WITNESSETH: That in consideration of the sum of one dollar and other good and valuable consideration the said grantors do grant, bargain, sell and convey, unto the said grantees their heirs and assigns

20

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Village of Ridgefield Park in the County of Bergen and State of New Jersey.

BEGINNING at a point in the southerly line of Highland Place, distant thereon four hundred and fifty-three (453) feet easterly from its intersection with the easterly line of Gibson Street, as shown on a certain map entitled "Map of Property of Mamie H. Kelly, Haselton Heights, Ridgefield Township, Bergen Co., N. J.", filed in the Bergen County Clerk's Office, September 10, 1890, as Map No. 471, and running thence (1) southerly parallel with the easterly line of Gibson Street one hundred (100) feet, more or less, to

30

40

Exhibit D-1.

the southerly line of the property shown on the above mentioned map and the northerly line of the property now or formerly of Charles Enders, Jr., thence returning to the point of beginning and running (2) easterly along the southerly line of Highland Place thirty (30) feet, more or less, to a point distant along the southerly line of Highland Place one hundred and thirteen (113) feet westerly from the corner formed by the intersection of the southerly line of Highland Place and the westerly line of Teaneck Road; thence (3) southerly at right angles to the southerly line of Highland Place one hundred (100) feet, more or less, to the southerly line of property shown on said map and the northerly line of property now or formerly of Charles Enders, Jr.; and thence (4) westerly along said southerly line thirty (30) feet, more or less, to the end of the first course.

Being part of the same premises conveyed to James Duffy by Wallace MacNeill, by deed dated October 8, 1926, and recorded in Book 1430 of Deeds for Bergen County on page 633.

Subject to the proportionate share of a first mortgage, amounting to \$625.00, to the proportionate share of a second mortgage, amounting to \$500.00, and to the proportionate share of a third mortgage, amounting to \$425.00.

Subject to a purchase money mortgage in the amount of \$1736.90.

TO HAVE AND TO HOLD said premises with the appurtenances, unto the said grantees their heirs and assigns forever,

AND the said JAMES DUFFY for himself, his heirs and assigns, do COVENANTS:

1. That the title to said premises is vested in fee simple absolute in the said JAMES DUFFY.

Exhibit D-1.

2. That he has the right and authority to convey the said premises to the said EMIL ISBELL and GEORGE TAUFER.

3. That the grantees shall have peaceable and quiet possession of the said premises free from all encumbrances, except as aforesaid.

10

4. That the same are now free and clear of all encumbrances whatsoever, except as aforesaid.

5. That the grantor will execute such further assurances and conveyances of the said land as may be reasonably required.

6. That he will WARRANT and DEFEND the premises hereby conveyed against all persons lawfully claiming the same.

20

IN WITNESS WHEREOF, the said grantors have hereunto set their hands and seals the day and year first above written.

JAMES DUFFY (LS)

MARY DUFFY (LS)

Signed, Sealed and Delivered
in the presence of

CATHERINE MURPHY

30

STATE OF NEW JERSEY, }
COUNTY OF HUDSON } ss:

BE IT REMEMBERED that on this Fourteenth day of October in the year of our Lord One Thousand Nine Hundred and twenty-nine, before me, the subscriber, a Notary Public for the State and County aforesaid, personally appeared JAMES DUFFY and MARY DUFFY, his wife, who, I am satisfied, are the grantors mentioned in the within

40

Exhibit D-1

Instrument, to whom I first made known the contents thereof, and thereupon they acknowledged that, they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

10

CATHERINE MURPHY
A Notary Public of New Jersey.

(Endorsement)

DEED.

JAMES DUFFY and
MARY DUFFY, his wife.

to

20

EMIL ISBELL and GEORGE TAUFER

Dated, October 14, 1929.

RECEIVER in the Office of
the County of on
the day of A. D.,
19 , at o'clock, in the
noon, and Recorded in Book
of DEEDS for said County,
on page

30

JOHN D. CRAVEN
Counsellor at Law
15 Exchange Place
Jersey City, N. J.

40

Exhibit D-2.

February 25, 1930.

Mr. George Taufer,
Hardenberg Avenue,
Demarest, N. J.

Dear Sir:

Isbill was in again today and made some more
promises. I told him that we would not wait any
longer than March 17th for him to finish his work,
as he has had plenty of time to finish. Please be
advised that unless he finishes up by this time,
that we will declare the contract at an end, and
that his interest in the land will cease, and we will
take steps to finish the house and cancel the con-
tract of Isbill to purchase the said land. 10

Yours very truly,

20

JDC/EJH

Exhibit D-3.

February 27, 1930.

Mr. William Isbill,
140-21st Street,
West New York, N. J.

Dear Sir:

I have communicated what you said to me, to
Mr. Duffy, and his patience is now exhausted, as
you have had two years to finish this house. This
is to advise you absolutely, that we will give you
until March 17th to take title, and if you do not
take title at that time, that the contract will be
at an end, and we will consider it null and void.
Unless you are prepared to take title, it will not
do any good to communicate with me or Mr. Duffy
to make any further promises. 30

Yours very truly,

40

JDC/EJH

Exhibit D-4.

March 17, 1930.

Mr. William Isbill,
140 21st Street,
West New York, N. J.

10 Dear Sir:—

When you did not take title today to the Duffy property we considered the contract at an end and will not consider you in any way as we have taken the position that you have forfeited all your interest in this property. I have instructed Mr. Duffy to that effect and he will, of course, disregard you or Mr. Taufer in this matter.

20 JDC/MFJ Yours very truly,

30

40

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1

New Jersey Court of Errors and Appeals

EMIL ISBELL and GEORGE TAUFER,

Complainants-Appellees,

—vs—

JAMES DUFFY and MARY DUFFY,

his wife,

Defendants-Appellants.

On Appeal
from the
Court of
Chancery.

BRIEF OF COMPLAINANTS-APPELLEES

Facts

The Complainants-Appellees controvert the statement of facts of defendants-appellants in the following particulars:

The contract dated October 17th, 1929, is marked Exhibit C-1. This contract provides that the parties of the second part will pay all taxes and interest on the unpaid purchase price from this day to the time of taking title.

The proviso "and time to be considered as of the essence of this agreement" is clearly an after-thought, as was pointed out by the learned Vice Chancellor in his oral conclusions.

Case, page 158, lines 16 to 34.

The contract (Ex. C-1) was made so that one of the vendees, George Taufer, would not lose the value of cement blocks that his corporation had furnished for the building already partly constructed on the premises.

From the date of the contract (Ex. C-1) up until after March 17th, 1930, William Isbell (contractor for the vendees) was in touch with the attorney for the vendors as to the progress of the building.

The letters of February 25th, 1930 (Ex. D-2) and

February 27th, 1930 (Ex. D-3) do not state that the interest of the vendees in the land would cease and the contract be null and void; nor do they make the date, March 17th, 1930, as the essence of the contract, by which time the vendees interest to the title or the contract, would be null and void.

No letter of March 17th, 1930, was sent to Emil Isbell advising him that the contract was at an end; and the letter to George Taufer, one of the vendees, (Ex. C-9) did not advise him that the contract with him was null and void.

The vendees proceeded to do further work on the building, and materials were supplied, after March 17th, 1930, for the construction of the same.

POINT I.

Time as the essence of the contract was waived by the vendors.

“Notice by vendor, fixing definite time for payment of purchase price is for his benefit and hence may be waived by him or his duly authorized agent, expressly or impliedly.”

Strause vs. Rabe, 127 A 188, 97 Eq. 208.

In this case the date of January 15th, 1930, to close title had been expressly waived—

Case, page 187, Ex. C-5.

Case, page 189, Ex. C-7.

Case, page 190, Ex. C-8.

and the date of March 17th, 1930, claimed to be fixed as a final date had been impliedly waived by permitting complainants—appellees to continue to do work and spend money for materials.

Case, page 42 lines, 12 to 40.

Case, page 43, lines 1 to 11.

Case, page 62, lines 21 to 32.

Case, page 88, lines 32 to 33.

In *Kerney vs. Johnson* (104 E. 244) Minturn, J., speaking for this Court, said at page 246:

"It is true that the contract provides in a printed clause that time shall be of the essence of the contract; but, as the learned Vice Chancellor very properly held, such a statement is not conclusive where it appears from the evidence and the conduct of the parties that they did not in fact so treat the contract, and did not in fact consider that time should be of the essence of the contract, but in reality waived by their own conduct that defense which they now urge as a barrier to recovery in the case. In such an eventuality, where the parties themselves have practically construed their own contract, such a clause does not control the situation, but the circumstances and the equities of the case as defined by the conduct of the parties present the best interpretation as to the meaning of such a clause; for concededly, under the settled construction of the law, upon this subject, the acts of the parties in dealing with the subject matter of their contract afford the best indication of their intention either to execute it or to annul it. *Acts exteriora indicant interiora secreta.* 8 Coke Rep. 291."

In the case of *Orange Society of New Jerusalem vs. Konski* (94 E. 632, affirmed by this Court, 95 E. 254) V. C. Backes said:

"The law is that a day fixed in a contract for closing title, without more, is merely formal, but if it is stipulated that time is of the essence, or the circumstances are persuasive that that is the case, prompt performance is essential; and it is also the law that, where the time fixed is regarded as a formality only, and the period has gone by, or where time is of the essence, and there is a waiver, time may nevertheless be made of the essence **by formal demand that the title be closed by a given day**, but the time given must be reasonable."

In *Schultz et al. vs. Pollock et ux* (102 E. 157) affirmed

by this Court (144 Atl. 920) (not officially reported) V. C. Church said at page 159:

"Neither does this letter, in my opinion, make time of the essence of the contract nor the two letters taken together. There is no fixed and definite time in either after which the defendants will consider the contract at an end. In *Wyatt v. Bergen*, 98 N. J. Eq. 502, a letter of defendants called in the opinion Exhibit 7, as set out in full on page 505, couched in much stronger terms than the ones before us in this case, was held by Vice Chancellor Griffin (at page 506) not to make time of the essence of the contract. The learned Vice Chancellor, says again (at page 505) that he thinks, "in the language of Mr. Justice Holmes, in *Stewart v. Griffith*, 30 Sup. Ct. Rep. 528," that they were "Politely to apply a spur to the defendant to speed her in the performance of the contract." This is an apt characterization, it seems to me, of the letters we are discussing.

Along the same lines are the two following cases which are similar to the case ~~of~~ sub judice:

Kobrin v. Drazin, 97 E. 400.

Rapps v. Tulenko, 102 E. 207.

POINT II.

It would be inequitable, by refusing specific performance, to give to the Defendants-Appellants a building worth between \$6,000.00 and \$6,500.00.

The testimony of Rollo Steenland is, that the building in its present condition is worth between \$6,000.00 and \$6,500.00

Case, page 81, lines 16 to 33.

James Duffy, one of the defendant-appellants and one of the vendors, knew that a building was being erected on the premises.

Case, page 49, lines 12 to 16.

Case, page 42, lines 21 to 29.

Case, page 43, lines 2 to 11.

The inference from the testimony is plain that what the Defendants-Appellants desired was to secure the building at no cost to themselves and James Duffy could not give any satisfactory reason to the Court why they were not willing to convey the premises when the tender was made.

Case, page 122, lines 18 to 28.

Case, page 123, lines 32 to 40.

Case, page 124, lines 1 to 2.

The Complainants-Appellees relied upon the contract, went into the actual possession of the premises and supplied more than \$5,000.00 in permanent improvements, and as was said by Garrison, J., speaking for this Court in the case of *Page v. Martin* (46 E. 586):

“In every case of this character the court is chiefly concerned with the equities of the parties before it. In the present case the party seeking the enforcement of specific performance grounds his right upon a written contract made with the owner of the lands, under the supposed protection of which he entered into possession of the premises, and laid out a large sum of money in their permanent improvement.”

Therefore, in this case equity should compel the specific performance of the contract (Ex. C-1).

Answering the defendants-appellants points the complainants-appellees say:

POINT I.

The contract (Exhibit C-1) was made by the vendors with Emil Isbell and George Taufer. The waiver, that time was of the essence, January 15th, 1930, was an implied waiver as to Emil Isbell. This under the law is perfectly good.

Strauss v. Rabe, (97 Eq. 208).

As to George Taufer, there was an express waiver.

Case, page 187, Exhibit C-5.

There is nothing in the testimony of the case to show that Emil Isbell was merely "a Straw Man."

The defendants-appellants admit that the date of closing was adjourned and it became the duty, if they wished the advantage of making time the essence, for them to fix another definite time, by "an express notice given requiring the contract to be closed or rescinded at a stated time."

Vautrinot v. Booth, (147 Atl. 530 at page 540).

✓ **King v. ~~Rickman~~ ^{Richman}**, (20 Eq. 316).

Orange Society v. Konski, (94 Eq. 632 page 635

Affirmed 95 Eq. 254).

By permitting the complainants-appellees to continue in possession of the premises and doing work on the building the time to close title, alleged to be March 17th, 1930, was further carried along; and complainants-appellees insist that the notices referred to on page 5 of defendants-appellants brief were not "good notices" for that purpose.

It is true that notice to an agent is notice to a principal, but this general statement must be qualified by the further statement, if the thing sought to be done by the notice is within the scope of the agent's authority to bind the principal. The proof is that William Isbell was only the contractor to erect and supervise the building.

Case, page 29, line 38, and page 30, line 1-2.

Proof that William Isbell was the agent of Emil Isbell to receive a notice of rescission, if the contract was not closed on March 17th, 1930, is upon the one offering it.

Hartman v. Church, (101 Eq. 512) citing **Strauss v. Rabe**, 97 Eq. 208 at page 212.

The case is devoid of any such proof.

Page 8 of defendants-appellants brief (first paragraph) the inference is given that the motion to strike out the lien claim was argued before the Bergen Circuit on April 4th, 1930. The testimony of Mr. Craven is that this motion was argued on June 6th, 1930.

Case, page 134, line 36-37.

The fact that the lien claim was stricken out is denied as no such order was at the time of this trial on file in the Bergen County Clerk's Office.

Case, page 110, lines 30 to 40; page 111, line 1-12.

George Taufer, one of the vendees, referred to in defendants-appellants brief on pages 7 and 8, went to Mr. Craven's office on May 20th, 1930, in an endeavor to settle the matter; and even after the tender was made on May 26th, he went to see Mr. Duffy and offered him more than Mr. Duffy was legally entitled to, so as not to bring this suit.

Case, page 98, lines 22-40; page 99, lines 1-10.

The case of Doctorman v. Schroeder (92 Eq. 676) cited by defendants-appellants, is clearly distinguishable from this case; as was pointed out by this Court in Kerney v. Johnson, (104 Eq. 244):

"In our judgment, the case of Doctorman v. Schroeder, 92 Eq. 676, cited by defendants under its facts and circumstances and the rule there laid down, has no application to the situation portrayed in the present case."

And the reasons are as follows:

(a) In Doctorman v. Schroeder, V. C. Leaming said:

"Obviously, if the default has been waived, a different situation exists."

In the present case, we claim that there has been a waiver of the default.

(b) The V. C. further said: "And the parties entered into a supplemental agreement, to that effect, in

language which is probably as apt and as powerful and explicit as it can be drawn." That is the whole test. In the present case the notices relied on by defendants-appellants D-2 and D-3, (case, page 251), do not come within the rule laid down.

And that is the distinguishing feature in the cases cited under this point by the defendants-appellants. The language must be "unequivocal and unmistakable," (Merlis v. G. & M. Corp., 143 Atl. 139). The reason for the rule is "Equity does not favor forfeitures."

POINT II.

Answering this point, complainants-appellees say: The proof is, that there were, on January 15th, 1930, and March 17th, 1930, and down to date of trial, three blanket mortgages covering premises sued for, and other property, aggregating \$5,150.00.

Case, page 109.

These mortgages are admitted by defendants-appellants and they did not prove that the said mortgages contained any release clause covenanting to release this particular lot, upon the payment of a portion of the money loaned. Therefore, the defendants-appellants were not able, ready and willing on their part to convey according to the terms of their contract, and it is conceded that no preparations to do so had been made.

Dunwoody v. Goldfarb, (152 Atl. 336 not yet officially reported).

Defendants-appellants in their brief cite the case of *Randolph v. General Investors Co.*, (124 Atl. 765). But the difference between a judgment of \$55.05 and mortgages of \$5,150.00 is too obvious to require further comment.

POINT III.

Answering this point, complainants-appellees say: They did not abandon the contract, but continued to do work, spend money for materials and had materials delivered to and used in the house up to May 27th, 1930.

Case, page 62, lines 21-32.

POINT IV.

Answering this point, complainants-appellees say: The so-called notices, being letters (D-2 and D-3, case, page 251) are insufficient and invalid. D-3 not having been given to the proper party. It is a letter addressed to William Isbell. William is not one of the vendees. The letter, D-2, to Mr. Taufer does not apprise Mr. Taufer that his interest in the lands is being jeopardized, or that the contract with him will be rescinded on March 17th, 1930. It only speaks of the interest and the rights of William Isbell, who was not the co-vendee with Mr. Taufer. Their effect and intention are fully discussed by the learned Vice Chancellor who heard the case in his "oral conclusions (case, page 162 and 172).

Further it is plain from their wording that they were only intended to be a "polite spur" to cause the active prosecution of work on the building and an early completion.

Schultz et al v. Pollock et ux, (102 Eq. 157),
citing **Stewart v. Griffith**, (217 U. S. 323).

In the cases cited by the defendants-appellants in their brief under this point, the notices referred to in those cases are all much stronger, "unequivocal and unmistakable," than the notices relied on in the present case.

POINT V

Answering this point, complainants-appellees say: Laches on the part of complainants-appellees can only avail the defendants-appellants if their position or status has been changed by the delay.

Rapps v. Tulenko, (102 Eq. 244), citing **Dynan v. McCulloch**, (46 Eq. 11), affirmed 98 Eq. 700.

The entire case shows that the defendants-appellants have not suffered any damage by the delay and defendant, James Duffy, could not give any reason to the court for refusing to perform the contract.

Case, page 122, lines 19-28; page 123, lines

30-40, and page 124, line 1-2.

As to the case cited in the brief of defendants-appellants under this point; complainants-appellees say they have complied with the rules laid down in the parts of these cases which are cited.

POINT VI.

Answering this point, complainants-appellees say: In view of all the exhibits offered in evidence; and the testimony of the witnesses, it is plain that to give defendants-appellants this building, by refusing specific performance of the contract C-1, would be highly inequitable and a great injustice. The distinguishing feature between the cases cited by counsel and the case sub judice is, that complainants-appellees, relying on the contract and extensions of time, have gone into possession, with, at least, the tacit consent of the defendants, and have expended large sums of money and done work in the permanent improving of the premises; which defendants-appellants, by a technical and strict construction of the contract, and a strained construction of the notices claimed to have been given; now seek the benefit of; and complainants-appellees say this is peculiarly a case in which equity should grant the relief given by the final decree of the Chancellor.

Therefore, they respectfully ask this honorable Court to affirm the decree and remit the case to the Court of Chancery to do what further should be done to give complainants-appellees complete and equitable relief.

FRED W. MATTOCKS,
Solicitor and Counsel for
Complainants-Appellees.

W. J. MORRISON, JR.
On the Brief.

New Jersey Court of Errors and Appeals

Between
EMIL ISBILL and GEORGE TAUFER,
Complainants-Appellees,

and

JAMES DUFFY and MARY DUFFY,
his wife,
Defendants-Appellants.

On Appeal
from the
Court of
Chancery.

BRIEF FOR DEFENDANTS-APPELLANTS.

Facts.

By an agreement in writing made the 17th day of October, 1929, James Duffy and Mary Duffy, his wife, the defendants-appellants, hereinafter called the vendors, contracted to sell to Emil Isbill and George Taufer, the complainants-appellees, hereinafter called the vendees, a lot in Ridgefield Park, Bergen County, New Jersey, for the sum of \$1,736.90. No deposit was paid at the time of the execution of the contract, but the entire sum was to be paid at the time of the passing of title. The contract specifically provided that time was to be considered as of the essence of the agreement, and title was to be passed on or before January 15th, 1930.

The vendors, previously, on July 24th, 1928, had made a contract with one William F. Isbill, a brother of one of the vendees, to sell a tract of five lots, including the premises in the contract above mentioned. The said vendee, William F.

Isbill was not able to complete the purchase under his contract and the contract above mentioned resulted from this fact. Under the contract of July 24th, 1928, William F. Isbill had started the construction of a house on the lot which the vendors, James Duffy and Mary Duffy contracted to convey under the contract of October 17th, 1929. The second contract of October 17th, 1929, was made by the vendors so the said William F. Isbill would not lose the value of any building which he had started to construct on this one lot.

From the time of the second contract in October, 1929, up to January 11th, 1930, William Isbill was in touch several times with the attorney for the vendors, but no satisfactory information was received from him as to whether the vendees would be in a position to take title by January 15th, 1930, as provided in the contract. The vendees advised the vendors and their attorney that the house would be finished up within a short time, and a mortgage could then be obtained, at which time they would be able to take title. The vendors did not insist upon the vendees taking title on January 15th, 1930, but gave them a reasonable time thereafter to complete the house and take title. The vendees were advised that if they would complete the house within a short time, that title would be given to them. William F. Isbill conferred several times with the attorney for the vendors, and wrote to him advising him of the progress of the work. The vendors finally lost patience with the tactics of the vendees and on February 25th, and February 27th, 1930, letters were written to George Taufer, one of the vendees and William Isbill, who was acting as agent in the entire matter for his brother, Emil Isbill, that unless title were taken

by March 17th, 1930, that the interest of the vendees in the land would cease and the contract be declared null and void.

By these notices time was again made of the essence of the contract for March 17th, 1930. The vendees were not ready and did not appear to take title on March 17th, 1930. When the vendees, or any one representing them did not make an appointment to close the title on or before March 17th, 1930, and did not appear on that day to close the title to the said premises, letters were written to George Taufer and William F. Isbill, under date of March 17th, 1930, advising the vendees that they had forfeited all their interest in the property, and that the contract was null and void, due to their not having taken title. Nothing further was heard from the vendees or anyone on their behalf until about the 20th day of May, 1930.

On May 20th, 1930 one of the vendees, George Taufer, conferred with the vendors and their attorney relative to him taking title to the premises in his own name, even offering an additional sum of money over the contract price under the contract of October 17th, 1929. To this the vendors did not assent, as they had taken the position that the interest of all the vendees had ceased in the said contract, and that they did not have any further interest in the said land.

On or about the 28th day of May, 1930, the vendees accompanied by William F. Isbill, and their attorney, made a tender to the vendors of the balance of the purchase price due under the terms of the agreement. At this time they were advised that the vendors would not convey title to them as they had lost all interest in the said lands and premises.

The vendees had started the construction of a house on the said premises, and after a lapse of

two years the house was not finished, and had not been finished up to the time the tender was made. There is testimony to show that the house was anywhere from 50% to 90% finished.

The vendees then instituted a suit in the Court of Chancery of this State for the specific performance of the contract of October 17th, 1929. The Court after hearing held, decreed that the vendors specifically perform the said contract and convey the title to the said premises to the vendees, subject to all taxes and assessments which accrued as liens since the 17th day of October, 1929. The Court further decreed that if the vendors did not convey the said property in accordance with the terms of the said decree, that the vendees have judgment against the vendors and a lien be impressed upon the lands and premises for all moneys expended by them in the construction of the said house on the said lands.

POINT I.

The complainants-appellees were not ready, able and willing to take title on January 15th, 1930, the time specified in the contract or at the time of March 17th, 1930, to which time was extended the time for closing of title, and their rights under the contract ceased at those times.

The contract in controversy was made between James Duffy and Mary Duffy, his wife, as vendors, to Emil Isbill and George Taufer, as vendees. There was no contact of any kind between the vendors and Emil Isbill up to the time that the tender was made of the balance of the purchase price in May of 1930. There were no communications from or to him, all the conferences and cor-

respondence being with William Isbill, he being the real party in interest. Emil Isbill merely testified about the making of the contract, and he testified that it was William Isbill who was building the house on the said premises, and that any arrangements that his brother William made in regard to the property were satisfactory to him.

Case, page 28, lines 28 to 40; page 29, lines 1 to 2.

There is nothing which appears by either oral or written communications to Emil Isbill, that there was any waiver of the stipulation in the contract making time of the essence as of January 15th, 1930. Any waiver that could be valid as applied to him would have to be by oral or written communications from the vendors to William Isbill.

William Isbill was the real party in interest in the entire transaction, and the vendee, Emil Isbill, was merely a "Straw Man". If it be contended that Emil Isbill never received any notice fixing the time as of the essence of the contract for March 17th, 1930, then there was no waiver at any time of the provision of the original contract, as far as he is concerned, making time of the essence as of January 15th, 1930. If there were a waiver of the provision in the contract making time of the essence for January 15th, 1930, notice of the waiver being received by William Isbill as agent for his brother, Emil Isbill, then the notices given personally and by mail to William Isbill, that unless title were taken by March 17th, 1930, his interest in the said land would cease and the contract be declared null and void, were good notices to make time as of the essence for March 17th, 1930. Notice to an agent is notice to a principal, which is so elementary that it does not need citations of law authorities to support it.

Emil Isbill knew that title should have been taken by January 15th, 1930, yet he made no effort personally to obtain an extension of time to take title. He never bothered himself about the premises until May 28th, 1930, at which time he appeared for the purpose of making a formal tender of the balance of the purchase price. Final notice was sent to William Isbill on February 27th, 1930, that unless title were taken by March 17th, 1930, that the contract would be at an end and considered null and void.

Case, page 251, lines 30 to 40.

When the vendees did not take title on March 17th, 1930, another letter was written to William Isbill, advising him that the contract was at an end.

Case, page 252, lines 1 to 20.

The Court found that William Isbill had authority to deal with James Duffy and his attorney with respect to whatever matters should be negotiated or dealt with respecting the property on behalf of his brother ~~William~~ ^{Emil} Isbill.

Case, page 161, lines 1 to 10; page 29, lines 1 to 3.

This would mean that the vendors were justified in sending notices to William Isbill and not Emil Isbill to terminate the contract and declare it at an end.

Under date of January 11th, 1930, a letter was written by the attorney for the vendors to George Taufer, one of the vendees, to ascertain if he would be ready to take title on January 15th, 1930, the day stipulated for the closing.

Case, page 187.

A letter was written to the same man under date of January 18th, 1930, advising him that he was

in default in regard to the contract, but that if the vendees would be ready to take title within a short while, it was possible that title might be conveyed to them.

Case, page 188.

Another letter was written to him on January 24th, 1930, by which he was advised that if the contract were complied with by the end of February, that conveyance would be made.

Case, page 190.

A final letter was again written to him on February 25th, 1930, advising him that the vendors would not wait any longer than March 17th, 1930, and that if the contract were not performed at that time, that the contract would be cancelled and considered null and void.

Case, page 251, lines 1 to 20.

He was not ready to take title on March 17th, 1930.

Case, page 67, lines 25 to 30.

When no one appeared on behalf of George Taufer on that day, a letter was written to him on that date advising him that the contract was at an end and null and void.

Case, page 191, lines 1 to 30.

The said George Taufer had previously filed a mechanics' lien against the said premises, he not having any interest in the land at the time, and the vendors' attorney gave notice to him to strike out the lien claim. Under the terms of the contract which was entered into by George Taufer, that contract was in no way to effect the status of the lien claim and the argument on the motion

was adjourned until after January 15th, 1930, the time for closing of the title. In this letter of March 17th, 1930, notice was given to the said George Taufer that the motion to strike out the lien claim would have to be argued on April 4th, 1930. It appears that the motion was argued and the Court struck out the lien claim.

Case, page 134, lines 35 to 40.

He did not do anything further about taking title until sometime in May of 1930, at which time he got in touch with Mr. Duffy, one of the vendors, in an endeavor to buy the lot for himself.

Case, page 60, lines 15 to 20.

From this it would appear that he considered the contract null and void, and that he had no further interest, for if he thought he had any interest, he would not have tried to buy the property in his own name. He did not make any further effort in regard to the property until May 28th, 1930, when he appeared at the office of the vendors and his attorney for the purpose of making a formal tender.

The vendors had acquiesced in the extension of the time to take title and were willing to give title up to March 17th, 1930. When no attempt was made to take title as of that time, they took the position that they could stand on their legal rights and consider the contract at an end. Previous to this, the vendees had made repeated promises that they would be able to take title from time to time, but from the last of February, 1930, to the 17th of March, 1930, no one appeared for any of the vendees to arrange to take title at any time. When no appointment was made at this time to take title, the vendors were justified in believing that the vendees had abandoned the

contract, particularly in view of the fact that on May 20th, 1930, one of the vendees attempted to make a new contract with the vendors and offered additional money to the vendors to give title. The vendor, James Duffy, testified that he refused to give title, as he stood on his legal rights after waiting two years for title to be taken.

Case, page 123, lines 31 to 35.

Courts of equity have not allowed vendees or those seeking the aid of the Court to be lax in times for taking title. In one of the leading cases where title was to be taken at 2.30 in the afternoon, and the purchaser was not ready to close the title until three o'clock, the Court held that when the purchaser complainant was not ready at the time stipulated, that the lapse of even one-half an hour was fatal to his claim.

“A contract was made by the complainant by which she agreed to pay \$1500.— on the 19th of December, 1919, \$500.— having been previously paid by her, the contract providing that unless the sum of \$1500.— was paid on that particular day, that the contract should be null and void. On the 19th, the complainant and purchaser did not have the sum of \$1500.— but induced the owners and defendants to accept \$500.— and made a supplemental agreement that the balance of \$1,000.— was to be paid not later than 2:30 on Saturday, December 20th, or else, the contract was to be null and void and all payments on account should be forfeited. The owners and defendants were ready at 2:30 December 20th to convey but the purchaser and complainant was not ready at that particular time. However, about 3 o'clock the purchaser and complainant made a proposal to pay the balance of \$1,000.— but the owners took the position that the time had passed and that the rights of the complainant and purchaser had ceased and that the contract was null and void. The court then held

‘The single question, then, which is presented for consideration, to my mind, is whether this court has the power, after parties have deliberately and solemnly contracted to the time when a payment should fall due under a contract, and equally deliberately and solemnly agreed upon the consequences that should flow from a failure to pay at the time, to say that different consequences shall flow from such a default, even though the default is only a matter of minutes. Obviously, if the default has been waived a different situation exists, but, in the absence of a waiver, it seems to me a court of equity is powerless to come to the relief of a purchaser of property who has failed to pay at the time specified in the agreement, when the agreement distinctly and clearly provides that that time is essential and that the purchaser’s rights as purchaser shall cease and become void unless payment is made at the time stipulated.

* * * * *

But so far as the agreement relates to the loss of the right of the purchaser to buy the property in the event of failure to pay an installment at a time agreed upon, it seems to me there can be no doubt of the rights of the parties to so contract and of either party to stand upon his rights under such a contract; and when that time has arrived and the payment has not been made, it is the privilege of the owner of the property to either accept the payment at a later day, or to treat the contract as null and void. I cannot see that there is the slightest doubt about that.

* * * * *

There is nothing unlawful or illegal in such an extension, in such an agreement, in such covenants, or in such stipulation. If the parties see fit to provide that default of payment by a certain hour of a given day shall terminate the rights of the

purchaser, I know no reason why they cannot agree to it. I can see no possible legal objection to it. It is in their power, as all of the authorities hold, to make time the essence of the contract. The parties have clearly done so in this supplemental agreement in every way that can be done.'

"It transpired that the purchaser defaulted at two-thirty on the afternoon of the day named in the supplemental contract, the hour when payment should have been made under the terms of the supplemental contract. Now, what was the effect of that default: I do not recall of ever having seen any case which has discussed the subject of a stipulated hour for payment with the consequences stipulated for failure to pay upon that hour or minute, but the principle must be the same as a stipulation to pay on a given day. The time limit is fixed and the contract between these parties is that the payment must not be made later than that hour, whereas in fact the purchaser undertook to make the payment later than the time stated. That attempt, it seems to me, was entirely ineffectual, unless, of course, there was some waiver upon the part of the owner of the property."

Doctorman v. Schroeder, 92 N. J. Eq., p. 676.

This doctrine is also supported by the following cases which are on all fours with the case *sub judice*.

"According to the facts in this case title was to pass on July 2nd, 1923. The time for closing was extended until September 6th, then to September 28th. Not being ready at that time, the complainant promised to be ready on October 10th and 'seeking no further adjournment from that date.' Time was then extended by the defendant until October 10th but, at that time, the complainant was not ready, but the defendant agreed to take

part cash and a note for sixty days, the deed not to be delivered until the note was paid. Repeated demands were made of the complainant both verbally and in writing, to pay, but of no avail, and on January 7, 1924, the defendant wrote the complainant that he was taking steps to demand the deed left in escrow. On the 9th the complainant pleaded for more time, to which the defendant replied that he would hold the matter open to Friday, the 11th, at noontime, but if the balance were not paid by that time, he would consider the transaction entirely closed once and for all. On the 11th the return of the deed was demanded and it was returned on the 14th. On the 21st or the 22nd of January, the complainant tendered the balance in cash which was refused by the defendant and the bill for specific performance was filed on the 29th.

The principal contention of the complainant is that time was not of the essence of the contract, and that the final call to perform was too abrupt. Time was not expressly made the essence of the contract, but that it was of essence is inferable from the circumstances. The defendant had made a contract to purchase the land, which, in effect, it turned over to the complainant at a slight profit. The conveyances to and from it were to concur. Its purchase price was to be supplied by the complainant, and that it was to be timely furnished was essential to the defendant's due performance of its contract with its vendor. Prompt performance was waived, but time was again made of the essence by the extension to October 10th, and again by the extension to December 10th, and again by the extension to January 11th. *King v. Ruckman*, 20 N. J. Eq. 316; *Bullock v. Adams*, 20 N. J. Eq. 367; *Newark v. Lindsley*, 114 Atl. Rep. 794. It was the privilege of the defendant to put an end to the contract on any of these occasions. This it chose to do January 11th. Tender of performance thereafter was properly rejected. *Doctorman v.*

Schroeder, 92 N. J. Eq. 676. The forbearance of the defendant does not imply that time was not essential. Graciously extending the time of performance over and over again was not a license to presume on good nature. The defendant waited long and patiently after December 10th and very properly refused to go further than the last call, January 11th. The halt was not abrupt or unreasonable. The principle of *Orange Society of New Jerusalem v. Konski*, 95 N. J. Eq. 254, cannot be applied.

Wachung &c. Co. v. Llewellyn &c. Corp.,
96 N. J. Eq. 498.

“A receiver contracted to sell property for \$40,000—a deposit being paid and it was stipulated to adjourn the closing to a further time upon the payment of an additional deposit. After waiting for over a year the receiver resold the premises for \$55,000.

Time was of the essence of the contract. The stipulation extending the time is evidence of that. *King v. Ruckman*, 20 N. J. Eq. 316; *Orange Society v. Konski*, 94 N. J. Eq. 632. But the receiver was not exacting, and, although constantly urging, was sympathetic and indulgent, and hopeful that Gwillim would succeed in his struggle, and was, up to the time another purchaser was found, anxious that he should have the property. On the return day of the order to show cause why the new sale should not be confirmed and the confirmation of his contract revoked, Gwillim announced his ability and readiness to perform. Some one had come to his rescue in the pinch, but, as often happens, too late, and besides the new purchaser, whose original offer had been \$40,000, raised it to \$55,000, which he was unable to meet. Had there been parity of price Gwillim would have been favored, though he had lost his right to demand specific performance by his delay. *Wachung &c. Co. v. Llewellyn &c. Corp.*, 96 N. J. Eq. 498. The penalty ought not be

pressed beyond withholding from him the benefit of his bargain. He was willing but unfortunate.”

Merchants &c. Nat. Bank v. Newark &c. Co., 98 N. J. Eq. 477 (at p. 478).

“The complainants entered into a contract to purchase from the defendant certain premises the title of closing to be August 10th, 1927. On the day set the defendant was not able to convey because of certain encroachments and tenement house violation. On August 12th, the complainants filed their bill for specific performance. Just at the time the bill was being filed, the defendant’s solicitor wrote to the complainants that they would be in a position to convey title, and by letter of August 13th the complainants’ solicitor wrote that they would be willing to take title on August 25th if the contract were complied with and they would then consent to a dismissal, but on the day of August 25th, a deed was tendered which was refused as the encroachments and violations had not been removed, and were not removed until September of 1928. The complainants urged that the letters of August 2nd and the 13th made time of the essence as of August 25th.

“In equity time is not ordinarily regarded as of the essence of the contract, and therefore specific performance may be decreed in cases where justice requires it, even though literal terms of stipulations as to time have not been observed, but, as declared by the court in *Pyatt v. Lyons*, 51 N. J. Eq. 308, 27 A. 934:

‘The relief invoked is not a matter *ex debito justitiae*; the bill for specific performance is addressed to the extraordinary jurisdiction of a court of equity to be exercised according to its discretion, and he who seeks performance of a contract for the conveyance of land must show himself ready, desirous, prompt, and eager to perform the contract on his part.’

“Substantially the same rule was stated in *Meidling v. Trefz*, 48 N. J. Eq. 638 at page 644, 23 A. 824, 825, wherein it is said:

‘The general rule is that he who seeks performance of a contract for the conveyance of land must show himself ready, desirous, prompt, and eager to perform the contract on his part. Therefore, unreasonable delay in doing those acts which are to be done by him will justify and require a denial of relief. No rule respecting the length of delay which will be fatal to relief can be laid down, for each case must depend on its peculiar circumstances.’ * * *

“If August 25th, 1927, be disregarded as the time set for the closing and the defendant remedied the encroachments and violation within a reasonable time thereafter, the complainants could not then reasonably object to a decree being made against them, but the fact that the defendant indulged in such procrastination as is apparent in this case in causing to be removed the incumbrances complained of, the final clearance of which being effected in September, 1928, 14 months after the making of the contract, and one year after the title, under the terms of the contract, should have passed, manifests clearly that it was not ‘ready, desirous, prompt, and eager to perform the contract on its part’.

Merlis v. G. & M. Corporation, 143 Atl. Rep. p. 139 (at p. 141).

“In this case the time for closing was February 6th, 1926, and at that time the complainants were not in a position to give title. At that time a deed, bond and mortgage and a check were left in escrow with a bank. The attorney for the purchaser served on the vendor on March 22nd, notice that they desired title to be closed within five days, and on April 17th, 1926, served notice that they demanded return of the purchase price and on May 25th served notice on the bank for the

return of their papers left in escrow. On May 27th the purchaser commenced suit in the law court for the return of the deposits.

"When vendors and purchaser entered into escrow agreement, pursuant to which certain sum was deposited in escrow to be distributed and deed delivered on certain inheritance tax being paid, and the mortgage canceled, time not being of essence, held that, where vendee notified vendors to complete contract within reasonable time, thus making time essential, and vendors failed to comply with agreement within reasonable time, vendors will not be decreed specific performance of agreement, but contract will be declared of no further force and effect, and depository restrained from paying over money deposited with it."

Mecray v. Goldman, 142 Atl. Rep. p. 9
Aff. 147 Atl. 911.

"While upon this subject of the essentiality of time, a court of law ascertains only what the parties have expressed in their contract, a court of equity endeavors to ascertain what is in truth the real intention of the parties and to carry that into effect; in so doing, however, the court must, in the first place, look carefully at what they have expressed, that being in general what they intend, and the burden is thrown on those who assert the contrary. In the ordinary case of purchasing an estate, the fixing of a day for passing the title is merely formal, and the stipulation means in truth that the purchase shall be completed within a reasonable time, regard being had to all the circumstances of the case and the nature of the title to be made. But this is a mere corollary from the general proposition, which is, that the real contract and all the stipulations really intended to be complied with literally shall be carried into effect. * * * and a stipulation as to time must then be literally complied with in equity as well as in law. * * *

"The doctrine is that the failure of the party receiving notice of abandonment, to make immediate assertion of his right to enforce the contract, may be considered as such an acquiescence in the notice and an abandonment of equitable rights as to leave the parties to their legal remedies and liabilities. *Walker v. Jeffreys*, 1 Hare 341, 348 (Vice-Chancellor Wigram, 1842). Whether such delay is an acquiescence or abandonment depends, of course, on the circumstances of each case, and the explanation of the delay."

Agens v. Koch, 74 N. J. Eq. at p. 533, 536.

"Such it appears to me is the import of the terms used in this contract: 'In the event of the said S. K. Foster not complying with the above stipulations within the time specified, the said Landis to have the right to take back the said lands,' &c. He has a right, the exercise of which is optional with him, and for his benefit. *Cartwright v. Gardner*, 5 Cush. 273. The time to evoke it is when the default occurs. To manifest his intention some act must be done, some notice given, because the agreement does not become void upon the happening of an event, or the expiration of a fixed time, but it is voidable upon the volition of the vendor expressed in a particular way, by the repayment of the money which he has received before the default. He has made no expression of this determination, but has been quiet, and permitted the condition of the opposite party, and of the property, to become changed; and has not only been quiet, but has done other acts by which he is precluded in equity from asserting his former right to annul the contract."

Grigg v. Landis, 21 N. J. Eq. 494 at p. 509.

"While time was not of the essence of the contract as originally executed, it seems to me that it was made such by agreement of

the parties when the final date for closing was fixed for September 8th, which was evidenced by the letter of September 1st from the defendant to the complainant Barry, and further evidenced by a form of extension agreement prepared by complainants' solicitor. The preparation and submission of this form of agreement by the complainants' solicitor is strong evidence to my mind that he understood that the final date for closing was September 8th, and his failure to demur to defendant's letter of September 1st is conclusive. I feel that in rescinding the contract, after the failure of the vendee to perform on September 8th, the defendant was clearly within her rights. Under the circumstances of this cause, the extension of one week granted by the defendant for the closing of title was, in my judgment, entirely reasonable, especially in view of the complainants' long delay in ordering searches. This, I believe, to be in accordance with the adjudication of this court and the court of errors and appeals in the following cases:

King v. Ruckman, 20 N. J. Eq. 316;
Huffman v. Hummer, 17 N. J. Eq. 267;
Newark v. Lindsley, 114 Atl. Rep. 794;
Orange Society v. Konski, 94 N. J. Eq. 632 affirmed, 95 N. J. Eq. 254.

In *Orange Society v. Konski*, *supra*, Vice-Chancellor Backes said (at p. 635);

"The law is that a day fixed in a contract for closing title, without more, is merely formal; but if it is stipulated that time is of the essence, or the circumstances are persuasive that that is the case, prompt performance is essential, and it is also the law that where the time fixed is regarded as a formality only, and the period has gone by, or where time is of the essence and there is a waiver, that time may, nevertheless, be made of the essence by formal demand that the title be closed by a given day, but the time given must be reasonable."

And in *Newark v. Lindsley, supra* (at p. 796), the same Vice-Chancellor said:

“A bill for specific performance is addressed to the extraordinary jurisdiction of a court of equity to be exercised according to its discretion. The general rule is that he who seeks performance of a contract for the conveyance of land must show himself ready, desirous, prompt and eager to perform the contract on his part. Therefore, unreasonable delay in doing those acts, which are to be done by him, will justify and require a denial of relief. No rule respecting the length of the delay, which will be fatal to relief, can be laid down, for each case must depend on its peculiar circumstances.”

Barry v. Ruskin, 99 N. J. Eq. 730 at p. 732.

POINT II.

The defendants-appellants were able, ready and willing to convey in accordance with the terms of the contract.

At the hearing of this cause there was produced a deed in which it was stated that the premises were subject to the proportionate part of three certain mortgages. The court made much of the fact that because of this deed the vendors were not ready, able and willing to convey title in accordance with the terms of the contract, which was to be free and clear of all encumbrances. As the vendees never made any appointment to close the title, it was not necessary for the vendors to pay off mortgages when they well knew that the vendees were not going to take title either on January 15th, or March 17th, 1930.

"Secondly, the defendant claims that specific performance should not be decreed because at the time fixed for the passing of title the property was incumbered by a judgment of \$55.05. This contention is disposed of in the case of *Gerba v. Mitruske*, 74 N. J. Eq. 141, 94 Atl. 34."

Randolph v. General Investors' Co., 124 Atl. 765.

The vendor, James Duffy, testified that he needed all his money in his business, and when the vendees made no effort to take title that he did not arrange to pay off the said mortgages, but that he was ready and able to pay off these mortgages as of January 15, 1930, and March 17, 1930.

Case, page 121, lines 31 to 40; page 122, lines 1 to 15.

There was testimony to the effect that the lot in question could be released from the lien of these three mortgages.

Case, page 141, lines 37 to 40; page 142, lines 1 to 17.

It is elementary that where there are encumbrances on property, and title is to be conveyed free and clear of all those encumbrances, that at the time of closing of title, these encumbrances are paid off out of the cash received. Arrangements had been made in this particular transaction that the premises in question could be released from the lien of the mortgages which covered this lot and other lots. By applying the purchase price to the payment of these encumbrances there would be more than enough to release the lot from the lien of these mortgages. It is not a usual practice to have money and pay off liens, and then receive cash money, but the usual practice and custom was adopted in this case of using the cash to pay off the liens at the time of closing.

As the vendees admittedly were not ready on January 15th, 1930, and March 17th, 1930, there was no reason for the vendors to be ready at these times.

It is no objection to a title that at the time to close title there are mortgages or judgments open of record.

The Courts of this State have consistently held that where one of the parties to a contract is admittedly not ready to perform at the time stipulated and according to the provisions thereof, that the other party is excused from being ready, as that party would be put to needless trouble and expense.

The vendors had done nothing to deter the vendees in completing their house or in taking title, but had co-operated with them in every way possible, even to extending the time to take title for two months. There was no overreaching on the part of the vendors with the vendees. The contract was fair and made between the parties dealing at arm's length with each other.

POINT III.

The complainants-appellees abandoned the contract to purchase the said premises.

After the time to take title on March 17th, 1930, had passed the vendee, George Taufer, was in the office of the attorney of the vendors on May 20th, 1930, at which time he tried to get a deed in his own name. If he did not believe his rights were gone, he would not have tried to buy it in his own name, as he could have demanded a deed to himself and Emil Isbill.

Case, page 69, lines 15 to 20; page 70, lines 10 to 25.

Even after this time the said George Taufer conferred with the vendors, endeavoring to obtain a new contract and offered \$200.—more than the original contract price.

Case, page 123, lines 10 to 25.

After March 17th, 1930, no effort was made by any of the vendees to get in touch with the vendors or their attorney until May 20th, 1930, some two months thereafter. If they believed the contract was still in force, they certainly would have gotten in touch with the vendors or their attorney before that time, as the testimony showed all through the case that William Isbill had been in touch with the attorney of the vendors constantly from January 15th, 1930 until the last of February, 1930, but after that time until the tender was made, nothing was seen or heard from them.

POINT IV.

Valid notices were given by the vendors to the vendees to make time of the essence of the contract.

The equitable doctrine is established that notice may be given requiring a contract to be closed or rescinded at a stated time.

“Courts of equity do not in general consider the time of performance as the essence of a contract for the sale of lands; but hold that it may become of the essence, by being expressly made so by the contract. * * * Or, by notice from the other party insisting upon performance at a time fixed.”

Bullock v. Adams' Executors, 20 N. J. Eq. 367 at page 371.

"A time stipulated in an agreement for performance will be held of the essence, when from the nature of the subject matter or the object of the parties, the time of performance was intended to be such. * * * And a new agreement extending the time is evidence that they consider the time material. At page 354:

The established doctrine of equity is, that in general, time is not of the essence of a contract for the sale of lands. But it is now also settled that in such contracts time may become of the essence of the contract, either by being made so by the contract itself, or from the nature and situation of the subject matter of the contract, or by express notice given, *requiring the contract to be closed or rescinded at a stated time*, which must be a reasonable time, according to the circumstances of the case."

King v. Ruckman, 20 N. J. Eq. 316 at pages 351-354.

There is no particular form of notice that is required, and in this case, notice was given not only of the date of March 17th, 1930, to take title, but after that time had passed notice was given that the contract was at an end. Letters in ordinary form, advising the delinquent vendees that if title were not taken at a specified time their rights would cease, have been held to be good and valid notices.

"March 22d, 1926.

TO JEREMIAH E. MECRAY,
Cape May, N. J.

PLEASE TAKE NOTICE:

That I demand delivery of the post office building, Cape May, New Jersey, into my possession within five days from date, together with deed and other papers belonging to the ownership of the same, or else a return

of my mortgage and bond, and a return of all moneys paid on the purchase of the same.

Yours very truly,

ISADORE GOLDMAN,
By LEWIS T. STEVENS,
His Attorney."

Mecray v. Goldman, 102 N. J. Eq. 559.

"You have not performed contract for purchase of Tonnele Avenue property, and on behalf of the executors of the estate of Anna F. Simpson we now give you notice that if contract is not performed by the 10th inst. we shall deem the contract null and void and feel at liberty to make such disposition of the property as opportunity may afford. All your rights under contract heretofore made will cease and determine after April 10th, 1923."

Wyatt v. Bergen, 98 N. J. Eq. 502.

The court below was of the opinion that by the two letters of ~~March 17th~~ ^{February 28th}, some subsequent action was to be taken by the vendors, its opinion being founded on the clause in the letters that "We will declare the contract at an end".

Case, page 162.

If any subsequent action were to be taken by the vendors to cancel the contract, it was taken by the letters of March 17th, 1930, written to George Taufer and William Isbill, declaring that the contract was at an end.

Exhibit C-9, Case, page 191; Exhibit D-4,
Case, page 252.

A letter was also written under the same date to Palisades Park Lumber & Supply Co., advising them that the contract was null and void.

Exhibit C-15, Case, page 202.

It is not necessary for a vendor to state any reason for declining to convey. The court below

went into detail as to the reason for the vendors declining to convey. It is submitted that the vendors can be arbitrary and stand on their legal rights and give absolutely no reason for refusing to convey.

“That it was Konski’s privilege to withdraw from the contract if his building plans were not accepted by the 10th of October. It was his right to do so arbitrarily.”

Orange Society v. Konski, 94 N. J. Eq. 632.

The vendors testified that the matter had dragged along for such a long period of time that he felt that he had some rights in the matter.

Case, page 113, lines 1 to 40; page 114, lines 1 to 10; page 122, lines 18 to 29.

The court below was in error in finding that the mechanic lien suit was open of record against the property, as testimony showed that the lien claim had been discharged by an order of the court after argument on the motion to strike out the lien claim.

Case, page 134, lines 25 to 40; page 135, lines 1 to 10.

The *Lis Pendens* which was found to be open of record was a *Lis Pendens* filed in this cause against the property.

Case, page 110, lines 15 to 20.

POINT V.

The complainant-appellees were guilty of laches.

Even assuming that the notices to make time as of the essence of the contract for January 15th, 1930, and March 17th, 1930, were unavailing, the vendees still did not make any tender to take title

until May 28th, 1930. Under all the circumstances of this case, this was an unreasonable time after title should have been taken to make a tender. It is submitted that the vendees should not have the right to come in at their own good pleasure and at their own convenience and say that they were ready. The vendors gave three months' time to the vendees to take title and then extended the time two additional months, and tender was not made for two more months. The law holds that what is a reasonable time to take title depends on each individual case, and there is no set rule to guide the court. It is contended that even in this case, two months is too long a time to make tender after date fixed for closing.

No justification was given for the delay on the part of the vendees, except that Mr. Duffy is a good-hearted man.

Case, page 62, lines 26 to 27; page 68, lines 38 to 40; page 69, lines 1 to 2.

It was not a question of an unmarketable title or any attempt on the part of the vendors to prevent the work being finished, but the delay was due entirely to the fault of the vendors.

The testimony showed that the construction of the building stopped for two or three months at a time.

Case, page 72, lines 14 to 20.

One of the vendees also testified that if the work were properly done, the building could be entirely finished in three or four months.

Case, page 73, lines 20 to 30.

“The court will not countenance unreasonable delay, nor will it aid a vendee to obtain an unfair advantage by being passive if the value of the property is lessening or stable and quickening into activity, only when the value of the property has risen.

But if none of these elements are present—and none are present in the case now under consideration—the court merely looks to see whether the delay in the payment of the purchase-money has been unreasonable.

If the vendee has not shown any disposition to abandon his contract, but, on the other hand, has shown that he is endeavoring to carry it out, the court will hold that a short delay is not unreasonable.

The fact that the vendee has gone into possession and has expended money upon the property, is an added reason for decreeing a specific performance of the contract to convey to him, and the further fact that the part of the purchase price paid by him at the time of the execution of the contract was never returned or tendered to him, is an additional equity in his favor."

Cranwell v. Clinton Realty Co., 67 N. J. Eq. 540 at p. 546.

"The usual maxim is, that a party seeking specific performance must show himself ready, desirous, prompt, and eager, to perform the contract. Unreasonable delay will, of itself, be often a bar to a suit of this character. (*White & Tudor's L. C.* in Eq. 83.) "And even," says Judge Story in delivering the opinion of the court, in *Taylor v. Longworth*, 14 Pet. 172, "when time is not thus either expressly or impliedly of the essence of the contract, if the party seeking a specific performance has been guilty of gross laches, or has been inexcusably negligent in performing the contract on his part."

Meritt v. Brown, 21 N. J. Eq. p. 401 at p. 406.

"The final question raised in the briefs is that of laches. Complainant's contract was executed December 24, 1924. He took no action in the courts until some time in April, 1925. * * * It seems to me that this was such laches on the part of the complainant as

would justify the court in disregarding his claim.”

Heller v. Sweeney, 100 N. J. Eq. 150 at p. 155.

“A bill for specific performance for the sale of land must be promptly filed after a definite refusal to perform.”

Ketcham v. Owen, 55 N. J. Eq. 344;

Agen v. Koch, 74 N. J. Eq. 528.

Storch v. Tepperman, 99 N. J. Eq. 48 at p. 51.

“The relief invoked is not a matter *ex debito justitiae*; the bill for specific performance is addressed to the extraordinary jurisdiction of a court of equity to be exercised according to its discretion, and he who seeks performance of a contract for the conveyance of land must show himself, ready, desirous, prompt and eager to perform the contract on his part.”

Meidling v. Trefz, 3 Dick. Ch. Rep. 644;

Page v. Martin, 1 Dick. Ch. Rep. 589;

Blake v. Flatley, 17 Ste. Eq. 231.

Pyatt v. Lyons, 51 N. J. Eq. 308 at p. 314.

“I find nothing that affords complainant a shadow of excuse or justification in thus determining to withdraw from the contract at the time it was his duty to perform his obligations under it and more than two months thereafter demanding performance. I am unable to accept certain reasons assigned by way of justification.” * * *

“In the language of Professor Pomeroy touching specific performance of contracts in which time is not of the essence, but is yet material: ‘The delay, whether long or short, must be accounted for and explained by facts and circumstances which are regarded by courts of equity as sufficient to justify and ex-

cuse it.' Pom. Cont. (Spec. Perf.), p. 402. After the purchaser has fully determined he will not complete his purchase a contract of that nature should not be considered as automatically converted into an option of purchase in his behalf to enable him to change his mind at some future time; laches may afford a bar to relief to the same extent as in other equitable remedies. This is the spirit of the language often used to the effect that a complainant must show himself ready, desirous, prompt and eager to perform the contract on his part."

Meidling v. Trefz, 48 N. J. Eq. 638;
Pom. Cont., p. 403.

Fox v. Fridrich, 96 N. J. Eq. 456 at p. 457.

POINT VI.

The court below erred in its findings that it was unequitable to enrich the defendants-appellants at the expense of the complainants-appellees.

There was various testimony introduced to show that the building which was erected on the premises varied in value from \$1,500 to \$6,000.

Case, page 117, lines 30 to 32; page 59, lines 32 to 36.

Even at the time of the hearing the building was still unfinished.

There was testimony by Taufer, one of the vendees, that he had given large sums of money to William Isbill toward the construction of the said building, but it was not conclusively shown that all of the money advanced by him went into the construction of the building.

The contract was fair on its face and the vendees had ample time to finish up their building

and take title. There is no suggestion of fraud or overreaching. If the vendees thought that they could not have finished their building and obtain their mortgage loan to pay off the purchase price at the time stipulated in the contract, they should have made provision for this at the time of the signing of the contract. Equity must follow the law, even if the vendees are to lose the fruits of their labor. The cases hold that even if a whole life's saving were involved, but if the person were at fault, equity could not help them out. The cases in the court of equity even go so far that if the mental condition of one of the parties to the suit is affected because of losing the old homestead, or part of the life's saving, that still they cannot be aided.

"The facts were that the defendant contracted to sell her home and as a result thereof was alleged to have suffered a severe nervous breakdown and her mental condition was very bad when she contemplated losing her old home.

A court of equity is not permitted to disregard established equitable rules in the exercise of its discretion in cases of this class, the discretion to be exercised must be a judicial and not a capricious discretion; and unless counsel can convince me by some authorities which may be cited, in case a brief is sought to be filed, that the exercise of a discretion of this court in refusing this decree can find legal justification because of its possible, and I perhaps, may say, probably detrimental influence upon the mental condition of defendant, owing to the nervous state she has reached in contemplating the loss of her old home, it presently seems to me I shall be obliged to advise a decree for performance."

Lean v. Leeds, 92 N. J. Eq., p. 455.

"The facts were that the defendant would be deprived of his farm and would be required to pay a large amount of money in return for

stock, and it was doubtful as to the value of the said stock.

I come now to the only defense which seems to me to possess any merit, and that is that the court ought not to enforce the equitable remedy of specific performance because it would be harsh and oppressive. With considerable hesitation, I have adopted this view.

In his work on Equity Jurisprudence, volume 3 (1st ed.), in the foot-note on page 449, Pomeroy says:

‘Oppression or hardship may result from unconscionable provisions of the contract itself, or it may result from the situation of the parties, unconnected with the terms of the contract or with the circumstance of its negotiation and execution—that is from external facts or events or circumstances which control or affect the situation of the defendant.’ ”

Bartley v. Lindabury, 89 N. J. Eq., p. 8.

There is testimony that the building as constructed by the vendees was an eyesore and was not in keeping with the other buildings in the neighborhood and it would tend to decrease the value of the other property of the vendors, rather than increase it.

Case, page 115, lines 25 to 40.

It is respectfully submitted that the Court below erred and its decree should be reversed and a decree entered that the Complainants-Appellees lost their rights under the contract when they did not take title, and that the Complainants-Appellees have no further rights in the contract or in the lands or premises embraced in the said contract.

JOHN D. CRAVEN,
Solicitor and of Counsel with
Defendants-Appellants.



