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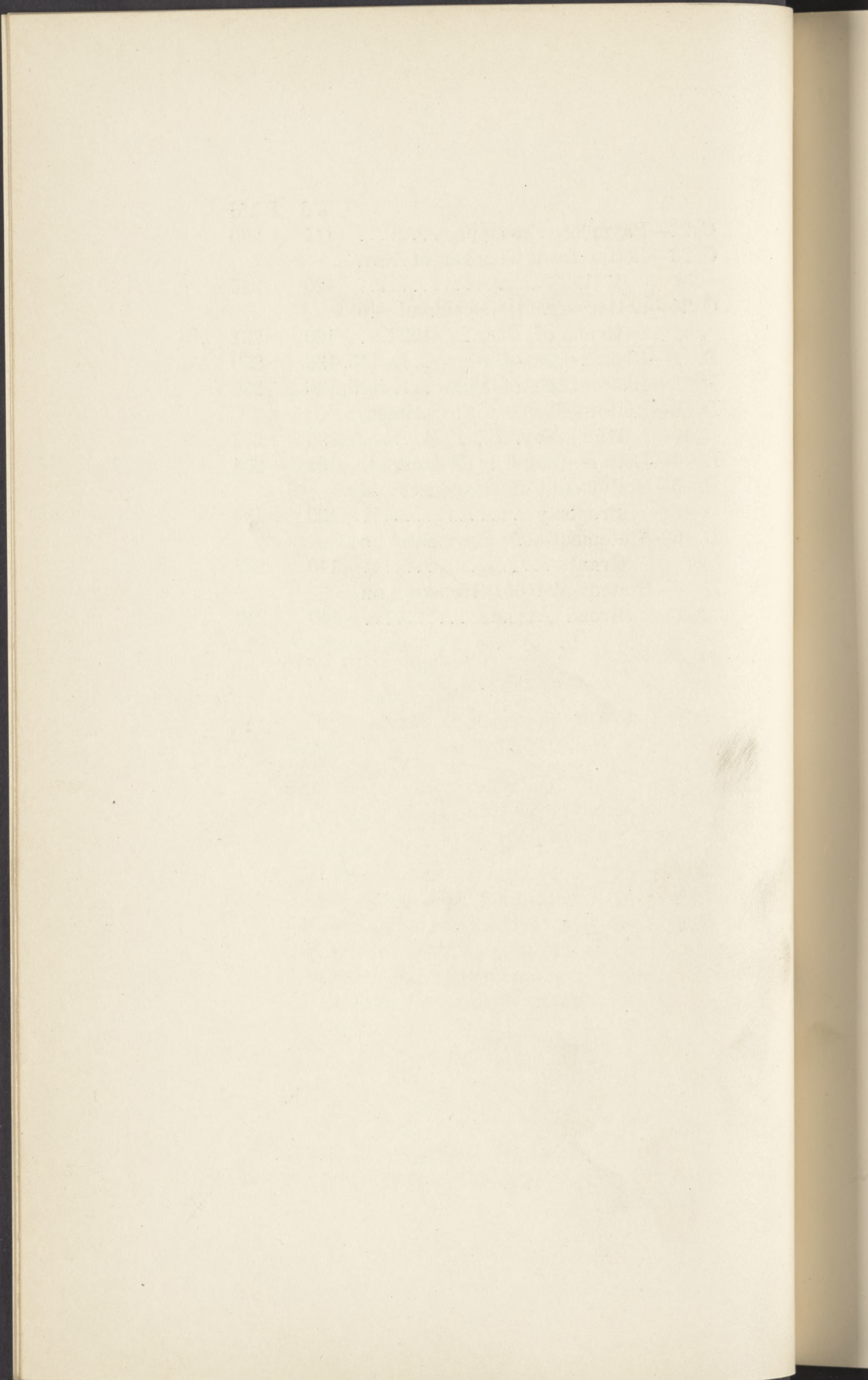

BILL OF COMPLAINT.

In Chancery of New Jersey

Between RODERICK D. GRANT, *Complainant,* *and* STEENLAND CONSTRUCTION COMPANY, and NORDHOFF LAND COMPANY, *Defendants.*	*Bill of Complaint.*

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

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The complainant, Roderick D. Grant, respectfully shows:

1. That at all the times hereinafter mentioned, complainant, was, and is, a resident of the City and State of New York.

2. That at all the times hereinafter mentioned defendant, Steenland Construction Company, was, and is, a corporation duly organized and existing under the laws of the State of New Jersey and having its principal place of business at Palisades Park, New Jersey.

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3. That at all the times hereinafter mentioned, defendant, Nordhoff Land Company, was, and is, a corporation duly organized and existing under the laws of the State of New Jersey.

4. That on or about the 5th day of November, 1923, the complainant secured from the

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Nordhoff Land Company an option for the purchase of approximately one hundred and five (105) acres of land, being all of the lands owned by the said Nordhoff Land Company in the City of Englewood and in the Boroughs of Leonia and Fort Lee, all in Bergen County, New Jersey.
10 That for the particular terms of said option, complainant begs leave to refer to the same upon the trial of this action as if made a part hereof.

5. That thereafter complainant entered into negotiations with the defendant, Steenland Construction Company, and as a result thereof entered into an agreement with the said Steenland Construction Company whereby the complainant and said defendant agreed to become mutually and jointly interested in securing the said prop-
20 erty and in the developing thereof, with the understanding and agreement that all profits derived therefrom should be equally divided between the said defendant, Steenland Construction Company, and the complainant.

6. That in pursuance to said agreement on or about December 10, 1923, and prior to the expiration of the option previously secured on November 5, 1923, as hereinbefore alleged, com-
30 plainant secured a further option from the defendant, Nordhoff Land Company, wherein and whereby the complainant and the defendant, Steenland Construction Company were named jointly as the optionees under said option agreement and were to become joint purchasers of said property thereunder and joint obligors upon the bonds and mortgages given upon the exercise of said option. That said option covered the same property as was covered in the previous option and was to expire on the 3rd day of
40 March, 1924. That complainant upon the trial

of this action begs leave to refer to said original option as if fully and at length set forth and made a part hereof.

7. That thereafter the said defendant, Steenland Construction Company induced the complainant to agree to a variation from the terms of said option agreement insofar as they provided for the taking of the title of the property of the Nordhoff Land Company under the option agreement in the joint names of the complainant and the defendant, Steenland Construction Company, and instead thereof to have the title to a large portion of the property placed in the name of the Steenland Construction Company alone, the said defendant representing that this should be done solely for the purpose of convenience in the handling of matters in connection with the financing and developing of the said properties when secured under said option.

8. That complainant, relying upon the good faith of the defendant, Steenland Construction Company, consented to permit the Nordhoff Land Company at the time the said option was exercised to make the deed of a large portion of the property to the Steenland Construction Company alone instead of to the complainant and the said defendant jointly, the complainant to become guarantor upon the bond and mortgage to be executed instead of joint obligor as previously provided for.

9. That thereupon on the 13th day of February, 1924, defendant, Nordhoff Land Company, made and delivered a deed of the aforesaid properties (consisting of about 78 acres) to the Steenland Construction Company and received a bond and mortgage from said company, upon

which bond and mortgage the complainant became guarantor.

10. That said deed was duly recorded in the office of the Clerk of Bergen County on the 14th day of February, 1924, in Liber 1256 of Deeds, page 165, and said mortgage was duly recorded on said date at said place in Liber 646 of Mortgages, page 655.

11. That the property so deeded to defendant, Steenland Construction Company, by defendant, Nordhoff Land Company, is bounded and described as follows:

All those certain tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the Boroughs of Leonia and Fort Lee, and in the City of Englewood, all in the County of Bergen and State of New Jersey:

FIRST PARCEL.

Beginning at a point in the center line of Jones Road, being the point of termination of the first course of a certain tract of land described in a certain deed from Thomas Thacher and Sarah McC. Thacher, his wife, to Nordhoff Land Company, dated April 24, 1902, and recorded in the office of the Clerk of Bergen County on June 23, 1903, in Book 564 of Deeds for said County, pages 365 &c., said point of beginning being distant 1,835.48 feet from the northwesterly corner of the tract conveyed by said Thacher Deed, measured along a line running from said northwesterly corner south 43° 7′ east along the southerly line of land formerly of the Estate of William Walter Phelps and the northerly line of said tract; running thence (1) along

the said center line of Jones Road, being also the easterly boundary of the tract of land conveyed by the aforesaid Thacher Deed, south 14° 59′ 30″ west 289 feet; thence (2) still along said center line south 12° 48′ 30″ west 442 feet; thence (3) still along said center line south 19° 15′ 30″ west 363.48 feet; thence (4) still along said center line south 14° 14′ 30″ west 375.70 feet; thence (5) still along said center line south 21° 36′ 30″ west 634.33 feet to the southeasterly corner of the tract of land conveyed by said Thacher Deed; thence (6) still along said center line of Jones Road, being also the easterly boundary of a tract of land described in a certain deed from Angela Warneken and husband to Nordhoff Land Company, dated March 2, 1904, and recorded in the office of the Clerk of the County of Bergen on March 30, 1904, in Book 579 of Deeds for said County, pages 218 &c., south 28° 5′ 30″ west 310.73 feet to the southeasterly corner of the tract conveyed by the said Warneken Deed; thence (7) still along the center line of Jones Road and along the easterly boundary of a tract of land described in a certain deed from E. Ellery Anderson and wife to Nordhoff Land Company, dated November 3, 1902, and recorded in the office of the Clerk of the County of Bergen on June 25, 1903, in Book 564 of Deeds for said County, pages 446 &c., south 28° 5′ 30″ west 147.13 feet; thence (8) still along the center line of Jones Road and the easterly boundary of the land described in said Anderson Deed south 34° 50′ 30″ west 175.88 feet to the southeasterly corner of the tract described in said Anderson Deed; running thence (9) along the southwesterly boundary of the tract of land described in said Anderson Deed north 44° 23′ 30″

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west 727 feet; running thence (10) still along the said southwesterly boundary of the land described in said Anderson Deed north 45° 53′ 30″ west 292.13 feet; running thence (11) still along the said southwesterly boundary of the tract described in said Anderson Deed north 50° 53′ 30″ west 946.06 feet to a point where the easterly line of property formerly belonging to the Christie Estate intersects the northerly line of Riley avenue; running thence (12) along the westerly boundary of the tract of land described in said Anderson Deed, being also the easterly line of property formerly belonging to the Christie Estate, north 35° 7′ 30″ east 332.41 feet more or less to the southeasterly corner of the tract of land described in a certain deed from Anna C. Stagg and Edward Stagg, her husband, and Minnie Christie to Nordhoff Land Company, dated October 1, 1903, and recorded in the office of the Clerk of Bergen County on December 7, 1903, in Book 573 of Deeds for said County, pages 316 &c.; running thence (13) along the southerly boundary of the tract of land described in said Stagg Deed north 49° 0′ 30″ west 125.72 feet; running thence (14) still along the boundary line of land described in said Stagg Deed 36° 22′ 30″ east 62.84 feet to a point which would be in the prolongation of the northerly line of a private roadway commonly called Harold avenue; running thence (15) southeasterly along the said prolongation of Harold avenue and along lands conveyed to Harry Stark by deed dated July 31, 1923, and recorded in the office of the Clerk of Bergen County, to the westerly boundary line of lands of Niblick Realty Company; running thence (16) along the said boundary line of lands of Niblick Realty Company

south 18° 8′ 30″ west to an angle point in the boundary line of said lands of Niblick Realty Company; thence (17) still along lands of said Niblick Realty Company south 36° 14′ 30″ east 244.60 feet; thence (18) still along lands of said Niblick Realty Company south 13° 58′ east 235.50 feet to a point; thence (19) still along lands of Niblick Realty Company, north 63° 5′ east 437.38 feet to a point; thence (20) still along lands of said Niblick Realty Company, 856.59 feet on a curve bearing to the left with a radius of 2,249.60 feet, (the chord of said curve bearing north 52° 13′ east 851.42 feet) to a point, said point bearing north 48° 41′ 30″ west 45.0 feet from a stone monument; running thence (21) still along lands of Niblick Realty Company north 41° 18′ 30″ east 91.60 feet to a point, said point being in the westerly side of Nordhoff Drive; running thence (22) still along lands of Niblick Realty Company, being also the westerly side of Nordhoff Drive north 4° 36′ 30″ east 56.20 feet to a point, said point bearing north 85° 23′ 30″ west 5.0 feet from a stone monument; thence (23) still along lands of said Niblick Realty Company, being also the westerly side of Nordhoff Drive 684.35 feet on a curve bearing to the right with a radius of 1,129.98 feet, (the chord of said curve bearing north 21° 57′ 30″ east 673.94 feet) to a point, said point bearing north 50° 41′ 30″ west 5.0 feet from a stone monument; running thence (24) still along lands of said Niblick Realty Company and along the westerly side of Nordhoff Drive to the intersection of this last-mentioned course with the northerly boundary of the tract of land described in the Thacher Deed hereinabove referred to; running thence (25) easterly along

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the said northerly boundary of the lands described in said Thacher Deed to the point or place of beginning.

SECOND PARCEL.

Beginning at a point in the easterly side of
10 Nordhoff Drive, being the point of intersection of the said easterly side of Nordhoff Drive and the northerly boundary line of the "First Parcel" above described; running thence northerly along the said easterly side of Nordhoff Drive to the point of intersection of said easterly side of Nordhoff Drive with the southerly boundary line of a certain tract of land conveyed by Nordhoff Land Company to Herbert Barber in the year 1915 by deed recorded in the office of the
20 Clerk of Bergen County; running thence easterly along the said southerly boundary line of said lands of Barber to the point of intersection of said southerly boundary line with the westerly line of Jones Road; running thence southerly along the said westerly side of Jones Road to the point of intersection of said westerly side of Jones Road with the northerly boundary line of the "First Parcel" above described; running thence westerly along the said northerly boun-
30 dary line of said "First Parcel" to the point or place of beginning.

THIRD PARCEL.

Beginning at a point in the westerly line of lands conveyed by Nordhoff Land Company to Niblick Realty Company by deed dated May 20, 1910, and recorded in the office of the Clerk of Bergen County, where said westerly line is in-
40 tersected by the northwesterly line of lands con-

veyed by Nordhoff Land Company to Niblick Realty Company by a certain other deed dated February 2, 1920, and recorded in the office of the Clerk of Bergen County; running thence (1) north 10° 21′ west along lands of Niblick Realty Company described in said first-mentioned deed 156.58 feet; running thence (2) still along said lands of Niblick Realty Company north 32° 37′ 30″ east 309.70 feet; running thence (3) still along lands of Niblick Realty Company north 44° 47′ 30″ west 94.46 feet to a point in the center line of Broad avenue; running thence (4) along the said center line of Broad avenue south 38° 12′ 30″ west to a point where the said center line of Broad avenue would be intersected by the projection westerly of the northerly line of the tract of land conveyed by Nordhoff Land Company to Frank Walker and Ida Walker, his wife, by deed dated April 28, 1921, and recorded in the office of the Clerk of Bergen County; running thence (5) easterly along the said projection westerly of the northerly boundary line of the tract described in said Walker Deed and along the said northerly boundary line of the said tract described in said Walker Deed to the point of intersection of said northerly boundary line of said Walker Tract with the northwesterly boundary line of the tract described in the deed from Nordhoff Land Company to Niblick Realty Company, dated February 2, 1920, hereinabove referred to; running thence (6) northerly along said northwesterly boundary line of said tract described in said last-mentioned deed to Niblick Realty Company, to the point or place of beginning.

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FOURTH PARCEL.

Beginning at a point in the westerly side of Nordhoff Drive, being the northwesterly corner of the "First Parcel" above described, and being also the point of interesection of the said westerly side of Nordhoff Drive with the northerly boundary of a tract of land described in a certain deed from Thomas Thacher and Sarah McC. Thacher, his wife, to Nordhoff Land Company, dated April 24, 1902, and recorded in the office of the Clerk of Bergen County on June 23, 1903, in Book 564 of Deeds for said county, pages 365, etc.; running thence northeasterly along said westerly side to Nordhoff Drive, being also the easterly boundary line of lands of Niblick Realty Company and still continuing along the same side of Nordhoff Drive, following the curves thereof, and along said lands of Niblick Realty Company, northerly, northeasterly, westerly, northerly and northwesterly to the intersection of the said side of Nordhoff Drive with the easterly side of Broad avenue; running thence northeasterly along the said easterly side of Broad avenue 50 feet more or less to the point where said easterly side of Broad avenue is intersected by the other (that is, northeasterly side of Nordhoff Drive; thence southeasterly along said northeasterly side of Nordhoff Drive and along other lands of Niblick Realty Company and continuing along the same side of Nordhoff Drive and following the curves thereof, southerly, easterly, northeasterly, easterly and again southerly to the point of intersection of said side of Nordhoff Drive with the northeasterly side of Club House Road; running thence southeasterly along said northeasterly side of Club House Road, being also along the

line of lands of Niblick Realty Company and continuing along the same side of said Club House Road and also along lands of Niblick Realty Company following the windings of said Club House Road to the point of intersection of the said side of Club House Road with the northwesterly side of Jones Road; running thence southwesterly along said northwesterly side of Jones Road and across said Club House Road 35 feet more or less to the point of intersection of the opposite side of Club House Road with the northwesterly side of Jones Road; said point being also the northeasterly corner of a tract of land conveyed by Nordhoff Land Company to Herbert Barber in the year 1915 by deed recorded in the office of the Clerk of Bergen County; running thence along said opposite side of Club House Road, being also along said lands conveyed to Herbert Barber as aforesaid, westerly, southwesterly again westerly and northwesterly following the windings of said Club House Road to the point of intersection of the said side of Club House Road with the easterly side of Nordhoff Drive, said point being also the northwesterly corner of the lands conveyed to Barber as aforesaid; running thence southerly along the said easterly side of Nordhoff Drive to the intersection of said easterly side of Nordhoff Drive by the northerly boundary of "First Parcel" above described; running thence westerly 50 feet more or less along said northerly boundary of said "First Parcel" to the point or place of beginning; it being intended hereby to describe the lands lying in the bed of Nordhoff Drive between the northerly boundary of the "First Parcel" above described and the easterly line of Broad avenue, and also the lands in the bed of Club House Road between the

westerly side of Nordhoff Drive and the easterly line of Jones Road.

12. That thereafter, without any intimation or warning, on the 29th day of December, 1924, the defendant, Steenland Construction Company, repudiated the agreement aforesaid between the
10 parties wherein and whereby the parties agreed to be jointly interested in said property and to equally divide the profits from the said joint undertaking and threatened to exclude the complainant from any interest whatever in the said transaction asserting that defendant, Steenland Construction Company, was under no obligation whatever to the complainant in regard thereto.

13. That said defendant, Steenland Construc-
20 tion Company, has continued to maintain the position that it had no agreement whatever with this complainant and is under no obligation to him in regard to this transaction and that complainant has no interest whatever in said property.

14. That the defendant, Steenland Construction Company, threatens to dispose of the property in question for its own use and benefit with-
30 out recognizing any right of the complainant to any interest therein and prior to the commencement of this action has attempted to dispose of or has disposed of a portion of this property and is attempting to encumber or has encumbered other portions thereof without the knowledge and consent of the complainant.

15. Upon information and belief, that the said defendant, Steenland Construction Company, is insolvent and that the transfer of the property
40 hereinbefore described would leave this com-

plainant without any redress whatever against it and result in a total loss of his income therein.

16. That unless the defendant, Steenland Construction Company, is enjoined from disposing of or encumbering said property and the said property is protected by this Court during the pendency of this action, complainant may lose all the benefit of his rights and interest in and to said property and the profits to be derived therefrom.

17. That the defendant, Nordhoff Land Company, is made a party in this action for the reason that it may be a necessary and material party thereto by reason of its interest in said properties and option agreements hereinabove referred to, but no affirmative claim for relief is made against said defendant. The said Nordhoff Land Company still retains title to some of the property described in said option agreement.

18. That complainant is without any adequate remedy in the courts of law and therefore prays:

1. That it be adjudged and decreed that the property deeded and conveyed by the defendant, Nordhoff Land Company, to the defendant, Steenland Construction Company, be declared to be the property of the complainant and the defendant, Steenland Construction Company, jointly, and that the said Steenland Construction Company received title to said property for the mutual benefit of this complainant and said Steenland Construction Company, and that said Steenland Construction Company secured title to said property as the agent and trustee for the complainant and the said defendant and for the mutual benefit of the complainant and said defendant.

2. That it be adjudged and decreed that the complainant and the defendant, Steenland Construction Company, have a joint and equal interest in the said property and in any profit or profits to be derived therefrom.

3. That the said defendant, Steenland Con-
10 struction Company, be directed to render a just, true and full account of all moneys received, laid out or expended in connection with the disposition or encumbrance of any of said property which it may have disposed of or encumbered.

4. That the said Steenland Construction Company be enjoined and restrained pending the final determination of this action from selling, assigning or in any way encumbering the said property or any portion thereof.

20 5. That a receiver of the rents, issues and profits of the property and of the property itself, as described herein may be appointed, pending the final determination of this action, with the usual powers and duties of receivers in like cases.

6. That it be adjudged and decreed that this complainant have an undivided one-half (½) interest in the fee of said described premises.

30 7. That the defendant, Steenland Construction Company, be directed and required to execute, acknowledge and deliver proper deed or deeds, or other instruments in writing sufficient for that purpose, to legally vest in this complainant a one-half (½) interest or right in the fee of said described premises, and that this complainant be adjudged to have full right to or a joint possession of said premises and have the right to receive and have paid him his share
40 of the income arising therefrom, or if it be de-

creed and adjudged that said premises should be sold in the interest of said parties, that the said premises should be sold under the decree of this Court, in this action, for the benefit of this complainant and such parties to this action as may be entitled to any share thereof and the proceeds thereof divided among the complainant and the defendants herein, in proportion to their respective interest claimed thereto. 10

8. That the complainant may have such other and further judgment or relief in the premises as may be just and proper under the evidence and proofs adduced.

9. That complainant may have the costs and disbursements of this action.

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

ANDREW J. WHINERY,
Solicitor for Complainant.

State of New Jersey, }
County of Essex. } *ss.*

Roderick D. Grant, of full age, being duly sworn according to law, upon his oath deposes and says that he is the complainant in the foregoing bill of complaint named, and that the matters and things therein contained are true. 30

RODERICK D. GRANT.

Subscribed and sworn to at Newark, N. J., this 13th day of February, 1925, before me,

L. Edna Hampson,
A Notary Public of New Jersey. 40

ANSWER.

The defendant, Steenland Construction Company, a New Jersey corporation, having its principal office and place of business at Palisades Park, Bergen County, New Jersey, answering
10 the complainant's bill, says that:

1. Paragraphs 1, 2 and 3 are admitted.

2. Paragraph 4 is admitted and defendant further answering says that the option therein mentioned has expired and complainant has now no rights thereunder.

3. Answering paragraphs 5 and 6, this defendant admits that an option agreement dated December 10, 1923, was made by Nordhoff Land Company, as vendor to this defendant and com-
20 plainant, therein described as optionees, by which said optionees were given the option to purchase the lands described in paragraph 11 of complainant's bill, and other lands, and fully answering says that in and by said option it was expressly agreed that "if the optionees shall exercise any option hereunder they shall jointly and severally be bound and do hereby agree to purchase the parcel with respect to which the option is so exercised," and the de-
30 fendant denies the other allegations of paragraphs 5 and 6.

4. Complainant and this defendant did subsequently elect to exercise their said option to purchase the premises described in paragraph 11 of the complainant's bill.

5. Answering paragraphs 7, 8, 9 and 10, this defendant admits that the premises described in paragraph 11 were conveyed to this defendant as alleged in paragraphs 9 and 10 and denies the
40 other allegations of said paragraphs, and fur-

ther answering says that complainant has always neglected, failed and refused to perform on his part the joint obligation of said complainant and this defendant, under said option as aforesaid, and has neglected, failed and refused to pay any part of the moneys required by said agreement and by the mortgages and other documents executed as therein provided, and that by reason thereof this defendant, having become not only jointly, but severally, liable therefor, has been obliged to pay and has paid all moneys required for the performance of said agreement.

5. This defendant has paid the following sums of money as required by said agreement:

Taxes—1924.

Borough of Leonia	$4,249.28
Borough of Englewood	825.42
Borough of Fort Lee	438.77
Borough of Leonia—Assessment	2,154.32
Paid on account—Principal mortgage	30,012.20
	$37,680.99

6. This defendant will be compelled to pay, during the present year, approximately the following sums of money as required by said agreement:

Taxes—1925.

Borough of Leonia	$5,000.00
Borough of Englewood	1,000.00
Borough of Fort Lee	500.00
Assessment for macadam roadway and concrete—Jones Road	4,665.90
On account—principal of mortgage	30,000.00
On account—principal of mortgage	3,960.00
	$45,125.90

Answer.

7. This defendant has paid the following sums for expenses incidental to the performance of said agreement:

Drawing papers, including stamps.	$ 413.11
Advertisements	265.75
Engineer services, surveying, plans.	1,059.00
Painting signs	179.49
Carpenters, laborers and material work on road	780.60
	$2,697.95

8. This defendant has paid for the erection of six buildings on said premises, a total of $59,729.93, of which $45,000 was raised by mortgages on said buildings, the balance, $14,729.93 having been advanced by this defendant.

9. This defendant, at the request of complainant and on his representation that he had no other means of support, has advanced to complainant from $35 to $105 in weekly payments, from January 8, 1924, to January 24, 1925, aggregating in all $3,765.

10. Answering paragraphs 12, 13 and 14, this defendant says that it has repeatedly demanded of complainant that he perform his joint obligation under said option agreement and furnish or procure to be furnished jointly with this defendant the moneys paid and required to be paid as aforesaid, and that complainant has and still does fail and neglect and refuse to do so, and that by reason thereof this defendant has refused longer to make weekly advances to complainant, and has asserted that complainant had failed to perform said agreement and has no longer any interest in said transaction.

Answer.

11. This defendant tenders itself now ready and willing, as it has always been ready and willing, to perform all of its obligations to complainant under said agreement, if and when complainant shall perform the obligation of said agreement incumbent upon him.

12. Paragraph 15 is denied. 10

13. Answering paragraph 16, this defendant says that complainant has lost his rights and interest in said premises by failing to perform his own obligation under said agreement.

MORRISON, LLOYD & MORRISON,
Solicitors for and Counsel with Defendant,
Steenland Construction Company.

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AFFIDAVIT.

THOMAS CAMERON, of full age being duly sworn according to law on his oath, says that he has examined the records of lis pendens in the Bergen County Clerk's office and that there is recorded in said office in Book 7, Page 216 of Lis Pendens, a notice of the pendency of this suit, between Roderick D. Grant, complainant, and 30 Steenland Construction Company, et al, Defendants.

THOMAS CAMERON.

Sworn to and subscribed before me
this 19th day of March, 1925.

MADELINE BACHMAN,
Notary Public,
New Jersey.

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AFFIDAVIT.

State of New Jersey, }
County of Bergen. } *ss.*

Peter M. Steenland, of full age, being duly sworn according to law, on his oath deposes and
10 says that he is president of Steenland Construction Company, one of the defendants in this suit, and that he has personally had full charge of all of the transactions between said Steenland Construction Company with complainant, Roderick D. Grant, and defendant, Nordhoff Land Company, in respect to matters mentioned in complainant's bill.

Deponent further says that on December 16, 1923, the Nordhoff Land Company, as vendor,
20 made a certain option agreement to Steenland Construction Company, and the complainant, Roderick D. Grant, therein described as optionees; by which said optionees were given the option to purchase certain lands, part of which are described at length in paragraph 11 of complainant's bill, and further says that in and by said option, it was expressly agreed that "if the optionees shall exercise any option hereunder they shall jointly and severally be bound
30 and do hereby agree to purchase the parcel with respect to which the option is so exercised." Deponent further says that the original of said option agreement is in his possession, as president of said company, ready to be produced and proved whenever the Court shall so require.

Deponent further says that after obtaining said option, the complainant and Steenland Construction Company elected to exercise said option and purchase the premises described in
40 paragraph 11 of complainant's bill.

Deponent further says that he has repeatedly requested and demanded that complainant furnish or procure to be furnished jointly with Steenland Construction Company the moneys required to be paid by said option agreement by the execution of mortgages and other documents as therein provided, and that said complainant, Roderick D. Grant, has always neglected, failed and refused and still neglects, fails and refuses to pay, or cause to be paid, any part of said moneys.

Deponent further says that said Steenland Construction Company having bound itself by said option agreement as aforesaid, not only jointly, but severally, to perform said agreement, has been obliged by complainant's failure to provide any part of said moneys, to pay all of the moneys required to be paid in and about the performance of said agreement.

Deponent further says that Steenland Construction Company has paid:

Taxes—1924.	
Borough of Leonia	$4,249.28
Borough of Englewood	826.42
Borough of Fort Lee	438.77
Borough of Leonia	2,154.32
Paid on account—principal of mortgage	30,012.20
	$37,680.99

and will be compelled to pay during the present year approximately:

Taxes—1925.	
Borough of Leonia	$5,000.00
Borough of Englewood	1,000.00
Borough of Fort Lee	500.00

Assessment for macadam roadway and concrete—Jones Road	4,665.90
To be paid—account principal of mortgage	30,000.00
To be paid—account principal of mortgage	3,960.00
	$45,125.90

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and has also paid:

Drawing papers, including stamps.	$ 413.11
Advertisement	265.75
Engineer services, surveying, plans.	1,059.00
Painting signs	179.49
Carpenters, laborers and material, work on road	780.60
	$2,697.95
For the erection of six buildings on said premises	59,729.95
Raised by mortgages on said buildings	45,000.00
	$14,729.95

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Deponent further says that the complainant, Roderick D. Grant, from the early part of January, 1924, until the latter part of January, 1925 had, so far as this deponent could learn, by statements made to him by said Roderick D. Grant or otherwise, no means of support other than the expectation of moneys to become payable to said complainant in and by reason of performance of the aforesaid option agreement, and that at the request of complainant, in order that he might maintain himself pending the performance of said agreement, this deponent did cause Steenland Construction Company to pay

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to said Roderick D. Grant weekly sums of money ranging from $35 to $105 per week, from January 8, 1924, to January 24, 1925, aggregating in all $3,765.

Deponent further says that upon the continued and persistent refusal and failure of said Roderick D. Grant to pay or cause to be paid any part of the moneys required for the performance of said option agreement, and the documents drawn and executed in conformity therewith, this deponent, on behalf of Steenland Construction Company, has refused longer to make weekly advances to complainant, and has asserted to complainant that by reason of his failure to perform said agreement, complainant has no longer any right, title or interest in the premises in question.

Deponent further says that, as required by said option agreement, there have been erected on part of the premises described therein, six dwelling houses, for which the Steenland Construction Company has paid the cost of construction over and above the amount raised by mortgages as hereinbefore mentioned; that Steenland Construction Company has contracted to sell and convey one of said houses to Anthony Cutaia and agreed to deliver the deed and close title on December 30, 1924, and that said purchaser has refused to take title by reason of the lis pendens filed by or in behalf of complainant in this suit.

This deponent further says that the other five houses of the six last above mentioned are substantially completed and ready for sale, and that they cannot be sold or conveyed by reason of said lis pendens; that the market for the sale

of property of that class will be active during the remainder of this month and the months of April and May, and said houses should be sold at that time if they are to be sold to advantage.

PETER M. STEENLAND.

10 Sworn to and subscribed before me this 19th day of March, 1925,

Madeline Bachman,
Notary Public, New Jersey.

REPLICATION.

The complainant, replying to the answer filed by the Steenland Construction Company, a New
20 Jersey corporation, the defendant in the above action, says that:

1. As to the allegations in the second paragraph of said answer, the complainant admits that the first option has now expired, but he asserts that the new and existing option given by the Nordhoff Land Company, a corporation, to the Steenland Construction Company, a corporation, and this complainant, was based and
30 predicated upon the original option, and that it carried out and continued the terms of said option, and further that the said second or existing option was made and executed prior to the expiration of the original or first option, and was considered as a continuation of said original option.

2. Replying to the third paragraph of said answer, the complainant admits that the said option agreement given by the Nordhoff Land
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Company contained the quotation particularly set forth in said paragraph, but complainant asserts and alleges that said provision pertained only to the agreement between the Nordhoff Land Company on the one part and the Steenland Construction Company and this complainant on the second part, and that said quotation has no bearing upon the agreement made between this complainant and the said Steenland Construction Company, a corporation. The complainant further asserts that under the terms of said agreement between complainant and the Steenland Construction Company it was expressly understood and provided that the Steenland Construction Company was to advance any and all moneys required for securing and developing said property, it being expressly understood and agreed that the complainant was not required or expected to advance any sum whatsoever for said purposes, or for any other purpose in connection with the exercise of said option for the purchase of said property, or the development thereof.

3. Complainant admits the allegation of the fourth paragraph of said answer, but asserts that the said option was exercised in the manner and under the conditions as set forth in the bill of complaint.

4. Complainant, replying to the allegations in the fifth paragraph of said answer, repeats the allegations of the bill of complaint, and further asserts that he has never neglected, failed or refused to perform any part of the agreement to be performed on his part, and further alleges that no request or demand whatsoever was ever made by the defendant Steenland Construction

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Company for complainant to pay any of the moneys as set forth in the answer, and further asserts that it was not his obligation, under the agreement, to make any such payments, but that under said agreement the Steenland Construction Company were to assume and pay
10 all of the finance expenses connected with the purchase, development and sale of said property, and further asserts that he, the complainant, carried on and completed all of the negotiations with the Nordhoff Land Company, resulting in the option set forth in the bill of complaint and answer.

5. Replying to the allegations set forth in paragraphs 5, 6, 7 and 8 of said answer, the complainant asserts that he has no knowledge,
20 information or belief sufficient to express an opinion thereon, and he leaves the defendant to its proof thereof at the hearing in this matter, but the complainant further asserts that any and all payments so made by the defendant as set forth in its answer were in strict accord with the agreement between complainant and said defendant and were a part of the obligation of the said defendant under the terms of the said agreement.
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6. The complainant, replying to paragraph 9 of said answer, admits that he has received certain weekly payments from the defendant Steenland Construction Company, between the dates as set forth in said paragraph and amounting to approximately the total set forth in said paragraph, but the complainant denies all the other allegations as set forth in said paragraph, and further says that under the agreement made
40 between said complainant and the defendant,

Steenland Construction Company, he was to receive a weekly salary of one hundred dollars ($100) and that these payments of salary were to be considered and charged as one of the items of expense in the development of the said property and were to be deducted as such in the determination of profits at a subsequent date; that some time after making this arrangement and during a discussion relative to these weekly payments, it was suggested that they be tentatively considered as payments to be deducted from complainant's share of the profits when determined and distributed, and that four payments of fifty dollars ($50) each were made to complainant after the said repudiation of the agreement by the said defendant, Steenland Construction Company, as set forth in the bill of complaint.

7. Replying to the tenth paragraph of said answer, complainant denies that the defendant has repeatedly demanded of the complainant that he furnish or procure to be furnished jointly with the defendant, Steenland Construction Company, moneys paid or required to be paid under the said option agreement or for any other purpose, or that the said defendant repeatedly or at any time has demanded that the complainant perform any obligation under said option agreement or otherwise relative to the procuring or furnishing of money as aforesaid, and the complainant further alleges that under his said agreement with the Steenland Construction Company all financial obligations connected with the purchase, development and sale of said property and premises were to be paid by the defendant, Steenland Construction Company, he, the complainant, having secured the option for

the acquisition of said property, having arranged all the terms for the purchase of same and assisting in such manner as might be possible in the development and sale thereof. The complainant asserts that no demand was ever made upon him by the Steenland Construction
10 Company that he furnish any funds or moneys in connection with the purchase, development, maintenance and sale of said property, and that the first intimation which he has ever received of any such demand, or the first intimation which has ever been given to him that he was expected to share the financial burdens relative to said property was received when he first read the answer filed herein, to which this replication is made, and the complainant asserts that this is the first demand or suggestion of a demand
20 which has ever been made that he share in the financial obligations as provided in the option agreement or otherwise; and complainant denies that the refusal of the said defendant to make or continue to make the weekly payments to complainant was due to his refusal or failure to share the financial obligations or burdens relative to said property; and complainant asserts that he has fully performed all of his obligations
30 and duties under his agreement with said defendant relative to said property and that he remains willing and ready to continue to perform all the terms, conditions and obligations in accordance with his agreement with the said defendant.

8. Replying to paragraphs 11 and 13 of said answer, the complainant denies that the defendant has always been ready and willing to perform all of its obligations to complainant under
40 said agreement and denies that he, the com-

plainant has lost any of his rights and interest in said property by failing to perform any of the obligations on his part which under his agreement with the Steenland Construction Company were to be performed by him; and the complainant asserts that he tenders himself ready and willing to carry out the terms of his said agreement with the defendant, Steenland Construction Company.

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ANDREW J. WHINERY,
Solicitor for Complainant.

REBUTTER.

The defendant, Steenland Construction Company, answering the new matter alleged in complainant's replication, says that:

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1. It denies the allegation in paragraph 1 that the new and existing option given by the Nordhoff Land Company, a corporation, to the Steenland Construction Company, a corporation, and this complainant, was based and predicated upon the original option, and that it carried out and continued the terms of said option and that said second option was considered as a continuation of said original option.

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2. It denies the allegation in paragraph 2 that it was expressly understood and provided that the Steenland Construction Company was to advance any and all moneys required for securing and developing said property, it being expressly understood and agreed that the complainant was not required or expected to advance any sum whatsoever for said purposes or

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for any other purpose in connection with the exercise of said option for the purchase of said property, or the development thereof.

3. It denies the allegation in paragraph 5 that any and all payments so made by the defendant as set forth in its answer were in strict accord with the agreement between complainant and said defendant and were a part of the obligations of the said defendant under the terms of the said agreement.

4. It denies the allegation in paragraph 5 that under the agreement made between said complainant and the defendant, Steenland Construction Company, he was to receive a weekly salary of one hundred dollars ($100) and that these payments of salary were to be considered and charged as one of the items of expense in the development of the said property and were to be deducted as such in the determination of profits at a subsequent date; that some time after making this arrangement and during a discussion relative to these weekly payments, it was suggested that they be tentatively considered as payments to be deducted from complainant's share of the profits when determined and distributed, and that four payments of fifty dollars ($50) each were made to complainant after the said repudiation of the agreement by the said defendant, Steenland Construction Company, as set forth in the bill of complaint.

5. It denies the allegation in paragraph 7 that under his said agreement with the Steenland Construction Company all financial obligations connected with the purchase, development and sale of said property and premises were to be paid by the defendant, Steenland Construc-

tion Company, he, the complainant, having secured the option for the acquisition of said property, having arranged all the terms for the purchase of same and assisting in such manner as might be possible in the development and sale thereof and that the first intimation which he has ever received of any such demand, or the first intimation which has ever been given to him that he was expected to share the financial burdens relative to said property was received when he first read the answer filed herein, to which complainant's replication is made, and the complainant asserts that this is the first demand or suggestion of a demand which has ever been made that he share in the financial obligations as provided in the option agreement or otherwise, and that he has fully performed all of his obligations and duties under his agreement with said defendant relative to said property and that he remains willing and ready to continue to perform all the terms, conditions and obligations in accordance with his agreement with the said defendant.

MORRISON, LLOYD & MORRISON,
Solicitors of Defendant.

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IN CHANCERY OF NEW JERSEY.

November 10, 1925.

Between

RODERICK D. GRANT,
Complainant,

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and

STEENLAND CONSTRUCTION COMPANY, *et als.*,
Defendants.

Transcript of shorthand notes of testimony taken in the above-entitled matter before his Honor, John H. Backes, Vice-Chancellor, at
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the Chancery Chambers, in the City of Newark, New Jersey, in the presence of Mr. Andrew J. Whinery for complainant, and Messrs. Morrison, Lloyd & Morrison for defendants.

RODERICK D. GRANT, sworn for complainant.

Direct examination by Mr. Whinery.

Q Mr. Grant, you are the complainant in this
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case? A I am.

Q Will you tell us when you first became interested in the real estate which is described in your bill of complaint and which is the subject of this suit? A I think some time in September, 1923.

Q How did you become interested in it? A Having had some talk with George Hitchcock, who was developing the Phelps estate in Teaneck and in regard to a golf club promotion, he
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later—after those negotiations had failed as

far as I was concerned, because I told him I did not care to be associated with it, he then suggested that I go with him and look at certain property surrounding the Englewood Golf Club in Englewood and— (interrupted.)

Q Did you go to see that property? A I went to see that property with him. 10

Q And what happened after that? A He suggested that at that time that I go—it was then Mr. Thacher—it is now Judge Thacher—I suppose I ought to call him Judge Thacher now—he sent me to Judge Thacher to see if I could take over his property and manage it for him on certain terms, the detail of which he outlined and gave to me on a slip of paper. This was done after we went back to his office at Teaneck. 20

Q Did you see Judge Thacher relative to that? A I saw Judge Thacher, I think, on October 18th for the first time, 1923.

Q And did he accept your proposition that you put to him at that time? A He in the first place asked me if I could tell him who I was and wanted me to submit some recommendations. I took him certain letters, several of which came from Ambassador Myron T. Herrick, Ambassador to France, and Senator Theodore E. Burton, 30 and two or three judges in Portland, Oregon, that I knew. There were letters from Roland P. Grant, who was no relation of mine—the same name. He was then president of the Irving Bank-Columbia Trust Company, and submitted those letters to him.

Q Now, who is Judge Thacher? We haven't put that on the record yet. A He was Thomas D. Thacher and he was the son, is the son of Thomas D. Thacher which originally collected 40

this acreage besides the acreage which is in the Englewood Golf Club property some twenty-three or twenty-four years ago.

Q Is Judge Thacher connected in any way with the Nordhoff Land Company? A Judge Thacher is president, or was then, of the Nord-
10 hoff Land Company.

Q Did you enter into any arrangement or scheme at that time with Judge Thacher or did you make any proposition to him? A I made a proposition to him to take over the property and he was to pay me a hundred dollars a week for managing it; he was to pay all expenses, and they were itemized as so much for office, stenographer, telephone—temporary office, and so forth and so on, and we were to share fifty-fifty on all of the profits, and I showed him how much he
20 could, in all conservative figuring get from the property.

Q What did Judge Thacher do with regard to the proposition? A He said he wanted to consider it, and I think I saw him two or three times—my notes will show exactly when I saw him if I can—(interrupted).

Q First, what happened? Did he agree to that proposition? A He said he wanted to con-
30 sider it and he wanted to make some investigation about me; wanted to call on Parmeley Herrick, son of Ambassador Herrick under Presidents Taft and Roosevelt, because a friend of Judge Thacher knew Parmeley Herrick very well, and wanted to talk to him, and he said, then, if I would come back after he knew the result of that, that he would let me know definitely, and then I went back.

Q Now, did you enter into any agreement
40 with Judge Thacher to handle the property on

that basis? A No. After I went back to him he said he had decided that he didn't want to go into the real estate business, as he put it, and if I could get somebody to back me on the proposition and take over the whole property, that he would do everything he could to make it possible for me to do that. 10

Q And did you then seek anybody to go into the venture with you? A I then went back and saw Mr. Hitchcock and asked him what he would then suggest. He suggested, among other people, the Steenland Construction Company, and that was on the 30th of October, 1923, and I went from his office in Teaneck over to them and saw them in regard to the property. It was Mr. Peter Steenland.

Q On October 30th, is that what you mean? A October 30, 1923. 20

Q Peter M. Steenland? A Yes, sir; the president of the construction company.

Q Did you take up the proposition with anyone besides the Steenland Construction Company? A Yes, sir; I talked with a friend of mine in New York, David B. Rushmore, who was a consulting engineer.

Q In this talk on October 30th with Mr. Peter Steenland, will you tell us what you discussed with him at that time? A In the first place, I started to discuss the property, and then I told him what the property was; what the possibilities were; I told him that there was a mile and a half of improved roads in there that could not be duplicated at present prices—then present prices—under $200,000, and then I told him about the possibility of the bridge coming across, because there has been considerable agitation—had been—in connection with the bridge. He 30 40

knew that; and those things appealed to him; and then the conversation got around to my own personal affairs again, as to who I was, and he said, "Of course, I don't know who you are, Mr. Grant. You appear all right, but I would like to know something about you," and I told
10 him I would bring to him these letters.

Q Now, on that day did you discuss the terms of your agreement? A Yes, sir; went into it fully, the terms of the agreement; I told him the proposal which I was bringing to him was this, that he was to furnish all of the finances in every way; he was to draw no salary—there was to be no overhead charge; they were to do it under their own company, that they were to pay me a hundred dollars a week for looking
20 after the active necessary work there was in connection with the active development, and we were—I was to share equally in the sale of the property—I was to control it—we were to control it together, and after the other expenses were deducted, including my salary, we were to share fifty-fifty in the profits.

Q When the property was sold? A As it might be sold, or if we sold it all—it was discussed whether we might sell the whole thing
30 together or whether it might be sold in parcels, but as we went along—(interrupted).

Q When did you next see Mr. Steenland or anyone representing the company? A May I look at my diary notes?

Q Are those diary notes, notes that you kept daily? A Yes, sir, they are. I have kept a diary since—well, to be accurate, since January, I think, 1918, when I went into the army I
40 starting keeping a diary.

Q Were the records in this diary entered from day to day? A Yes, sir, each day.

Q Each entry is made on the day for which it states? A Yes, sir; generally before I retired at night. Sometimes during the day. I think I saw him then the next day. I saw him so many times there. I went and saw him in the A. M., and saw Thacher in the afternoon. 10

Q What day is this? A This was the 31st of October, 1923.

Q And did you discuss the matter again with Peter M. Steenland? A Yes, sir, discussed again with him in detail because—at that time we discussed it very much in detail and precisely along the same lines.

Q Were the terms of your arrangement discussed at that time? A I can't say that they were absolutely discussed at that time. I remember, I think on November 9th, or—I think it was November 9th—(interrupted). 20

Q Just stick to this particular day now, Mr. Grant. A I cannot say absolutely that this—between ourselves that was taken for granted; it was more the possibilities of the property.

Q When did you see him again? Can you tell us? A I saw him November 2nd the next time. We went over the property on that day and discussed again the possibilities and what we might each make out of the property ourselves. 30

Q And then did you see Mr. Thacher soon after that—Thomas D. Thacher? A I saw—I don't think that I saw—I wish you would enlighten me as to whether I ought to say Judge Thacher or Mr. Thacher.

The Court: Go on. Call him anything. 40

The Witness: I didn't see him that day. I saw Hitchcock that day.

Q Did you obtain any option from Judge Thacher? A I obtained first a verbal agreement that he would do so and so if I could get somebody to back me on the proposition. He told me what he would do.

Q Afterwards did you get a written option? A I got a written option on the 5th of November.

Mr. Whinery: Have you that original option, Mr. Morrison?

Mr. Morrison: I do not think so.

Q I show you this paper, Nordhoff Land Company and Roderick D. Grant, and ask you if that is the option? A That is the option.

Q Signed by whom? A Signed by Mr. Thacher, president of the—(interrupted).

Q Dated November 5th? A November 5th.

Mr. Whinery: I offer that in evidence.

(Paper marked Exhibit C. 1.)

Q When did you see Peter M. Steenland or the officers of the Steenland Company next? A After November 5th I saw him on November 9th. Meanwhile I had seen Thacher several times.

Q What conversation did you have with Mr. Steenland on the 9th? A I talked to him about the same proposition and he checked me again on the terms, and he said, "Now, Mr. Grant, let me see what your arrangement is again," and he repeated, he said, "We are to go into this

and you expect me to put up all this money and expenses and pay you a hundred dollars a week and we are to split fifty-fifty on the property,'' and I agreed.

Q Did you see him the next day at all? A Yes, sir; I saw him November 10th.

Q And what happened that day? A Mr. Hitchcock, George C. Hitchcock, came over in answer to a request from me, either Mr. Steenland or me, through me, that he come over and talk about possible loans in connection with the property, because Mr. Steenland wanted to know how far it would be possible to give mortgages and Mr. Hitchcock thought that possibly he could help in the situation. He came over and talked to us jointly.

Q Was anything said at that time about your taking over the property? A He made the statement to Mr. Hitchcock, "Mr. Grant and I are considering taking over that Nordhoff property.'' Mr. Hitchcock knew that, of course, because I had already told him. You haven't asked that yet.

Q When did you next see Mr. Peter M. Steenland? A I saw him on the 13th of November.

Q What happened that day? A I had seen Judge Thacher in the morning and told Mr. Steenland our conversation, and we wrote a letter to Judge Thacher, a copy of which I think you have.

Q What was that, relative to this property? A Yes, sir, that was relative. There had been some question in Judge Thacher's mind as to whether the people who were backing me, whom he hadn't seen at that time, were really serious and really wanted to go into the proposition.

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Q What did your notes say with regard to the property, if your notes show—if they can refresh your memory—either with Judge Thacher or with Mr. Steenland? A We wrote this letter, which I do not remember, all the wording, but to the effect—(interrupted).

10 Q Tell us what happened after you saw Judge Thacher. I think you went that far. You said you had seen Judge Thacher the next day. What was it? A Yes, sir; he wanted me to state to him, to emphasize that I really had somebody that was seriously figuring on going into the proposition.

Q And did you see Judge Thacher or Peter M. Steenland the next day; that would be November 14th. A 14th, I think; I beg pardon.

20 Q On the 14th did you see him? A I saw Judge Thacher and gave him this letter, and meanwhile I had a photostat taken of this letter.

Q Did you see Judge Thacher or Peter M. Steenland on the 15th, the next day? A I saw him on the 15th, yes, sir.

The Court: Is that letter important?

Mr. Whinery: Not particularly important. Judge Thacher will be here a little
30 later.

The Witness: I would like to correct one thing. I think that that letter—I did not have a photostat taken of that one; I had something else in mind when I said that.

Q You testified about the 15th—did you see Judge Thacher that day? A I talked on the phone on the 15th.

Q And what did you discuss with him then?
40 A Along the lines of the seriousness of these

people and getting additional concessions over and above what he had already allowed.

Q Now look at the next day. Did you see either Peter M. Steenland or Thacher that day? A No; I went to Palisades Park, but Mr. Steenland was not there.

Q When did you next see Mr. Steenland? A On the 20th of November. 10

Q And where did you see him? A At his office.

Q Where? A Palisades Park.

Q When did you next see Peter M. Steenland or Thacher? A On the same day I phoned Judge Thacher and made an appointment to see him the next day and I did see him the next day and then went to see Mr. Steenland at Palisades Park. 20

Q When did you next see Thacher or Peter M. Steenland? A I saw Judge Thacher that day and I phoned Mr. Steenland from Judge Thacher's office.

Q Which day is this? A That is on the 22nd of November.

Q When did you next see either Judge Thacher or Peter M. Steenland or anyone connected with the Steenland Construction Company? A On the 26th of November I saw Judge Thacher, and he agreed at that time to draw up the other papers—the joint option. 30

Q Joint, in whose names? A In the names of both of us, Steenland Construction Company and Roderick D. Grant, or Roderick D. Grant and Steenland Construction Company.

The Court: You haven't said a word as to any arrangement as to that.

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The Witness: That was discussed, your Honor, after—during the conversation after I had received the first option.

The Court: You haven't said anything about informing Mr. Steenland that you had the option, did you?

10 The Witness: I am not absolutely sure. You see, I was dealing with other people at the time. I wasn't tied up to him in any way at all. I had already talked to some other people. I had no assurance that Mr. Steenland would go into this property—would go into this proposition, and it was of very vast importance to me, the value was so great, and the contract which I was getting from Judge Thacher was a contract 20 that was so very unusual in its terms that even my own attorneys would hardly believe me when I told them what I had, and, naturally, I was in a position that I was afraid almost to take it to anybody, and so I can't say just exactly when I told Mr. Steenland that I actually had a written option. I can't say that.

Q I think one of the things that the Vice-30 Chancellor wants to find out is when you first discussed with Steenland, or if you had discussed with him the question of taking out a joint option between the Nordhoff Company on one hand and you and the Steenland Construction Company on the other, about? A That was, I should say, about the latter part of—I should say offhand about the middle of November. I couldn't say absolutely definite, and possibly within a few days or a week after the November 40 5th option, but I cannot—(interrupted).

Roderick D. Grant, direct.

Q Can you tell us about your discussion with Mr. Steenland, what was said in discussing with Mr. Steenland with reference to this joint option? A It was arranged that if we went into it at all we would go into it jointly. It was arranged on those terms. That is the thing he had repeated to me in his own words. I will add our agreement between ourselves was before he went and agreed to even consider it, and one of the letters which was written there was a note added to it at his direction that we are in no way legally or morally bound to go into this, because he hadn't at that time fully made up his mind that he actually would go into it. However, the discussion if we did go in was all on the basis of our original terms—if he did go in.

Q Now, when did you—first, in that discussion did you and Mr. Steenland agree that you would seek a joint option of this property? A Yes, sir. Yes; that was discussed, if we obtained the other option we would get a joint option.

Q In these conferences with Judge Thacher which you have mentioned, was mention of the joint option discussed with him? A I can't say just what day that was discussed, but it was decided that when we took the option we would take it in the names of ourselves, jointly, because Mr. Hitchcok during that time had gone to Judge Thacher's office and had, in my behalf, because there was always a doubt here as to whether we could get the concessions we wanted, or whether Judge Thacher would give those concessions, and Mr. Hitchcock went to his office and disclosed the fact that it was the Steenland Construction Company that was backing me, and I gave Mr. Hitchcock the authority to do that if he chose.

Q Now, will you look at November 28th, and tell us if anything occurred on that day? A I saw Mr. Steenland and received a letter to Thacher. That was a letter—I think that is the one to which I just referred that stated that we are not morally or legally obligated, and that states there plainly that—(interrupted).

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The Court: Wait; we will have the letter.

Mr. Whinery: We will leave that original letter until Judge Thacher comes.

Q When was that letter written, November 28th? A 28th.

Q Now, will you tell us what next happened relative to this transaction with the Steenland Construction Company? A Then I took the letter to Thacher, and meanwhile had a photostat taken of that letter.

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The Court: Now go on and tell us your story, won't you? Proceed.

The Witness: On the 30th of November—well, I had the photos taken; I have a note here—had that taken. I think you have the bill; I am not sure. I took the letter to Thacher on that day. On the 3rd of December I saw Judge Thacher and he told me that I would get the papers the following day.

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Q What papers were they? A Those were the final papers from him, and I went to Mr. Steenland and saw him and we decided to make some changes. I also received some blue prints from Mr. Steenland. I think those blue prints were in connection with houses and Mr. Thacher

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wanted us to furnish blue prints which would be a matter of record as to what class of houses we built on the property. On the 5th of December I received the papers from Judge Thacher and I took them to Mr. Steenland's office when he was not there. On the 6th of December—(interrupted).

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The Court: What paper?

The Witness: These were the joint options, your Honor, which was dated as of—(interrupted).

Mr. Whinery: This was the preparatory draft he is referring to now. The final draft was later.

The Witness: On the 6th of December I went again to Palisades Park and saw Mr. Steenland and he signed the agreement and I took them over to Mr. Thacher's office and gave them to Mr. Van Doren. Mr. Thacher wasn't there.

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I also phoned on that day George Hitchcock in connection with the commission which he was receiving from the sale of this property to the Steenland Construction Company and myself. On the 7th of November I saw Judge Thacher and was still undecided about certain additional concessions that we wanted. On the 8th I went to the Palisades Park and got some letters from Mr. Steenland, and I went over, saw Hitchcock, and also saw Judge Thacher, and he told me I would get the final papers on Monday; that was two days following, this being Saturday. On the 10th of December I went to Palisades Park with Mr. Van Doren, who is in Judge Thacher's—was in

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Judge Thacher's office, and we re-signed the agreement, because meanwhile—they had been signed, but there was a change made of some kind, and Judge Thacher wanted Van Doren to have charge of these papers when they went so that he could bring them back.

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Q These are the option agreements you speak about? A These were the option agreements.

Q Were they signed that day? A They were signed that day and Mr. Steenland told Mr. Van Doren to be sure—he says, "Now, be sure you got an extra copy for Mr. Grant, because he has got to get copies of all these agreements." He distinctly told him that. Mr. Van Doren said he had, the three of them were there.

20 Q And did you get a copy? A I did.

Q Is this it? A Yes, sir, that is the copy.

Q And the date of that is— A December 10th.

Mr. Whinery: I offer it in evidence.

(Paper marked Exhibit C. 2.)

Q What after that? A On the 11th I was there, stayed with Mr. Steenland at his house

30 to lunch and went over the property after lunch and went over to see some of the surrounding country relative to the possibility of approaches from the bridge, and so forth, because the bridge was quite large in our conversation at that time. Then I went over to Weehawken to see about the gas, as I remember it; gas, sewer, water and drain sewers were in these roads—this mile and a half of road I spoke of. I also went over to Judge Thacher's office to get some more maps, of which he had quite a number.

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Roderick D. Grant, direct.

Q And did anything happen on the 12th? A On the 12th I went over to see Mr. Steenland, and we also together went around to see the sewer and gas man and also went to see Stark. Mr. Steenland told these people that we were figuring on taking over this property, the gas people and the electric light people, and so forth, and we went over the property again and I went back—I think I phoned Mr. Halstead, but I don't remember about it.

Q What did you do on the next day? A The 13th of December I went to Mr. Leavitt's office; he was the engineer of the original layout of Judge Thacher's company, of the location of the sewer and water, and also Mr. Van Doren, in Judge Thacher's office, witnessed the signatures, which was one of the purposes for which Judge Thacher had sent him on the 10th with the three agreements—witness for all of them, and then I went to Palisades Park again and went to Englewood with Mr. Steenland, and went over to the gas company. I also wrote a letter to the Public Service Railway Company in regard to this property, I think in connection with the proper—how far the street car company was supposed to go according to their franchise on one fare.

Q Who did you see at the gas company that day; do you remember the name of the man? A I think it was Mr. Ackerman, the gas and electric man, but I wouldn't be sure. I think I saw Mr. Folger at the gas station, either in Weehawken or Hackensack.

Q Was anything said by Mr. Steenland in the presence of you and these other gentlemen relative to your interest in the property? A He said, as he did all those times, that "we," refer-

ring to me and himself. Sometimes he would say, "Mr. Grant and I have taken over that property," or "expect to take over that property"; he always spoke of it as though we were both doing it.

Q What happened on the next day, if anything? A I went—we arranged—had arranged to have the gas pipe exposed and they had sent men over to expose the gas pipe at the juncture of two of the roads, Nordhoff and Edgewood. I was also at Mr. Steenland's for lunch that day. I went to Teaneck to see George Hitchcock, but he was not there. We ordered—made arrangements with the engineer for the preliminary map also on that date.

Q Who was that engineer? A Mr. Hendee, Myron Hendee, and he at that time had a partner who afterwards left him. I don't remember the name.

Q Who was with you at that time? A Mr. Steenland was with me.

Q What happened on the 15th, if anything? A On the 15th I went over there in the afternoon—went over the property again, and Peter M. Steenland and Rollo Steenland and I had a conference, and the result of that conference was that we decided to ask for a deed.

Q From the Nordhoff Land Company? A Yes, sir.

Q Was a letter sent at that time relative to the deed? A I think there was a letter sent stating—I think it was a registered letter and was signed by the Steenland Construction Company and Roderick D. Grant.

Q And what discussion did you have that day with Mr. Rollo Steenland and Peter Steenland relative to that property, any at all? A I

will have to refer to some other notes that I have.

Q Did you discuss the property that day? A Yes, sir; we discussed that property, the possibilities of the property and its relation to the golf club and the right of the roads and so forth and so on, because we decided to take in property—we were talking about taking in property of the road itself which ran through the golf club property, and which were owned in fee by the Nordhoff Land Company with rights of way across the road.

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Mr. Morrison: Were these memoranda made each night?

The Witness: These notes were made every night.

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Mr. Morrison: At the time they bear date?

The Witness: Yes, sir, absolutely, and every telephone that—I would say every telephone can be checked up by the records of the telephone company, easy, sir. We are on what?

Q On the 17th. A We sent a letter to Simpson, Thacher & Bartlett, the representatives—legal representatives of the Nordhoff Land Company, 62 Cedar street, notifying them that the Steenland Construction Company and Roderick D. Grant intended to take over the property, and that letter was as per our arrangement of December 10, 1923, and both the Steenland Construction Company and I signed the letter. We also started the engineers on that day. The other man's name was Van Breeman—Hendee and Van Breeman.

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Roderick D. Grant, direct.

Q What relation was Peter Steenland to the company? A President, and Rollo Steenland is vice-president, I understand.

The Court: Family corporation?

Mr. Morrison: Yes, sir; these two brothers and perhaps nominal stockholders.

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The Witness: I was also to Mr. Steenland's for lunch that day, and the engineer notified us that he had qualified as an engineer.

The Court: With whom?

The Witness: With certain—with the Jersey Title Guarantee & Trust Company, Jersey City, which Judge Thacher specified the certificate should be by them, and we wanted Mr. Hendee to do this work and suggested that he get their O. K., which he did, and we turned that in to satisfy Mr. Thacher.

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The Court: What was it, subdividing?

The Witness: With the idea of development.

The Court: What was he to do, subdivide?

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The Witness: We were to subdivide and sell lots.

The Court: And what?

The Witness: And sell lots, and also build houses; general development of the property.

Recess.

Q Mr. Grant, you had just been testifying about the letter of December 17th, which was written to Simpson, Thacher & Bartlett.

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Roderick D. Grant, direct.

Mr. Whinery: May I take your carbon of that or are you satisfied to have a copy used? The original will be produced when Judge Thacher comes.

Q I show you this letter, Mr. Grant, and ask you—show you a change made on there, and ask you if that change of December 10th, instead of November—from November to December 10th was made before it went out? A Yes, sir.

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Q I call your attention to the end of the paragraph there where it states that deed to be made out to the Steenland Construction Company, a corporation of New Jersey, and ask you to explain, tell us any discussion that occurred prior to the entry of that clause in this letter? A There had been some—after December10th—after the joint option was delivered to us, there was some discussion on the part of Peter and the advisability of taking this property, the deed, when we might take it, in the name of the Steenland Construction Company, and he gave me his reason as this, he stated that they did a great deal of their financing by reason of second mortgages, and there were second mortgages, or would be second mortgages on houses with which I would have no connection, not in connection with this property, and that if I was part of the deed, that I would have to do a lot of signing, and if I changed my status as a single man that it might complicate things for my wife signing, and also another reason that he gave was that he had a discussion with me about the possibilities of my making some kind of an association with them in connection with their real estate work and building and that I could—I might be

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able in a great many cases, to get properties the same as I had been able to get this on better terms than if it were not known publicly that I was connected with the Steenland Construction Company. In other words, as he explained, if I went to somebody and they knew this is the Grant that is connected with the Steenland Construction Company that they would immediately think that their property was more valuable than they had thought and maybe they better stop and hesitate, but if I went absolutely unknown, as a free lance, as a real estate agent, that I could probably get better terms with them.

Q Now, Mr. Grant, was that discussed on that day when you wrote this letter of December 17th, and as a result of that discussion was there anything added to your letter, if you had such a discussion? A That was discussed at that time, and had been discussed before, and it was after we had written the letter—at first it was not in the letter—then we had a further discussion, and when it came back from the stenographer we discussed it again, and the stenographer was called in and a clause was added, as is shown here, added in after the letter—(interrupted).

Q What was the clause that was added? A The clause that was added was "Deed to be made out to the Steenland Construction Company, a corporation of New Jersey." As I remember it, that correction was not made on the letter proper and it was made on the carbon copy afterwards.

Q Now, go ahead, Mr. Grant, and tell us anything that happened on the 18th of December, if anything did happen, with regard to this property. A I went to the office of Levitt, the engineer who made the original layout for—

pardon me—for Judge Thacher's father, and obtained some drawings from him. I also went to Mr. Thacher's office and he told me that he had received our letter and he congratulated me on my persistance.

Q What was your purpose in going to see Judge Thacher that day? A That was—I went to see him in regard to some drawings—to get some drawings, because the engineer, Levitt's office didn't want me to take any drawings out, except I had an order from Thacher and I went there to get those drawings, for one thing.

Q Now, Mr. Grant, will you turn to your memorandum for December 20th and tell us if anything happened on that day relative to this property? A I would like to state here, on December 19th I went to see Mr. Conger of the Peoples Trust & Guaranty Company of Hackensack about handling the loans and title policies and Mr. Steenland told him that we, referring to me, had bought the property, and we were talking to him jointly about the loans on the property. At lunch—I was at Mr. Steenland's for lunch that day—and at the table I was telling them about a thing that happened out in Portland, a vessel that was on the beach, and I told them of the money that it might have been possible to make in that and also told him that in this property we ought to make two hundred and twenty-five thousand dollars apiece. This was at his lunch table that day.

Q Now, look at December 20 and tell us what happened on that day, if anything. A On the 20th of December I went to see Levitt and I had a letter from Simpson, Thacher & Bartlett. I went to see Mr. Steenland and he showed me the letter of Simpson, Thacher & Bartlett of the

18th, saying that he had received our letter stating our intention to take it over, and this letter—(interrupted).

Q Just a minute. I will come to the letter. Is this the letter to which you refer, dated December 18th? A Yes, sir; that is the letter.

10 Q And to whom is that addressed? A Addressed to the Steenland Construction Company and Roderick D. Grant. Our letter to him had been signed in the same way.

Mr. Whinery: I offer that in evidence.

(Paper marked Exhibit C. 3.)

Q Now you look through your notes for the next few days and see if you had any conferences with Judge Thacher relative to this land? A
20 I had one conference with Mr. Peter, and in talking about the—another joining property which was owned by Mr. and Mrs. Coover. We suggested—we talked about the advisability of going to Mr. Coover to get either—get a roadway through at a certain point and Peter suggested that Coover would say, and I have quoted these words, "Well, Mr. Grant and Mr. Steenland, if you want to pay for the improvements
30 on the extension of Reilly avenue and Overlook Terrace," and so forth. He made that statement to me.

Q Look through your notes of the next day or two and see if there is any conversation or conference that you had with Judge Thacher or at his office. Look at December 26th. A I was at Judge Thacher's office and saw him and Mr. Van Doren, and they told me that I would get the papers on the following Saturday.

Q What day is that? A That is on the 26th
40 of December.

Q And did you see Judge Thacher the next day at all or anyone? A I saw him and found the papers were not ready, and he told me that I would get them Saturday. Went to Palisades Park in the afternoon.

Q Did you see Mr. Peter M. Steenland that afternoon? A I saw him that afternoon and went to look at some other property with him. 10

Q Now turn to the 28th and tell us if you had any discussion that day about this property, and if so, with whom? A I went to the Palisades Park and saw Mr. Peter M. Steenland, and we had a discussion in regard to the advisability of taking over the golf links property, which is about ninety-six acres, I think, and is immediately to the east of our property—our property overlooking this—with the idea of cutting streets from Broad avenue right straight through, if we could get that property, and Mr. Peter M. Steenland told me at that time—we discussed the matter, and he told me at that time that if we got that, that would be on the same basis, and repeated our terms again, on the basis of my original agreement with him, that they were to carry the property and they were to pay me a hundred dollars a week and a fifty-fifty split on the profit, that, he thought we ought to consider that as part of the same property if we could get it. 20 30

Q Now we proceed to the 31st of December, and see if you have any memorandum there of any conference or discussion relative to this property? A I told Peter—Peter and Rollo on that day, the possibilities—I beg pardon. That is another piece of property. I had a discussion with Peter and I told him that I wanted the hundred dollars a week to start when 40

the final agreements had been made. I think he had meanwhile started to pay me fifty dollars a week, and I told him, I think that that should have started on the 10th when the joint option was taken. I have a note here as to what I think, or thought of it. I suppose I can't—(interrupted).

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The Court: What?

The Witness: I have a note here to the effect, "Think—"

The Court: No. On the subject?

The Witness: Yes, sir. I said, I had written here, "Think I am too lenient as usual—" (interrupted).

The Court: No, no.

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The Witness: I wrote—we wrote to Simpson, Thacher & Bartlett on that day and we both signed the letter. That was in regard to, I think, an extension about that time. We had expected to close January 1st. I think that was in regard to the extension. I also talked to Peter on that day because we had discussed in connection with the papers that I was supposed to sign, the supplemental agreement also, and I also told him—or he told me at that time that he would arrange the hundred dollars a week O. K. We also saw Hendee, the engineer, and Van Breeman. They were both down at the office.

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Q That is all on December 31st? A And he asked me at that time to come over Wednesday morning and talk over the papers, the bond and mortgage.

Q I show you a carbon copy of a letter, Mr. Grant, and ask you if that was a copy of the

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letter that was sent to Simpson, Thacher & Bartlett on December 31st? A Yes, sir; that is a copy.

Q Is that signed by you as well as the Steenland Construction Company? A Yes, sir.

Mr. Whinery: I offer that in evidence. (Paper marked Exhibit C. 4.) 10

Q Now when were you next at Palisades Park? A I was there on January 2nd.

Q What happened that day? A We read over the deed and mortgage and the duplicate agreement, the bond, Peter and I read those over and we decided to ask Mr. Thacher if we could have a surety bond instead of a personal bond, so that—because in case either Peter Steenland, Rolla Steenland, or myself should die, that it 20 might complicate matters, whereas if we had a surety bond it would go on in spite of anything.

The Court: Surety bond for what?

The Witness: Surety bond to guarantee the execution to the Nordhoff Land Company for our purchase.

The Court: The purchase price, you mean. 30

The Witness: The purchase price, a carrying out the terms of our agreement, retire the mortgage and so forth.

Q Now, turn to January 3rd and tell us what you find there. A Peter and I went to see Mr. Corbin of the Guarantee Mortgage & Title Insurance Company—I think is the correct name—at Passaic, and we talked to him and Mr. Harris, I think the trust officer, in regard to in- 40

surance and loans. We also stopped at Hackensack and saw the North Jersey Title Company, we also saw Mr. Conger of the People's Title & Trust, I think it is.

Q Now we proceed to January 4, and tell us what happened that day in connection with your
10 interest in this property. A I would like to state this, that Peter told Mr. Corbin and Mr. Zabriskie of the Jersey company also, that we, meaning Mr. Grant and myself, had taken over this property.

Q On what date was that? A That was on the 3rd also.

Q On the 4th? A On the 4th I saw Judge Thacher to obtain an abstract, and obtained the abstract which he let us take, and also to take
20 over the next day for both Steenland to sign personally and also myself.

The Court: Sign what personally—what do you mean?

The Witness: That was signing the—that was to sign the mortgage and the paper in case we should take the deed. That was in connection with, I think—the next day, rather, of doing that in connection with the
30 surety bond.

The Court: When was that?

The Witness: That was on January 4th.

Q Now look at your memorandum for the 5th of January and see what you got on that day relative to this property. A Peter—when I went to the office he showed me the papers that Simpson, Thacher & Bartlett had sent for us to sign for an extension of the closing date—both of us.
40 That was addressed to both of us, I think, both

the envelope and the letter, if I am not mistaken, came signed—addressed to both of us.

Q I show you envelope addressed Roderick D. Grant, Esq., and Peter Steenland, postmarked January 2nd, is that the envelope to which you refer? A Yes, sir.

Q And is this the stipulation to which you have just referred in your testimony? A Yes, sir. 10

Q And was a copy of that signed by you and by the Steenland Construction Company at that time? A We both of us had to sign it—both of us signed it.

Mr. Whinery: I offer the two papers.

(Papers marked Exhibits C. 5 and C. 6.) 20

Q Anything else happen on that day? A We also—Peter Steenland and I also went to see the engineer, Mr. Hendee, and also went to the real estate office to see how the stenographer—that is his real estate office in Palisades Park—to see how the stenographer was getting along with the copies of the abstract, which we had told Judge Thacher we would copy and return the originals.

Q And what day was that? A That was January 5th. 30

Q Look at your memorandum of January 7th and tell us if anything occurred on that day relative to the property? A We went to see the engineer again and Mr. Hendee at his office, and in speaking to Mr. Hendee, Mr. Peter uses the quoted words, "What Mr. Grant and I want."

Q Now we proceed to the 8th, and tell us if anything happened on that day? A Peter M. Steenland told me on that day—I was down to 40

the office—and he told Hendee how to lay them out and that he wanted me—Peter Steenland wanted me to O. K. it also as he didn't want—as he told Mr. Hendee he didn't want to do it unless I was satisfied.

Q Now look at your memorandum for the 10th, Mr. Grant, and tell us what happened on that day? A Mr. Reeves of the—in connection with the golf club came to the office and Peter Steenland and I had a conference and decided that possibly I had better keep in the background and not talk to Mr. Reeves at all, that was because we had discussed that it was better for me—along the lines that we discussed before in connection with his taking the deed in his own name, that I had better not appear as connected with them. We also had some negotiations for some other property under that same plan at that time.

Q Now skip over your notes until the 19th and tell us if anything occurred on that day. A I was there at Palisades Park and we talked over the possibilities of this property, both at his house and also in the machine.

Q Now, turn to the 28th of January and tell us if anything occurred on that day—if you had a discussion with either Peter Steenland or Mr. Rollo Steenland relative to this property at that time. A I was at Palisades Park and at Mr. Steenland's for lunch and he showed me Thacher's letter of the 23rd, and the assessment on Broad avenue for the curb, and it was addressed—this letter was addressed as I remember to—also to Roderick D. Grant and the Steenland Construction Company.

Q I show you an envelope addressed Roderick D. Grant and Peter Steenland, president, from

Simpson, Thacher & Bartlett, dated January 23rd, and ask you if that is the envelope? A That is the envelope, and I made a note of it at the time on the envelope.

Mr. Whinery: I offer the envelope.

(Paper marked Exhibit C. 7.) 10

The Witness: Also talked to Mr. Harris at Passaic at the Guarantee Title & Mortgage Insurance Company, and we wrote Thatcher that we would be ready to close February 10th at the latest.

Q Now, can you tell us what this letter from Thacher to you and the Steenland Construction Company was about? A Which letter?

Q Letter dated January 23rd, which you have just referred to. 20

The Court: Have you got the letter?

Mr. Whinery: No. I have called for its production and Mr. Morrison hasn't the letter. I may get a carbon from Judge Thacher.

The Witness: I think I testified to that, Mr. Whinery. I think that was in connection with the assessments on Broad avenue; 30 I think it was curbing, possibly sewer.

Q Now we proceed to February 2nd, and tell us if anything happened on that day? A I saw Peter Steenland, and Peter and Rollo and I discussed the advisability of having Rollo alone see somebody in connection with the golf club so that he could get the information that he wanted without committing himself, because he could say that Peter was looking after that in 40 detail—and he reports.

Q What information did you want from the golf club at that time? A There was considerable. There had been considerable talk about the possibility—(interrupted).

The Court: What is it you wanted to know? That's what he asked.

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The Witness: About the possibility of the golf club buying part or all of this property.

Q Now, return to February 4th, Mr. Grant, and tell us if you discussed this matter at that time either with Mr. Peter Steenland or Mr. Rollo Steenland, and if so, what the conversation was. A We went to Passaic that day and saw Mr. Corbin and Mr. Harris again. He also said that he had talked to a man by the name of Jones about getting some organization to take over the property and asked me if I would O. K. such a proposition.

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Q Was anything else said that day about this proposition of the possibility of selling to the golf club? A Yes, sir; that was discussed also on that day and we discussed then at that time that we might make as much as a half million apiece on this property because of the bridge going through and the desirability of the golf club to control the situation, which was very embarrassing to them on account of our owning these roads.

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Q Turn to February 6th and tell us on that day whether you discussed this matter with either Mr. Peter Steenland or Mr. Rollo Steenland? A This Mr. Jones was there and I asked Mr. Peter in Mr. Jones' presence if he understood that for the present I was to be kept

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out of the situation because Mr. Jones was going to talk with a man at 50 Church street. I think, by the name of Chandler, and I went over too, about that time, 50 Church street, with Peter, met Mr. Jones in the hallway and left them there. They wanted to see this Mr. Chandler whom I never met, and Mr. Jones said at that time that he thoroughly understood it and he would be careful to observe it.

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Q Now, did you have a talk with anyone else that day relative to the sale price of this property? A Reeves also was over that day and he asked for a sale price, and he made the statement that possibly the club might go as much as a half million for this property.

Q Was anything else said at that time—was Peter Steenland present then? A He was present and he made the statement that it was worth two million to us, and we figured it up in detail from the standpoint of lots with houses built on them—so much profit; so much for the lot, so much for the profit in the houses and so much profit for the Palisades Lumber & Supply Company, which is a company of which Rollo Steenland is president and which has its home office—main office at the same place as the Steenland Construction Company, and we figured that all told there was two million dollar-profit in the development of this property.

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Q Turn to the 8th of February and tell us if there is anything there in your notes relative to discussions concerning your interest in the property? A I asked Peter on that day to increase the money—the weekly money that he was giving—that I was supposed to get, and he, as he always did, said that he was hard up and didn't want to pay any more than he had to,

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but he did give me—he agreed to give me seventy-five dollars until—instead of fifty—and it was agreed that the other should last—should hang over until he felt a little more flush or until some money came in from the property itself.

10 Q Now will you look on the 12th of February? Will you tell us what occurred, if anything? A I was at Palisades Park with Mr. Steenland, that was at his house, for lunch, as I usually was around there every day, and went over the Nordhoff property after lunch with him, and we checked over the Nordhoff contract and papers preparatory to closing the following day.

Q Then, look at your notes for the following 20 day and tell us what occurred then, on the 13th of February. A I met Peter in the morning at 10:00 o'clock and went to the office of Simpson, Thacher & Bartlett, 62 Cedar street, New York City, and we had a long—we were there until 2:45, and we obtained the concession of $5,000 because of some misunderstanding in the interest date that had been changed, because we originally expected to take the property on the 1st of January, but it was afterwards changed until 30 the final date of March 3rd, and we signed up the papers, and we had to make a supplementary agreement at that closing, because of the fact that we had taken additional property, and both the Steenland Construction Company and myself signed that supplemental agreement.

Q Now, is this the day that the deed passed? A This is the day that the deed passed.

Mr. Whinery: Have you the deed, Mr. 40 Morrison?

Mr. Morrison: I have a certified copy.

Mr. Whinery: I will offer the certified copy of the deed. .

(Paper marked Exhibit C. 8.)

Q Did you sign any papers that day, Mr. Grant? A I did. 10

Q What did you sign? A Signed this supplemental agreement for the additional property and signed as guarantor on the bond which they had to give. I had to sign the bond of $312,000, and I also signed the unconditional guarantee of the performance of all of the details in the agreement—in the mortgage.

Q Now, will you turn to the 14th of February in your notes and state if you had any discussion that day with Peter Steenland or Rollo Steenland, and if so, what? A I went to Palisades Park and I took the carpenter foreman up to the property to show him where to put in the standards for some signs that we had decided to put on the property, or were at least talking that time of putting up; and also on that day Peter told me that I had better draw up an agreement, because if anything happened between ourselves—because if anything happened to him he didn't want me to have any trouble with his family. 20 30

Q Did you draw such an agreement? A I drew up an agreement and submitted it to him, an agreement purporting—setting forth the details, and he read it over and said it was satisfactory, and he told me—he says, "You draw up—make some carbon copies on the typewriter"—draw up some copies, and I did that and submitted it to him and he said that he would take them, and put them in his pocket. 40

He said he would let me know. I don't know whether that was the next day—it was within a day or two of that same time.

Q Did Mr. Peter Steenland see this copy that you wrote in long hand? A He had the copy that I wrote out in long hand—submitted it to
10 him—read it through and O. K.'d it; he O. K.'d it verbally.

Q I ask you if you recognize this paper, Mr. Grant? A I do.

Q Will you tell us what that is? A This is the—these are the items of the original agreement on which I took the property to the Steenland Construction Company in the first place, when I saw them on October 30th.

Q What is that particular paper, Mr. Grant?
20 A This paper? Contract between the Steenland Construction Company and myself setting forth the fact that—(interrupted).

The Court: Is that the one he approved, O. K.'d?

The Witness: Yes, sir.

Q And that is the one from which the copies were made? A Yes, sir.
30

Mr. Whinery: I offer that in evidence.

Mr. Morrison: I object to the offer, not having been signed or in any way shown to have been the contract, cannot affect the title to real estate with anything of that sort.

The Court: Go on.

(Paper marked Exhibit C. 9.)

40

Q In your testimony, Mr. Grant, you have spoken of a subsequent agreement which was executed about February 13th, in the office of Simpson, Thacher & Bartlett, and I ask you if this is the agreement that you had reference to? A That is the one.

Q Is that signed by you? A Signed by both of us, the Steenland Construction Company, by Peter Steenland, and Roderick D. Grant.

Mr. Whinery: I offer it in evidence.

(Paper marked Exhibit C. 10.)

The Witness: The passing of the deed was held up for an hour until this was done.

Q Now turn to your notes of the 18th. A I would just like to— The 16th I went over the property again with Peter after lunch at his house—went over to look at the signs, and he asked me to O. K. the kind of houses that he thought we ought to build on Broad avenue, because there were six houses under the agreement with the Nordhoff Land Company that we had to construct within six months.

Q Now turn to the 18th of February and tell us what your notes show as to anything that happened that day. Did you have a conference with anyone in the presence of Peter? A I had another conference. Peter told me that he had seen this man Jones in the morning and Jones seemed to think that we would let the property go for $4,000 an acre, and Peter said that he had told him between seven and a half and eight thousand dollars an acre would be the price.

Q Now turn to your notes for February 20 and tell us what they show for that day relative to this property. A I had a talk with Peter

Steenland in regard to my agreement with them and he objected to having my salary charged against the property and suggested that my salary—that it shouldn't be charged against the property, and I remember very distinctly that day when he asked me that he turned very red in the face and said, "Well, Mr. Grant—well, if that is the case where do I get off?" "Well," I said, "Peter, that was our agreement," and rehearsed at that time our terms of agreement, but decided that rather than have any misunderstanding at all that temporarily it was agreed that it should stand as coming out of my profit instead of coming out of the property, but nothing definite was agreed to by myself at that time.

Q When you say charged against the property, just what do you mean? A As expenses, the same as any other charges would be against it, interest and taxes and so forth.

Q Now will you turn to the 20th of March? A He also told me that day that he had told Rollo about this—my arrangement—that Rollo also knew about it.

Q What day was that, this last day you are speaking about? A That was on the 20th of February. He said that he had—no, he said he hadn't told Rollo and he was afraid Rollo would object. There seemed to be a good deal of hesitancy because there had been more or less—(interrupted).

Q Will you turn to March 20th? A March 20th?

Q Yes.

The Witness: If I can be pardoned again, on the 27th of February Peter showed me a letter from this man Jones in regard to

twenty-five dollars which Peter had given him and wanted to know if I would O. K. it, if I thought that was all right for the work that he had done.

Q Now, as to between the date that you have just given and March 20th, did you have numerous conferences or did you have conferences with Peter M. Steenland or Rollo Steenland, either one—with Peter M. Steenland relative to the development of this property or sale of it? A Almost daily. It was usually—usually daily —almost every day, I should say. Most every day I was at Peter M. Steenland's for lunch. 10

Q Now will you turn to the 20th of March and tell us what, if anything, occurred that day? A I had a talk with him and we discussed that, in connection with the property that was sold to the golf club at the prices at which we thought it would be possible to get at that time, that there would be at least $200,000 apiece in it, for the Steenland Construction Company and for myself, and we would still have about sixty-five acres left of the one hundred and five acres. 20

Q Now will you turn to March 29 and tell us if you had any discussion on that day with Peter relative to any phase of your arrangement? A I asked him that day if he had gone over the contract that I had given him—those two contracts, at his own suggestion, and before Rollo had left—Rollo having left for the Pacific Coast on a trip—and he told me—and reminded him that those contracts were given—that he had told me if anything happened to me he wanted me protected—and when I asked him he said he hadn't —hadn't had time to go over it and that he better let it go until something definite came out of the golf club offer. 30

40

Q Now will you turn over to the 9th day of April, 1924, and tell us if anything happened that day—you had any discussions with either Rollo or Peter or both relative to this property? A Yes, sir; I went with Peter to see them digging the house—the basement for the Broad avenue house—and I talked with both Peter and Rollo about the prices that we should put on the different propositions to sell to the golf club, and Rollo suggested that it might be better to sell quickly and then use the money to turn to advantage in other land, and he also used this remark which I have quoted. Turning to me, he said, "You could then take your money also and turn it so that in the end you would be better off," referring to my half.

Q Now turn to the 28th day of April, 1924. A Pardon me. We also had a discussion that day, that they stated they wanted me to be perfectly satisfied with any prices that we set on the property, but still at the same time did not think that any of us ought to be too anxious to get too much, but rather ought to let the property go quickly.

Q Now turn to April 28th and tell us if you had any discussion on that day relative to your interest in the property, with either Peter or Rollo and Peter? A I was on the way to New York to keep an appointment with—in connection with another piece of property on which the Steenstand Construction Company was going to pay some money, and Rollo told me that Peter had taken $35,000—about $35,000 worth of second mortgages out of the safe and he had no right to do that; that he was going to hold Peter responsible for it.

Q Now as to your interest, Mr. Grant, was anything said in that conversation relative to your interest in the property? A Maybe I should not have said that. He came on the car to tell me that, and I asked him if Peter had told him, Rollo, what our arrangement was with the Steenland Construction Company, and Rollo said, "Yes, he told me that you had an arrangement with Peter, whereby he was to pay the money to develop the property and was to pay you a salary of a hundred dollars a week and you were to split up fifty-fifty on the profits." 10

Mr. Whinery: Judge Thacher has just come in and I would like to withdraw this witness and put him on so that he can go back to New York. 20

THOMAS D. THACHER, sworn.

Direct examination by Mr. Whinery.

Q You are the District Court Judge for the Southern District of New York Federal Court? A One of them. 30

Q Are you an official in any capacity of the Nordhoff Land Company? A President.

Q Did you have any dealings with Mr. Roderick D. Grant relative to property owned by that company in Englewood? A I did.

Q When did they start? A Sometime in the fall of 1923.

Q For how long a period before any written agreement was made with him did you discuss 40

this property? A May I refresh my recollection?

Q Yes. A An option agreement was signed by me on November 5, 1923, running to Mr. Grant.

Q And had you discussed this property with
10 him for sometime previous to that? A I had discussed it previously; I cannot say how long.

Q This option agreement was given in favor of Mr. Grant alone to which you refer now?

The Court: We have the original agreement here.

The Witness: I have the original agreement.

20 Q Following this agreement, was any other agreement entered into relative to this property—option agreement?

The Court: Are you going to put the option agreement in?

Mr. Whinery: We have one in evidence now.

The Court: C. 1 is a copy of the one the witness has in his hand?
30
Mr. Whinery: Yes, sir.

Q Under date of December 10, 1923, an option agreement was executed by the Nordhoff Land Company on the one part, the Steenland Construction Company and Mr. Grant on the other. Prior to the execution of that agreement on December 10th, did you have conference with Mr. Grant relative to the terms of it, or to the granting of it? A I did.
40

Q Did you ever meet the other party to that contract prior to the preparation and execution of the second option agreement—by that I mean the Steenland Construction Company or any officer thereof? A I cannot fix the date when I first met Mr. Steenland, from recollection.

Q Do you recall whether you met him prior to the execution of this agreement—option agreement? A No, I cannot. 10

The Court: You mean the first option agreement?

Mr. Whinery: No, the second.

The Court: The joint option agreement?

Mr. Whinery: Yes, sir.

The Witness: I recall I did not meet him prior to the first option agreement to Mr. Grant. Whether I saw Mr. Steenland after the execution of that first agreement and before the execution of the second I could not attempt to state. 20

Q Do you recall whether or not you ever saw Mr. Steenland prior to the time he came to the office and closed title on February 13th? A I have no present recollection of any such occurrence, but it may have occurred. 30

Q You may have met him, but you do not recall that you did? A That is correct.

Q Have you your correspondence file here relative to this matter? A I have.

Q Will you tell us whether there is a letter there dated November 13th from the Steenland Construction Company addressed to you or to Simpson, Thacher & Bartlett? A I have a letter under that date directed to me and signed Peter M. Steenland. 40

Q Is that letter so it can be taken from your file, judge? A It may.

The Court: Have you a copy?

Mr. Whinery: No, sir; I haven't a copy. I offer the paper in evidence.

10 (Paper marked Exhibit C. 11.)

Q May I ask you to look to see if there is a letter dated December 15th from the same party to you? A I have no letter under that date.

Q Is there a letter on or about that date?

The Court: Have you a copy?

Q Have you a letter there dated December 20 31st from Steenland Construction Company or from Grant? A Yes, sir.

Mr. Whinery: I offer it in evidence.

(Paper is marked Exhibit C. 12.)

Mr. Morrison: That was already marked C. 4.

Q Is there a letter there dated November 30 28th from the Steenland Construction Company to you? A November 28th?

Q Yes. A Yes, sir.

Mr. Whinery: I have a copy, but it is not a carbon.

Mr. Morrison: I have my copy here.

The Court: Put it in.

Mr. Whinery: I offer it in evidence.

40 (Paper marked Exhibit C. 13.)

Thomas D. Thacher, direct.

Q Have you in your file here the bond and mortgage which were given on the closing of title on February 13th? A I have.

Mr. Morrison: We have a certified copy of the mortgage.

The Court: Put them in. 10

(Papers marked Exhibits C. 14 and C. 15.)

Q Have you a copy of a letter dated November 20, 1924? That is pretty near a year later. A I have.

Mr. Whinery: I offer it in evidence.

(Paper marked Exhibit C. 16.)

Mr. Whinery: Have you your copy of the extension agreement that is dated January 5th? We have a copy but it is not signed by the parties. 20

The Court: You admit it was signed, do you not, Mr. Morrison?

Mr. Morrison: Yes, sir.

Mr. Whinery: Then we won't need that—supplementary agreement signed by all the parties.

The Court: Any question about it? 30

Mr. Morrison: No, sir.

Q During all the negotiations for this property were you dealing with any one other than Mr. Grant, for the sale of this Nordhoff property in Englewood? A Do you mean did I see anyone?

Q No. Were you dealing principally with Mr. Grant. That is what I mean. A You mean as a principal?

40

The Court: No, principally.

The Witness: My dealings were almost exclusively with Mr. Grant.

Q Did you deal at all with Mr. Steenland for the negotiations for the sale of this property?
10 A Not except through correspondence.

Q But you didn't deal directly with him in any way for the sale of the property?

The Court: Except as to correspondence. You modify it.

Cross examination by Mr. Morrison.

Q Isn't there one other exception? Haven't Mr. Steenland and his company made all the
20 payments which have been made on this property? A I understood the question referred to the negotiations, not to the contract.

RODERICK D. GRANT, resumes the stand for

Further direct examination by Mr. Whinery.

30 Q Mr. Grant, subsequent to this date, April 28th, and without reference to any particular dates in your diary—can you tell us whether or not you discussed with Mr. Peter M. Steenland or Mr. Rollo Steenland the sale of the property by auction or otherwise during the two or three months succeeding April 28th? A Many times, in fact, almost every day, I would say.

Q And did you discuss it with any person or auctioneer? A Yes, sir; had representatives
40 from the Joseph P. Day Company go over the

property several times, and at the office we had Major Kennelly and Mr. Noonan from his office several times; we had Mr. Randall, a representative of the Gerth's Realty Experts, over the property with us, and we had a Mr. Gilbert, I think his name is.

Q Now, as to whether or not to your knowledge the golf club and the Steenland Construction Company had any difficulty with reference to the use of this property? A There was quite a bit of difficulty in connection with that. It was the idea of the Steenland Construction Company that the golf club must have the use of these roads—

Q What I have in mind, if I may interrupt you, Mr. Grant, there was some trouble? A Yes, sir.

Mr. Morrison: We all admit there is trouble and we got a suit on next Monday with the golf club which we hope to try.

The Court: Here?

Mr. Morrison: No, Jersey City; Vice-Chancellor Bentley.

Q Did you discuss the difficulties in that case with counsel or with Mr. Steenland? A Oh, yes; discussed it many times with Mr. Morrison here, and Mr. Richanecker.

Q And where? A At Mr. Morrison's office on quite a number of dates, which I think I have.

Q Can you tell us how many times you went to Mr. Morrison's office and discussed this—with reference to those things? A Thirteen times at least that I was there, and at least nine times that I have called him up. Mr. Morrison, of course, was acting for myself. I was paying

fifty per cent. of Mr. Morrison's salary at that time, according to our arrangement.

The Court: You mean fee?

The Witness: Yes, sir, fee, of course. Under our arrangement that money was to be advanced, but fifty per cent. of Mr. Morrison's fees were to be charged against my part of the property.

10

Q Now we turn to August 21st, and tell us if you had any discussion at that time with Peter M. Steenland or Rollo Steenland with reference to your interest in the property. A I had a discussion with him in connection—he wanted me to take charge of the Leonia office, which they had opened up, and I told him, as I had told him several times before, that I did not care to go into the Leonia office. I had my own reasons, which to me were very good reasons at that time, for not wanting to go into it, and I had explained that to him several times—oh, many times—and he many times asked me to go. He said he wanted me to go and give some look or appearance to the office and put some ginger into it, which was one of the expressions he used several times. I told him on that same date, as I told him before, that I didn't care to go into the Leonia office and that I had only one agreement with him and that was in connection with—at that time in connection with the Nordhoff property, that that was my principal—(interrupted).

20

30

The Court: What is the Leonia office?

The Witness: He has a branch office in Leonia—branch real estate office. He has the head office in Palisades Park.

40

Roderick D. Grant, further direct.

Q What did he want you to do there? A He wanted me to go into that office, and as he said, give some look—(interrupted).

> The Court: What do you mean, take charge of it?
>
> The Witness: To take charge of it. I told him that I wouldn't, that I had no agreement of that kind with him.

Q Now turn to the 25th of that same month. A I told him at that time I would be glad to go up there for a little while, when he—finally he was so insistent—that I would go up there a little while and spend some time there, which I afterwards did. I spent some time there.

Q Turn now to the 25th of that same month and tell us if you had any discussion with Rollo or with Peter relative to your agreement concerning the Nordhoff property. A Yes, sir. I discussed my half interest with Rollo at that time. Rollo came into the Leonia office and distinctly told me to be very careful in my dealings with Peter and never to take anything from him except I had it in writing, and he said, "I wouldn't. Peter does so many things" and he said, "As far as I am concerned you can tell Peter that same thing."

Q Did you discuss with Rollo your half interest in the property? A Yes, sir; I discussed it with him.

Q What was that discussion? A I told him that Peter had asked me to take the Leonia office and I had told Peter that I wouldn't and told him I had only one agreement with the Steenland Construction Company and reiterated the agreement.

Roderick D. Grant, further direct.

Q Now during all this time—during all this year were payments being made to you by the Steenland Construction Company? A The payments were started, as I remember it, just prior to the middle of January, 1924, about a month before we took title to the property, and were continued for four or five weeks at $50 a week; then they were increased to $75 a week, and those $75 payments ran through until October 11th, when Peter told me one day that he wanted to cut out any more payments—he wanted to be relieved of any more payments to me. I told him I would or could not stand for it, that he knew what the agreement—our agreement was; I had been very lenient with him all through the year—I was supposed to get $100, as he knew. He said, "Well, I'll think it over." And the following Saturday, the 18th, he told me—about a week later—Friday or Saturday—that he reiterated the same thing and told me that he was hard pressed—that he was—had a lot of payments and money was not coming in very well. I told him at that time that it really was up to us all that we hadn't been able to do something, because we could have sold—the golf people told us we could have sold for a half million—I didn't feel it was up to me. I was getting no amount of money by it, that I wanted to be as reasonable as I could, as I had shown him I did want to be, but I said if it would be of any possible moment that he could cut it down to $50, and if I am not mistaken the first $50 was started on October 18th, or a week subsequent to October 18th when he started in paying me $50 and paid me then $50 clear through until, if I am not mistaken, January 25, 1925, the present year.

Roderick D. Grant, further direct.

Q And, of which you say you had an arrangement of receiving $100 a week—that was the original arrangement? A That was the original agreement.

Q Have you roughly figured how much you received from him?

10

The Court: Am I interested in that?

Mr. Whinery: It may possibly be material, may it please the Court. I don't know that it would be except on an accounting.

The Court: That is something else.

The Witness: I have it figured, if he wishes it.

The Court: A statement you got there?

The Witness: It is just a pencil memorandum up to date. 20

Q Now, can you tell us how often you were at this property or at the office of the Steenland Construction Company? A I should say, in general, every day, in general.

By the Court.

Q What did you do there? A Pardon me? 30

Q What did you do there? A For the most part, your Honor, discussions in connection with the porperty; we had discussions with the golf club.

Q What did you do outside of discussions? A Didn't do anything except following down some leads. One, for instance, the Government was looking for two hundred and eighty acres to establish a hospital. I went to see certain people in connection with that.

40

Roderick D. Grant, further direct.

Q What were your efforts, to sell it? A We were trying—(interrupted).

Q What were you trying to do, sell it? A Trying to sell the property or decide whether we should have an auction. Mostly discussions. It got to the point that Rollo was—wanted to
10 have an auction right away. Peter didn't want to have an auction. They were arguing back and forth—time went on—day in and day out.

Q You separated when? A On the 29th of December, 1924, they—(interrupted).

Q 1925? A 1924, your Honor.

Q When was the repudiation? A The first repudiation—(interrupted).

Q No; when did you sever your relations? A I should say about—I think it was about in February or March, this present year.

20 Q Were you paid up to that time? A I was paid up until the 24th of January, your Honor, 1925, of the present year.

Q Up until the separation what did you do—what did you accomplish—what were you selling? A Trying to sell it.

Q Either as a whole or subdivisions? A We had decided some time previous to this that we would not develop any more—build any more
30 houses than the six houses that we were forced to build.

Q Under your contract? A Under the contract.

Q With Thacher? A Yes, sir.

Q Were they built? A They were built; yes, sir.

Q Sold? A Three of them, I understand, have been sold.

Q Since you left? A Partly during that time—I think that one was sold during that
40 time.

Q During what time? A Up to the time that I was with them, until the final date of the final separation.

By Mr. Whinery.

Q Did you have anything to do with the construction or design or planning of these six houses that were erected? A Yes, sir; I had quite a bit to do with those six houses. All different in design from the houses that the Steenland Construction Company had been building, and I wanted to get away from what I thought was a very commonplace house, and I had spent considerable time with their architect, Mr. Kaiser, in going over designs for these houses that we had built.

Q Well, have you had any experience in construction yourself? A Oh, yes. I have been in the construction business ever since I was out of Cornell—graduated.

Q What course did you take there? A Mechanical engineering. I did a lot—I did some of the very finest building in Cleveland, and also did work for the Government.

Q Now, did you tell Mr. Steenland of your past experience in the construction game when you talked over your going into it? A Yes, sir; I showed him these letters and showed him a lot of letters that I received from my commanding officer. I had one I showed him, one of the four regiments.

The Court: What do you mean by your "commanding officer?"

The Witness: I didn't want to burden the Court with too much of this. I had one of the four regiments in the Spruce division in

the Northwest, and that was the division that was cutting out spruce for aeroplanes during the war, having been commissioned in the Signal Corps as a captain and I had done some large construction work for the Government during this time, and besides these other letters from Cleveland people that were very prominent, and letters and telegrams from my commanding officer.

The Court: Are they in?

Mr. Whinery: He referred to them in the beginning. I would like to offer them, if I may.

The Witness: There are two or three letters in there that are by some people subsequent to this, but the Court can discard those.

Mr. Whinery: I offer those letters.

The Witness: There are also some pictures that I showed him of buildings that I constructed in Cleveland.

Mr. Whinery: We offer them with the pictures.

(Papers marked Exhibit C. 17.)

Q Mr. Grant, will you tell us what, if anything, led up to the repudiation which is mentioned in the pleadings? A All during this time I had been in the habit of going into the office of the Steenland Construction Company in Palisades Park as though I was a part owner of the office. I went in there one day, I think on the 29th of December, 1924, and found Mr. Peter Steenland talking with two men. Not knowing at first about what they were talking, I sat down over at Mr. Rollo Steenland's desk, the

other end of this office. I had put my hat and coat on the table. Mr. Steenland was talking to these other two men over a contract and I couldn't help but hear that that was in connection with this Nordhoff property. Mr. Peter Steenland said to these men, "I will have to go up and talk to Rollo about this, he hasn't seen this contract," and he came out—he got up and went to the door and looked at me in a very fierce fashion and motioned for me to come out. I went out and outside of the door he says, "Go get your hat and coat," and I went and got my hat and coat, came out, and he said, "What do you mean by walking into this office like this?" He says, "Why aren't you announced like everybody else?" And I said, in a very dumbfounded manner—I said, "Why, Peter, I don't understand what you mean. I have been doing this for over twelve months." He said, "You can't do it any more than anybody else." I said, "You were talking about this Nordhoff property, weren't you?" He said, "Well, what of it?" I said, "There is a lot of it." He said, "I am going up to see Rollo." And he started down the stairs and I followed him on the outside, and I said to him—I said, "Peter, what do you mean by—what do you mean by your actions?" He says, "What do I?" He says, "I have nothing to do with you at all." I said, "What do you mean?" "I have nothing to do with you at all," he said; "I have no agreement with you at all." I said, "You don't mean to say you are going to repudiate all the agreements I have with you, do you?" "I have no agreement with you." Talking at the top of his voice. I went on up to Rollo's house, which is two short blocks from the plant and office, and I said, "Well, I am going in

to talk with Rollo." He said, "You are not any such thing." And he ran across the front sidewalk on to the porch, went in and shut the door and locked the door on the inside. I tried it and the door was locked. I went around to the back and I saw Mrs. Rollo Steenland's sister and she started—I told her that I wanted to see
10 Rollo. She told me that Rollo was sick in bed. I said that I was very sorry, but I had something very important I must talk to him about and she wanted to know if there was any message she could take or anything she could do. I said, "No," and I told her that Peter was trying to repudiate all of our agreements, and I don't know as this is necessary, but she started in to tell me how Peter was always getting into trouble and Rollo—(interrupted).

20 Q Don't tell that. A I guess I better not.

Q Did you see Rollo? A She said if I would wait a while that she would see if Rollo could see me, and after Peter came out I went around to the front door—and she told me to come around to the front door, as I remember it, and I waited inside for a little while and she finally succeeded in letting me talk to Rollo. Rollo was in bed. I sat down in a chair beside the bed and
30 I said, "Rollo," I said, "I am sorry to bother you at this time especially, but," I said, "Peter has threatened to repudiate all my agreements," and he said, "What do you mean?" I said, "He has done that." He said, "Why did you want to be doing so much talking," he said, "I could hear you up here." I said, "Rollo, I can't help it," I said, "Maybe we shouldn't have talked so loudly, but," I said, "I wanted to come in to see you and Peter came in and locked the door and I had to wait for a chance to see you." He says,
40

"Well, you don't do anything at all—you don't pay any attention to anything, because," he says, "when Peter is that way—" Well, I won't discuss that; that is personal, but he said—one thing he did say, "Don't pay any attention to Peter when he is in that frame of mind, because he acts like a crazy man. You do nothing. Leave it to me. Wait four or five days." 10

Q Was that the first indication of ill will? A Absolutely, sir.

Q What did you do after this discussion with Peter and Rollo? A I told Rollo that I must put myself on record, that this payment was to be made to the Nordhoff Land Company and it had to be paid on the 31st, and that if they were not going through with it, I had somebody that would back me on the property and take the property over and make the payment. "Now," I said, "I must notify them." He says, "Don't you write anything at all, because you will get Peter all the more sore. You leave it to me and I will fix it. Peter won't beat you out of anything." 20

Q Did you write the letter? A I went over—yes, sir; I obtained paper and envelope and wrote two letters, one addressed to Peter Steenland, personally, and one addressed to Peter Steenland, president of the Steenland Construction Company, took them to the post office myself and registered them. 30

Q Is that the letter? A Yes, sir.

Q And the other is a copy of that same letter? A Yes, sir.

Mr. Whinery: I offer them in evidence.

(Papers marked Exhibit C. 18.)

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Q After December 29th what happened, Mr. Grant? December 29, 1924? A After this?

The Court: And your writing the letter on that date.

The Witness: I had several conferences.

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Q With whom? A With both Rollo and Peter.

Q Together? A Some together and some alone. Sometimes I saw Peter alone and sometimes I saw Rollo alone, because Rollo said he could do more with Peter when he was alone, and he would talk to Peter in a different way.

Adjourned until January 20, 1926.)

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SECOND DAY.

January 20, 1926.

Continuation of hearing pursuant to adjournment at the place and in the presence of the parties as before.

RODERICK D. GRANT, resumes the stand for

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Further direct examination by Mr. Whinery.

Mr. Whinery: I would like to introduce to the Court Mr. Charles A. Tausig, of the New York Bar, who is associated with me. I thought I had done so before, but I find no record of it.

Q Mr. Grant, at the time on December 29, when you came into the office of the Steenland

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Construction Company and found Mr. Steenland in conference with others, do you know the names of the two men with whom he was in conference? A Dr. Rosinoff and Mr. Peck, of Washington, I think; it is P-e-c-k. I have never been quite sure in my own mind; I think it is Pack. 10

Q Had you been notified of such a conference for that day? A I had not.

Q Did you know of any contract that was being drafted or had been drafted between the Steenland Construction Company and the parties? A Not until I saw the contract in their hands on that day at that time.

Q Now, after the 29th of December, Mr. Grant, when did you next see or talk with either Rollo or Peter Steenland? A On the 30th of December. 20

Q Did you see them on the 30th? A Yes, sir; I saw them—pardon me—no, that was the 31st when I saw them next.

Q Did you have any talk with Rollo and Peter on the 31st; if so, tell us what that conversation was. A I phoned to Rollo and told him that I had seen Mr. Thacher and he told me that I should not have written those two letters that I wrote. 30

Q You mean Rollo told you that? A Yes, sir; Rollo told me that; that I ought to have confidence in their doing what they had agreed to do.

The Court: What two letters are you referring to?

The Witness: Those are the two letters I sent them under registered mail on the 29th notifying them that I held them re- 40

sponsible for their repudiation and for any acts that might be done after that, and notifying them that payment would have to be made on the 1st of January, and if it was not made that I had somebody else that would make it in their place.

10 Mr. Whinery: Those letters were put in?

The Witness: Do you want me to go on with the 31st?

Q Yes; tell us what else happend on that day. A Then Rollo also told me that he would have something to say, as he was also a fifty per cent.—half stockholder or half owner of the Steenland Construction Company—and he would see that the proposition that—I was taken care of.

20 Q That was over the telephone? A That was over the telephone.

Q Did you see either of them that day? A I then called up Mr. Taussig and asked him to come over and meet me—I saw Rollo at his house.

Q And was anyone with you?

The Court: At Rollo's house?

30 The Witness: At Rollo Steenland's house.

Q Did anyone go with you? A Mr. Taussig went with me.

Q And tell what happened at that time, any conversation you had. A I told him—I reminded Rollo of our agreement—the agreement which he knew that we had. I told him that I had—reiterated again the repudiation of the 29th

40 and told him that I would have to hold him re-

sponsible. He spoke to me again about the two letters. He wanted me to leave it to him, that he would take care of it. We also talked over a give-and-take proposition in connection with the property, that either one make a price and either they take the property and I get out or that I take the property and they get out. He also made the statement that he thought I was not entitled to fifty per cent., that if he had been making the contract originally, he would not have stood for fifty per cent. He made the statement that, in his own words, "We have to put up all the money for this development and it doesn't seem as if you ought to get fifty per cent." He also made the statement that many real estate men would be glad to get twenty per cent. on a proposition of this kind. He also said that "I am a half owner," speaking of himself "a half owner of Steenland Construction Company, and I don't know but what I ought to get a third and Peter a third instead of our each getting a quarter and you getting a half."

Q Was there anything said by him on that day as to the necessity of your putting up any money? A Absolutely nothing. He made the statement, on the other hand, that it was up to them to put up the money.

Q When was the next time that you saw either Rollo or Peter? A I saw him next—pardon me. He also made the statement at that time that if we could not get together that he would fight me in court and would beat me out of everything.

Q Now, did anything happen on the 1st day of January, from your notes? Did you see either of them? A First of January I went

over to Rollo's house and I told him that if everything could be fixed up at once, and to avoid all trouble, and providing all of the details could be arranged, that I might agree to take a third and give them two-thirds of the proposition.

Q Anything else said that day in your conversation with Rollo? A He also said—told me that I didn't have any written agreement with them and that they could go into court and beat me out of everything.

Q Look on January 3rd and see if you had a conference with either one of them on that day. A I saw both Peter and Rollo on that day.

Q Where? A At their office in Palisade Park.

Q Tell us what conversation you had on that day. I told them at that time that if a contract could be drawn up and all the details arranged and agreed—arranged satisfactory to myself, that I would consider closing the whole thing upon that basis, on a third to myself and two-thirds to them, but providing that all the details would have to be arranged entirely satisfactory to myself. We discussed it at quite some length. Peter also told me at that time that he had not intended to disregard my rights and that they—that he wanted to give me whatever I was entitled to under our original agreement, but he thought I shouldn't ask for fifty per cent.

Q Was any money paid to you on that day? A He gave me—Peter gave me fifty dollars, which he had in an envelope in his pocket, and said that he would give me the balance of the seventy-five—the other twenty-five—on the following Wednesday. I went out of the room during that conference, and when I came in Rollo

said, "We have decided to settle with you on a third basis."

Q And what were you to do subject to that arrangement? A We were to draw up a contract, and we did draw up a temporary contract agreement agreeing that if this was settled—could be settled immediately on the basis that I have already stated—in other words, all the details satisfactory—that we would draw up a contract later embodying those details. Peter called in the stenographer—and meanwhile I suggested that we had better draw up a little pencil sketch by ourselves, that it would expedite matters, without having to figure over what we wanted to do while she was there, and when she came to the door they told her to never mind, and we drew up that pencil sketch.

Q What else happened? A It was agreed that I should come over Wednesday, which was January the 7th, to go over this agreement.

Q Was this little pencil memorandum you speak about signed by anybody? A No, it was not. They also stated at that time—Peter also later told me at that conference again, that he had not intended to beat me out—only intended to—wanted to treat me right.

Q Now, following that conference, was anything to be done relative to such an agreement that you have discussed? A I was to come over the following Wednesday to draw up such an agreement with them.

Q Did you, following that conference on the next day or any day after, have a memorandum drawn up? A I did. On the 7th of January I went over the draft with Peter and Rollo for just a short time.

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Q The one that had been drawn up in the meantime? A Yes, sir.

Q By whom? A By Mr. Taussig and myself.

Q Was Rollo there on the 7th? A He was there, but left almost immediately.

10 Q When did you next see Rollo and Peter? A On the 8th.

Q And where? A At their office, the last half of the afternoon.

Q Tell us what happened on that day. A At their office I told them that—some of the points—we went over this contract in quite some detail; they made notes and I made notes on the copies—some of the points we agreed to and others I refused to accede to. They agreed at that time to pay me seventy-five dollars, allow
20 the seventy-five dollars a week as a drawing account for the maximum of two years from that date. They asked me to give them some of the Broad avenue lots, and then they also tried to get them at a very low price.

Q Did you agree to give them the Broad avenue lots—or to give them to them at a low price? A Absolutely. I agreed to give them—we talked over the possibility of my giving them to them
30 at what was a very low price.

Q When did you next see either Peter or Rollo? A On the 9th I went there and saw Peter alone. Rollo wasn't there. I told him flatly that I wouldn't stand for his getting the Broad avenue lots at the price that he was trying to get them and mentioned to him at the time that the price that he was suggesting was even lower than the minimum price that the auction people had put on the lots as part of
40 their prospective deal.

Q When did you next see Peter and Rollo or either of them? A On the 10th of January I saw both Peter and Rollo.

Q Where? A At the Palisades Park office.

Q Tell us what happened at that conference. A Peter said he was sorry that he had talked so rough to me on the 29th, the day that he had repudiated this agreement on the way up to Rollo's house and suggested that we have a prayer meeting over it, pulled down the shades and locked the door and we had this prayer meeting over the proposition. Well, after that everything seemed to go my way. Rollo had been remonstrating with Peter, that he was asking—Peter was asking too much and suggesting that he ought to accede some of the points that I demanded. And after that everything, as I say, went very smoothly, and practically everything was agreed upon of that temporary contract, and they told me to go back and have a new contract written up and to come back on Monday preparatory to signing it.

Q In this conference, did you discuss this other contract that had been drafted previously and the terms of it? A Which other?

Q The contract that had been drafted by—(interrupted).

The Court: That is the one he is referring to.

Mr. Whinery: He said he was to draft a new one.

The Witness: Yes; I was to typewrite a new one to embody—because we had made a great many corrections, and a new one was—(interrupted).

The Court: The temporary one that you refer to is the one you had prepared by Mr. Taussig?

The Witness: Yes, sir.

The Court: And not the lead pencil memorandum?

10 The Witness: Oh, no, sir—no, sir.

Q Can you tell us what this is, Mr. Grant (showing witness paper)? A That is the pencil memorandum that I mentioned.

Q Previously? A Yes, sir.

Q Was this on the bottom of it at that time or did you put that on? A No; that was a note that I put on myself for my own—(interrupted).

Q Wednesday, the 7th, seems to be written 20 in different handwriting. Can you tell us who wrote that in? A Peter wrote that in himself. Rollo and Peter had this in their hands and I had left that blank and they suggested that that be written in.

Mr. Whinery: I offer the pencil memorandum in evidence.

Mr. Morrison: We object to the offer of this document unless it is first shown that 30 that finally resulted in some agreement, signed.

The Court: Objection overruled.

(Paper marked C. 19 of this date.)

Q What is this (showing witness paper)? A This is the original contract prepared by Mr. Taussig and myself.

40 The Court: Original draft of contract?

The Witness: Original draft of contract; yes, sir.

Q There are a lot of notes on there; can you tell us when they were made? A They were made during these conferences with Peter and Rollo Steenland at these conferences. 10

Q And did they have copies of this draft also? A Yes, sir.

Q Did they make memoranda on theirs at the same time? A Yes, sir; they did.

Mr. Whinery: I offer this contract.

The Witness: We checked up all the corrections as we went through each one and compared some of them to see that we had everything right. 20

Mr. Morrison: Same objection.

The Court: Same ruling.

(Paper marked Exhibit C. 20 of this date.)

Q Now, Mr. Grant, on the 10th, have you told us all that occurred at that conference? A Rollo also told me on that date that they would settle the Broad avenue lot price on the basis that I had suggested.

Q Following that conference on the 10th was a supplemental drafted contract prepared? A Yes, sir; I prepared it myself. 30

Q And that follows in general the memoranda and changes that had been made on the draft prepared by Mr. Taussig? A Followed them exactly, and this is the on that I wrote myself.

Q Did you give copies of that to the two Mr. Steenlands? A I don't know whether there were two copies, there were two copies, one to the 40

New Jersey State Library

Steenland Construction Company and one to myself.

Mr. Whinery: I offer this in evidence.

Mr. Morrison: Same objection.

The Court: Same ruling.

10 (Paper marked Exhibit C. 21 of this date.)

Q Turn to the 12th of January and tell us whether you saw either Peter or Rollo on that day and if so where? A At the Palisades Park office. Peter tried to get me to give up these Broad avenue lots at $500 apiece and Rollo remonstrated with him, and it was finally tentatively set at the price—tentatively set at $600 a lot, but at this only in case of necessity arising 20 from the purchaser of the house on the front lot demanding the extra hundred feet to the rear of the hundred foot lot on the street.

Q Now, what else occurred? A And then Peter and Rollo talked something over in Dutch so that I couldn't understand what they were saying.

Q Then what happened? A Peter told me that he would take up the contract with his attorney and left right away.

30 Q Having reference to the contract that you had prepared? A Yes, sir. I went over to Edgewater with Rollo and talked to him in the bank at Edgewater and he told me at that time of a conversation that he had had with Reese, I guess it is. I am not quite sure about that—Reese being a real estate man over there and I understood was in some way connected with this contract of Dr. Rosinoff, although I didn't know at that time what the connection was. He told 40 me that he had been—that Reese had told him

about some conversation at Atlantic City and Rollo also made the statement to me at that time that they might have to double cross Dr. Rosinoff, with whom they were dealing in connection with this contract because of some price arrangement.

Q Now, will you look on the 15th and see if you had a talk on that day with either Peter or Rollo and if so, where? A On the 15th I went to Palisades Park and I talked to both of them, Rollo having had to go out for a short time and coming back, and Peter told me that their attorney, Mr. Morrison had told them not to sign the agreement. I told them it was simply a question of whether they wanted to do the right thing or not and it wasn't a question of a legal matter at that time at all. Peter later in this conversation admitted that Mr. Morrison had told him—told him—Steenland Construction Company, not to sign this, simply as a measure of protection of the Steenland Construction Company, on the basis that if I didn't have anything why give me anything more than I had, let me prove—that I would have to prove what I had.

Q What else was said at that conference? A He also said at that time that we should have had an agreement originally and ought to have an agreement now.

Q What did he mean by that? Did he say it just that way or did he say it different? Did he mention what kind of an agreement? A He said that we should have had a written agreement, that our agreement should have been reduced to writing at that time, and ought to have one now. He also admitted at that time, made the statement, he knew they were in much better strategic position just now that they did not have any contract—any written agreement.

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Q Did you have any talk with Rollo that day? A I had a talk with Rollo and he told me he didn't know what had gotten into Peter, he was asking for so much and was so hard to deal with, as he had told me so many times before, but he said that he would talk to Peter and he said that if he talked to him in a spiritual manner he could always do more with him than any other way and he said that we would also find some way out of it. He also made the statement, he says, "You can't lose, because I have told my wife and her sister that in case anything happens to me that I want Mr. Grant fully protected in all the terms of this contract on which we are working."

Q Now look at the 17th, Mr. Grant, and tell us whether or not you had a conversation on that day with Peter or Rollo, and if so, where? A I would like to say this. Rollo at that time—(interrupted).

The Court: Answer the question.

Q You just answer the question, Mr. Grant; on the 17th now. A I talked to both Peter and Rollo at that time.

Q Where? A At their office in Palisades Park.

Q Tell us the conversation? A They said that they would not sign the agreement and Rollo said that they would give me a letter right there, even against the advice of their attorney, if necessary, but without going to him in any case, stating that when the property was sold, that they would give me a third of the profit, and I absolutely refused to do this, because one of the prime reasons was, that it would absolutely

cut me out of any control, which up to that time I exercised on an equal basis with them, and that I would be in a position of being at their mercy or anyone else's who might come into possession of this property from them without being able to control the development or sale or anything else in connection with the property. 10

Q Did you get any money that day from Peter or Rollo? A I received $50 from them on that day, and Peter at first hesitated about giving me this $50, because I had told Rollo that I intended to use these payments as showing that it was coming to me, and in spite of that they gave me the $50.

Q Now, did you have any talk with them that day relative to the possibility of going to court with the matter? A Rollo said that if I took them to court that they would claim that they 20 had offered to give me a third of the profits, and Peter also said at that time that if they wanted to they could make a phoney sale and beat me out of the possible profits without my ever knowing it.

Q Look on the 21st, Mr. Grant, and see if you had any conference that day with either Rollo or Peter. A On the 21st I went—I saw Rollo at Edgewater—arranged to meet him there by 30 appointment.

Q Tell us what happened at that conversation? A He told me that I had better take the letter that he had offered on Thursday, saying that they would give me a third of the profits when the property might be sold, and he said if I didn't get that that they would fight the case and I would get nothing out of it.

Q Now, will you look on the 24th, Mr. Grant, and tell us what you did on that date, if any- 40

thing, relative to this matter? A On the 24th I went to the office at Palisades Park—oh, yes—I didn't see either one of them, but I talked—I sent a messenger upstairs and they sent me down—I was there—and they sent me down the $50, and I also talked to Rollo over the 'phone and he told me I had better come over Monday because Peter was tied up with some calculations.

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Q Now, did you go over there on the 26th? Did you see either one of them on that date? A I went to the Palisades Park office on the 26th and saw Peter and Rollo.

Q Tell us what happened. A Rollo said that Peter had refused to sign the contract, that he wouldn't go into any agreement on a partnership basis and they wanted to get control of the whole situation and they wouldn't let me exercise my fifty per cent. control as I had up to that time, and I refused to stand for anything of that kind.

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Q Anything else happen that day, any other conversation? A And I told them that they could either sign the contract that we had drawn up, the tentative draft of contract that we had drawn up, or that I would withdraw it at once and take the case to court. I asked Rollo in the conversation how he was going to deny that —he made the statement that he would deny that he knew anything about this, that this was all Peter's doing. I asked him how he would be able to deny all these conversations and talks that we had, and I said to him—I said, "Do you mean to say you would go into court and lie about having agreed on this third arrangement?" And he shook his hand at me from behind the desk. He said, "Yes, if it is necessary I will go into court and lie about it"; and

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then he turned red in the face and he said, "No, I wouldn't lie about it. I will say I was willing to give it to you." That is what he said. Then I said, "Do you mean as a gift?" And he says, "Yes, as a gift." And I said, "Well, you will have a fine chance of making anybody believe that you were willing to give me a third of a most valuable piece of property just as a gift." 10

Q What else was said toward the end of that conversation, if anything? Was anything said about a court action at that time? A Yes, sir; Rollo said, "If I took it into court," he repeated again—that they would beat me out of everything.

Q Did Peter say anything to you relative to the court action? A He says, "We will use every means possible to beat you if you start anything." Those are the quoted words that I have. 20

Q Now will you turn to the 31st of January, Mr. Grant, and tell us what you did that day? A On the 31st I went to the Palisades office and made a formal demand on Peter and Rollo for the continued payments of the week payments—of the drawing account—and they refused.

Q Now, what did they say to you at that time? Do you remember their conversation—their words? A The wording of it was very little. They simply refused to do it. I can't remember their exact words at that time. It was just they refused. 30

Q To make this payment? A To make this payment. They said, "No," they—(interrupted).

Q Now, Mr. Grant, during all these conferences with Mr. Rollo Steenland and Mr. Peter Steenland, either prior to December 29th or after December 29th, were you ever requested to 40

put up any money towards the expenses or cost of carrying this property? A Absolutely not, in any way.

Q During these negotiations in which the third interest was mentioned, was anything said there about the necessity of your putting in
10 money if you kept your interest on that basis? A Absolutely not. On the contrary, the agreement shows that the burden—and it is stated there in black and white that I was not in any way to be called upon to furnish any capital of any kind.

Q And that is in these drafts that were prepared but not signed? A Yes, sir.

Q During the year 1924, did you make any disbursements on account of this property from
20 your own pocket? A There were some minor disbursements in connection with—well, there were some disbursements in connection with blue prints from Leavitt, the engineer in New York City, who had been the original engineer in laying out this property for Judge Thacher's father years ago, and there were some other minor cash amounts that I paid from time to time, some for photostats and things of that
30 kind.

Q And did you put in a charge to the Steenland Construction Company for these disbursements? A Yes, sir.

Q Were they repaid? A Oh, yes. I put them in to Mr. Martinus, the cashier, and he paid me those. Some of the slips I signed and some of them he gave me without my initial.

Q Were you a member or did you join the Englewood Golf Club during this time? A I
40 did.

Roderick D. Grant, further direct.

Q Tell us the circumstances under which you joined this club. A Well, it seemed to me because of the joining of this property with the Englewood Golf Club property that there might be business relations back and forth that would make it pleasant and advantageous to be a member of this club and that I would possibly be able to make business connections through it that I believed beneficial—(interrupted). 10

Q Beneficial to what? A Well, it would be beneficial to this proposition.

Q By that you mean this tract of land—the development of this tract of land? A Yes, sir; the relationship was bound to be very close and nobody knew just how the relationship might—(interrupted).

Q How were your dues paid in this club? A Mr. Peter—Mr. Steenland, of the Steenland Construction Company, gave me those—the money to pay in cash to pay the dues. 20

Q How much was that, do you recall? A Thirty dollars, house membership.

The Court: Did they have anything to do with your procuring the membership?

The Witness: No, sir, except we talked it over among ourselves and decided that I should do so. 30

The Court: The advisability of it?

The Witness: Yes, sir.

Q Now, the testimony, as we have gone over it, Mr. Grant, does not show very clearly just what you did during all this time towards the development of the property. Did you make any effort to sell it? A Oh, yes, on different occasions.

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Q What were some of those occasions, so we will have knowledge of it? A Well, I did considerable advertising, letter writing, too. For instance, we thought there was a possible chance of a colonization scheme being worked out by having the peoples of some certain nationality take over the tract.

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Q What nationality? A The one that particularly suggested it to us, as I remember, being the first one, was an Italian group and the—one of the leading Italian papers—Mr. Giordano was managing editor, and an associate of his had an idea to do such a thing—to make a very high-class Italian colony, and they agreed—Mr. Giordano agreed to throw the whole force of the editorial page, in repeated editorials, into this project to put it before the Italian people with, what he claimed, would be an absolute certainty of its going through.

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Q Did you take that up with Mr. Rollo and Mr. Peter Steenland? A Yes, sir; we talked of it at the time.

Q What was their attitude towards this proposition? A Their attitude was that unless this group wanted to show their good faith to the extent of ordering at least a few houses and agreeing to take them so that they could be assured of their actual backing in this thing, that they would not consider it. We had several conferences, Mr. Giordano and a doctor—the doctor was over several times and Mr. Giordano came over at least once to go over the property with them.

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Q Did you make any effort to sell it to anybody else? A I made an effort to sell it to the Government for a hospital for disabled soldiers, and in connection with that went and

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saw the headquarters of the American Legion, and they referred me to General Wingate, who I found was Judge Wingate, and I saw him at the Borough Hall over in Brooklyn, he being one of the committee.

Q Did you try to sell it to anyone else? A Yes, sir; there was a furniture dealer in Hoboken that was the head of the German Verein that had this same—possibility of the same colonization; and we tried it out with Russian people and two or three others. I also went to see the S. W. Strauss people in New York City, Fifth avenue, with the idea of their buying the property or some of their clients buying the property.

Q Did you make any effort to sell it to anyone else? A We were making running efforts all the time. From time to time there was something coming up—there were several propositions up to the Golf Club, Englewood Golf Club, in connection with it.

Q Were you consulted in all these propositions with the golf club? A Absolutely, in every one—every one of them.

Q Consulted by Rollo and Mr. Peter Steenland? A Always, and Mr. Peter Steenland—conferences with Rollo and Peter both.

Q And does that same statement apply to these other propositions of colonization and other possible sales? A Oh, yes, absolutely. There was nothing done in connection with the property in which I was not consulted. In fact, they themselves instructed some of the men that were working for them to take things up with me from time to time.

Q You have testified in your other testimony on the other day of a trip to Cleveland, I think? A Yes, sir.

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Q Can you tell us for what purpose you went to Cleveland? A I went there with the idea of the possible sale of the acreage.

Q Did you see anybody there relative to it? A I saw two people there in connection with it. One was a large—one of the largest real estate
10 people there that I know very personally, and the other one was a man that I know equally well, who was vice-president of—well, next to the largest trust company there.

Q Did you have anything to do, Mr. Grant, with the making of subdivisions or preparation of maps? A Yes, sir; I did. In fact, I laid out subdivisions of the entire acreage.

Q With whom did you work on that? A In connection with Mr. Hendee's office—Mr. Hendee and his men.
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Q Did you have anything to do—were you consulted with reference to the design of the houses that were erected—the six houses that were to be erected under the contract with the Nordhoff Land Company? A Yes, sir, it was—I think I might say that it was entirely through me that those designs were picked out, because I wanted to get away from the certain stereotyped, as I thought, type of house that the Steen-
30 land Construction Company was building and worked on that in connection with their architect in their office that was working—that did the actual designing.

Q Did you have anything to do with the placing of signs on the property, advertising signs, or anything of that kind? A Yes, sir; I designed—well, I guess entirely the wording of those signs—talked it over with Peter Steenland and sometimes with Rollo, and submitted them in the rough draft to their architect for draw-
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ing up in proportion, and so forth—went to the sign painter with Peter on quite a number of times to see how they were progressing and see how they looked after they were—(interrupted).

Q What were the purposes of these signs? A They were for the purpose of advertising to the public that this property was open for development and there was one large sign that we put up—about a hundred feet long, I think, and it must have been twenty or thirty feet high, that had on it, "Steenland Built Homes," and other signs at the entrance, encouraging the public to go through what had been considered by the public a private right of way through the golf club.

Q Did you have anything to do, Mr. Grant, relative to the conference with the title company—or the Public Service Company prior to the taking title by the Steenland Construction Company? A Yes, sir; we went there—generally Mr. Peter Steenland and myself went to see the gas company people, the electric light people, the sewer people, and there was another local engineer there with whom we talked on two or three occasions in connection with the improvements that were in. The present—the probable present condition of them, because they had been in a number of years, and the attitude of the Public Service Corporation towards extensions and so forth in case we built houses. I also took up with the street car people the question of how far their lines—their franchises called for their street car to run on a single fare from the ferry, because that was a very vital matter to us at that time.

Q In the testimony that was given the other day mention was made of efforts to interest auctioneers in the property? A Yes, sir.

Q Did you have anything to do with that phase of the plan? A Yes, sir, entirely; consulted them both in the city and they came over—Joseph P. Day's office people came over several times, Major Kennelly came over in person and with his people several times; a number of telephone conversations besides personal interviews; man by the name of Gilbert, an auctioneer, also came over to the property and it was—they said something about a man in Washington that was also nibbling at it.

Q Some mention was made in the testimony the other day about litigation with the golf club that subsequently arose. Were you consulted relative to that litigation? A Absolutely. Went to Mr. Morrison's office, and with Mr. Steenland practically every time, and the idea was that Mr. Steenland shouldn't go to Mr. Morrison without me. In fact, there were some appointments that were put off because he couldn't get hold of me to go with him.

Q Have you made a typewritten memorandum from your diary as to the number of times that you saw Mr. Steenland during this period? A Yes, sir; I have. I saw him in all at least—that I have noted—a hundred and ninety-eight times, and a hundred and twenty-six of those times I was at lunch at his house.

Q How many times did you see Mr. Morrison with him? A I should say—oh, I should say fifteen or sixteen—seventeen times at Mr. Morrison's office.

Q During this period that you were going over to Mr. Steenland and to this property were you engaged in any other business of any kind? A No.

Q Were you making any studies at that time? A Yes, sir; I studied law at Columbia during the mornings of the winter term of '24 and '25.

Q Was any objection made by them about your going to law school? A No, sir; no objection at all. One thing—with one conversation with Peter I told him I was studying law, and in connection with its value in connection with the future of real estate and my possible future there, as we had talked over, and he said at that time he wasn't particularly interested in my studying law, but there was no objection made to it.

Q Mr. Grant, I show you a package of little envelopes and ask you if you can tell what they are? A Those are the pay envelopes that were given me from week to week.

Q In which the payments made by Steenland Construction Company were enclosed? A Yes, sir.

Mr. Whinery: I offer them in evidence.

(Papers marked Exhibit C. 22 of this date.)

Q Mr. Grant, you testified the other day of having received first an option in your own name and subsequently an option jointly in the name of you and the Steenland Construction Company, both options coming from the Nordhoff Land Company? A Yes, sir.

Q Do you know whether either Mr. Rollo or Mr. Peter Steenland had knowledge of the existence of the first option prior to the making of the second one? A Oh, absolutely.

Mr. Morrison: I object. The witness has already said in his testimony that he did not call it to their attention.

The Witness: I made no such statement as that, your Honor.

The Court: Objection overruled.

Q Will you answer the question? Did they know of the existence of it?

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The Court: Do you know whether they knew?

The Witness: Absolutely, sir.

The Court: How do you know?

The Witness: Because it was talked over, and one of the points that Peter made—(interrupted).

The Court: Talked over with them?

The Witness: Yes, sir. One of the points

20 that Peter Steenland made especially was that until I had such an agreement they did not want to be seen with me going over the property because they were so well known in the neighborhood that if they were seen going over the property the real estate men would all know they were doing it for a purpose, and until I had some agreement with the Nordhoff Land Company, they didn't want to be seen around the property.

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Q Will you tell us about this letter of November 13th a little more—about the letter of November 13, 1923, which was written to the Nordhoff Land Company and was signed "Peter M. Steenland?" Do you recall that letter? A Oh, yes. That was the letter—that was the letter that Peter Steenland and I had talked over the advisability of writing, and I wrote that letter myself. In fact, I typed it myself,

40 it wasn't even written by one of their stenog-

raphers, with the idea of getting better terms from the Nordhoff Land Company than we had up to that time been able to get. That letter was written for that purpose.

Q And that was after you had had the first option on November 5th? A Oh, yes.

Q Did Mr. Steenland know at that time that you had this option of November 5th? A Oh, absolutely. In fact, that option was kept in their safe, to which I had access at all times, just as though I was part of the office.

Q Did that access to the safe and the office continue until this time on November 29th or December 29, 1924? A Absolutely, with perfect freedom. In fact, if there happened to be any—(interrupted).

The Court: Stop.

Q Mr. Grant, was the occasion of December 29th the first time to your knowledge that you had not been consulted in any of the negotiations relative to this property? A Yes, sir. I think I would like to qualify that answer. There were times, for instance, when Mr. Peter Steenland would tell me, "I saw so and so today and had a talk with him," but aside from those kind of conversations, this was the first time.

Cross examination by Mr. Morrison.

Q Mr. Grant, where had you had your residence before going to the Government Service in the war? A In Cleveland.

Q And how long after the war had you come to the vicinity of this property? A I saw this property, I think, for the first time, in September, 1923.

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Q And do you know how long the Steenland Brothers, Peter and Rollo, had been in the vicinity of this property? A Yes, sir; I remember very well, because—(interrupted).

The Court: Oh, how long?

10 The Witness: About nineteen years, they told me.

Q And these cash disbursements which you say were made and were returned by the Steenland cashier, one was for photostats, you say? A I suppose—yes, sir. They were, some of them. I can't remember all those in detail.

Q I am asking you just as to those photostats. Are those photostats that you had made of certain letters you mentioned here? A No;
20 those I paid for myself. These were some other photostats that were made in connection with the property.

Q And who has those photostats now? A I suppose they have those in their office.

Q Did Mr. Peter Steenland—did you ask him to approve the reimbursements of your expenditures by the cashier? A Yes, sir; because, as I remember, the first one or two or three pay-
30 ments were made by the cashier—one of them was handed to me, as I remember, in Mr. Steenland's office. After that Mr. Steenland told the cashier that he wasn't to make any payments of any kind without a slip, so that after that I had to turn in a slip, and those slips, I suppose, were O. K.'ed by the Steenland Construction Company before they were paid to me, and those slips I signed for.

Q One of the reasons you said was given for
40 putting the title of this property in the name

of the Steenland Construction Company as I remember it was that you were single and if you should marry there might be complications? A That was one of them.

Q Is it true that you were single at the time? A Yes, sir.

Q Have you been married? A Yes, sir.

Q And divorced? A Yes, sir.

Q Where? A In Cleveland.

Q You have said that you were consulted as to the making of certain signs. I show you a photograph and ask you whether this is one of the signs referred to in that testimony of yours? A Yes, sir; that is one of them.

> Mr. Morrison: I offer it in evidence for identification.
>
> (Paper marked D. 1 for identification.)

Q And is this another, in the right-hand margin of that photograph? A Yes, sir.

> Mr. Morrison: I ask that that be marked for identification.
>
> (Paper marked Exhibit D. 2 for identification.)

Q Mr. Grant, when the arrangement was made to which you have so often referred, that you were to have half the profits, as I understand your testimony, it was that the Steenlands were to put in all the money. A Yes, sir.

Q What were you to put in? A The option, this very valuable option and my experience.

Q And when you refer to the very valuable option, you mean the option that was marked C. 1—the first option? A Yes, sir.

Q And you say that you put that into this deal? A That was the consideration for them going into the deal and backing me with their capital in the development of this property.

Q And what else did you say you put into the deal besides the option, C. 1? A My experience and the agreement in connection with my time.

Q What was the agreement in connection with your time that you put into this deal? A I was to put in my experience for the nominal amount of a hundred dollars a week drawing account until the property should be disposed of.

Q And what were you to do? A I was to look after everything in connection with the property, the development, and work with them in connection with the development of the property.

Q You say you were to do that with them. Was there anything you were to do yourself? A Just what I have stated here.

Q Wasn't it part of your duty to negotiate for the sale of this property? A Only in connection as the necessity might arise from time to time. My half interest in the property would necessitate my consultation.

Q But other than that you did not undertake to find a buyer for the property? A Absolutely not. In fact when we went into the property originally there was no idea of getting a buyer. We went in with the idea of developing the property.

The Court: And then selling?

The Witness: Yes, sir.

The Court: Weren't you to help to get buyers then?

The Witness: Yes, sir.

The Court: Single lots?

The Witness: Yes, sir; anything that might come up, but not with the idea, as I take it, of selling.

The Court: Were you to engage in the sale of the lots for profit?

The Witness: Yes, sir; from time to time, yes, sir. 10

The Court: Wasn't that the ultimate aim, the sale of the lots at a profit?

The Witness: Yes, sir; that was the ultimate aim after development; yes, sir.

The Court: Weren't you to aid in that?

The Witness: Yes, sir.

Q Wasn't there negotiations with the Englewood Golf Club for the sale of this property or certain parts of it to that club? A Yes, sir. 20

Q And wasn't it in connection with that negotiation that you joined the club? A Not in connection in that way. It was at that time, and we discussed all the possibilities that might arise in the future.

Q Did you, as a member of the club, attempt to bring about a sale of this property to the club or of any part of this property? A Later I had—after a lot of antagonism had been shown by the Steenland brothers to the club, I went to the club with my resignation and told them that I thought it was only fair to myself, out of respect for myself, to resign from the club, and I went first to the man who had proposed my name through another friend in New York City and he wouldn't hear from it. 30

The Court: We don't want to hear all this. 40

The Witness: This is when the first talk came up with regard to the sale to the club.

The Court: Won't you give more concise answers?

The Witness: I will try to.

10 Q When you made this trip to Cleveland which you have mentioned, wasn't the purpose of that trip to procure money with which to pay the payment shortly then to become due to Judge Thacher's company? A Absolutely not. It was the idea of selling the property.

Q And to whom did you expect to sell it? A To this real estate man that I mentioned and the vice president of one of the trust companies there.

20 Q Now just briefly, and generally, as to all of the efforts that you have mentioned for the sale of the property, it is true, is it not, that you never succeeded in finding a purchaser? A We never have up to date.

Q You never have—you personally?

The Court: No.

The Witness: Not that was consummated. I found opportunities that they turned down.

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Re-direct examination by Mr. Whinery.

Q One question on the sale of lots, in order to get that clear to the Court. What was your first plan for the sale of this property, Mr. Grant? A The first plan was strictly in acordance with our agreement with Mr. Thacher that we were to develop the property.

Q By that you mean what? A To build
40 houses the same as the first six houses that he

absolutely required we should build to show good faith and our intention.

Q At that time was there any idea or plan to sell it as one whole tract? A No; we hadn't discussed that. It was a development proposition because they were in the development business.

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Q When did the plan come up to sell it as one tract? A Very shortly after the taking over of the property the negotiations were started with the golf club.

Q Can you tell us when the negotiations with the auctioneers for the sale of this property were stopped? A There was quite a sharp discussion between Peter and Rollo—Rollo wanted to auction the property in the fall of 1924 and tried to get me to get Peter to see it in that way. Peter wanted at that time to let the auction go until the following year. During the first negotiations the auctioneers were put off from time to time to maybe get a better deal from the auctioneer or from some other auctioneer.

20

RECESS.

AFTER RECESS.

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Mr. Whinery: The other witnesses have not shown up, but I would like to ask Mr. Grant one or two more questions.

RODERICK D. GRANT, resumed.

Direct examination by Mr. Whinery.

Q Mr. Grant, I show you a letter on the letterhead of Simpson, Thacher & Bartlett, and ask

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you if you know what that letter is? A That is a letter that was given to me by Mr. Thacher in his office in connection with the first option that was given to me.

Q Handed to you by Judge Thacher? A Yes, sir.

10 Q On what day? A On the 5th of November.

Mr. Whinery: I offer that in evidence.

(Letter marked Exhibit C. 23.)

Q I show you another paper and ask you if you know what that is? A This is a letter that Mr. Steenland sent to me in connection with some of the Public Service matters as pertaining to the property.

20 Q And when was that sent and when did you receive it? A It was sent on December 19th and I received it right after that.

Mr. Whinery: I offer it.

(Letter marked Exhibit C. 24.)

Q You told us in your testimony about a joint option that was given to you by the Nordhoff

30 Company, to you and the Steenland Company jointly. By whom were negotiations for that option conducted? A They were conducted entirely by myself, so far as the Nordhoff Land Company was concerned, with one—with this exception: At one stage of the negotiations I put Mr. Thacher, whom I had on the 'phone, I turned him over to Mr. Steenland so he could talk to him from his office in Leonia to Mr. Thacher's office in New York. Outside of that

40 they were entirely by myself, with one other ex-

ception: Mr. Van Doren, Mr. Thacher's representative, came over with the joint options to Mr. Steenland's office, and we signed them in Mr. Steenland's office, and Mr. Steenland at that time directed Mr. Van Doren to see that I also had a copy, as I was to have a copy of all these things. 10

Q Do you know whether Mr. Steenland ever saw Judge Thacher up to the time the deed passed and the title closed? A He did not—he had not seen him.

Q How do you know that? A Because I introduced the two Steenlands to Judge Thacher in his office for the first time, on the 13th of February, and there were several remarks passed as to their having been—having these negotiations back and forth and never having had the pleasure of meeting them. 20

Mr. Whinery: That is all.

Mr. Morrison: No questions.

Mr. Whinery: We will have to rest our case, because the other witnesses have not come. The New York attorney will be here; he is on his way, but we will have to try to use him in rebuttal, if we have the opportunity. 30

PETER M. STEENLAND, sworn for the defendant.

Direct examination by Mr. Morrison.

Q Where do you reside, Mr. Steenland? A Palisades Park. 40

Q In Bergen County, New Jersey? A Bergen County, New Jersey, yes.

Q And how long have you resided there? A About twenty-three years.

Q What is your business or occupation? A Builder.

10 Q How long have you been engaged in that business? A Ever since I was a boy.

Q What company or companies are you associated with in this business? A In this business?

Q In this building business. A I started in Passaic—my brother and I—(interrupted).

The Court: We do not care about that.

20 Q With what company are you now connected? A Steenland Construction Company and the Palisade Park Company.

Q And the Steenland Construction Company is what is usually known as a closed corporation? You and your brother own substantially all the stock? A Yes, sir.

Q And by that I mean your brother, Rollo Steenland? A Right.

Q When did you first meet Mr. Grant, the
30 complainant in this suit? A The fall of 1923.

Q What brought about the meeting? A He came to me in reference to a proposition that he had to offer about a golf links property, the Nordhoff Land Company, commonly so known.

Q And from whom did he come to you, if you know? A He brought a letter of introduction from George B. Hitchcock.

Q Who is Mr. Hitchcock? A George B. Hitchcock is a real estate operator in Bergen County.
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Peter M. Steenland, direct.

Q What was Mr. Grant's proposition that he brought to you? A Mr. Grant came into our office and saw me personally. The letter of introduction that he brought from George B. Hitchcock was directed to me, and told me that he had a proposition to offer in reference to a piece of property known as the Nordhoff Land Company property around the Englewood Golf Club, partly Leonia and partly Englewood. 10

Q What were the terms of the proposition as he laid it before you? A He didn't bring them before me at the first time. I simply told him that I didn't think I wanted to go in any negotiations at the present time because I had plenty to do, but he insisted that this proposition was so good and so well and I ought to consider it. "Well," I said, "I don't mind considering it; but what have you done?" "Well," he says, he was going to bring his letters, as I want to know who I was talking to, from one standpoint of the future—didn't want to go in—to go in with anybody in any business unless I know who, so he brought some letters that he brought from some army officers that he said he had and he brought them over. "Well," I said, "Mr. Grant, these letters are all right, but that doesn't say what you can do or will do; it doesn't prove anything to me and that." "Well," he says, "why don't you come over to this property and look at it? You got a car here. Let me take you over there." So I drove over with Mr. Grant, over to look at this property. "Now," he says, "right on this spot is where George B. Hitchcock and myself sat and looked over this property." 20 30

Q Had you ever seen the property before that time? A Oh, yes; I have seen it quite often. 40

Q How far was it from your place of business? A About a mile.

Q How far was it from the place where you were building other houses? A Oh, some of it is not—within half a mile or less than that.

Q About how many houses have you built
10 recently, and before meeting Mr. Grant, which were near this Nordhoff property? A I have built considerable houses in Leonia, maybe around one hundred or more.

Q When you say you built them, you built them and resold them; speculative building, was it not? A Yes, sir.

Q After you had looked at the property with Mr. Grant, did he make any proposition to you as to the terms on which you might purchase it
20 or otherwise become interested in it? A Mr. Grant wanted me to go in a proposition with him because he said he had an option on this piece of property, and he says, "I can show you, Mr. Steenland, that you can make some money here." I said, "Mr. Grant, if you can show me that we can make some money I am willing to consider that proposition, but," I said, "I have no money to put in any other proposition than what I have got under hand at
30 the present time and don't want to go into anything." "Well," he said, "you won't have to put in any money, for the simple reason I believe I can get a good option from Mr. Thacher of the Nordhoff Land Company, and he is very anxious to unload his property to somebody that is good and reliable." "Well," I says to him, "why do you come here? Why can't you get somebody else?" "Well," he says, "Mr. Hitchcock has recommended you to me because he
40 thinks I will get a square deal; you won't try

to beat me out of anything or anything of the sort. If I go to some Jews I will get nothing; they will get it all." I said, "Do you think we would do you out of anything?" "No." "Well," I said, "all right. What is your proposition, Mr. Grant?" Well, Mr. Grant thought he ought to get one hundred dollars a week for his service and he thought he ought to have fifty per cent. of the profit. "Well," I says, "you know, you don't count profits until you receive them. Now, what is this one hundred dollars a week for?" "Well, put me looking after things and doing something in the line of developing or selling this property." "Well," I says, "may I ask you what kind of experience you have had in developing?" "Oh, I have had quite a good deal of building experience." He told me in Cleveland he used to be in the contracting business, even road contracting. Showed me some of the pictures of the trucks he used to have, and also that he was connected with his father in the business in Cleveland, so after he showed me that I said, "That is very well, Mr. Grant, but how about it over here? Cleveland is not Jersey. We have had personally quite a good deal of experience and know what it is here in Jersey. I don't know what it would be in Cleveland myself." "Well," he says, "suppose I look—I go ahead and put up a proposition to you whereby you would be interested in developing this and I can show you that you can make some money, or, still better, I will go over this property with you and show you that the Englewood Golf Club has got to have this property because they do not own the road; the road is owned by the Nordhoff Land Company."

Q Where were the roads that were mentioned? A The road—the main entrance of the

Englewood Golf Club from Broad avenue into the golf club or the club house.

Q And where does that road lie in relation to the property Grant was asking you to consider? A That road goes through the property that we were to consider.

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The Court: Runs through the property?

The Witness: And goes between—runs through the golf links, but belongs to the Nordhoff Land property and not to the golf club.

The Court: It comes in from Broad avenue, running easterly from the slope of the Palisades to the property you were considering?

20 The Witness: Yes, sir.

The Court: And running directly through the golf links?

The Witness: Yes.

The Court: And also serving as an entrance to their club house?

The Witness: Yes, sir.

The Court: Does it run through this land?

30 The Witness: The road runs through the golf club property.

Q It runs through this land and, after reaching your land, where does the road go? A Yes, so then he brought me over—(interrupting).

Q No, Mr. Steenland. After this road, that you mentioned as coming through the golf links, reaches the property you were considering, where then does it go? A It goes through the

40 property. There is about, roughly speaking,

Mr. Grant always says, there is a mile and a half of improved streets there, of gas, water and sewer.

Examined by the Court.

Q How much of that ran through the golf links and how much through the property you were considering? A About half a mile through the golf links and the rest on the property. 10

Q How much? A About a half mile through the golf links.

Q You told us that. How far through this land? A The rest of it, about a mile.

Q Now, Mr. Steenland, Mr. Grant made this suggestion or proposition to you. What did you do about it? A I said, "These improvements are needed; they figure at least $200,000." 20

The Court: What?

(Answer read as follows: "I said, 'These improvements are needed; they figure at least $200,000.' ")

The Witness: $200,000, the improvements.

Mr. Morrison: I think he did not express himself clearly. (To witness:) Did you say improvements were needed or improvements were in there? 30

The Witness: Were in there.

The Court: He said, "Gas, water and sewer." He said that or you?

The Witness: He said that to me, Mr. Grant, at the meeting. I said, "Mr. Grant, maybe the gas is not any good, maybe the sewers are not any good. We better—if you think so well of that, we ought to investigate it before we do anything with it." 40

Q Well, did you make an investigation of the pipes which were supposed to be there for gas and sewers? A Yes, sir.

Q Found them there? A Found them there.

Q In what condition? A Well, the gas main—Mr. Ackerman of the Public Service Company of Englewood said that they could not accept the gas main as—for service on account of the leaks that were in it. We saw Mr. Coe of the Englewood Sewer Company—Mr. Grant was with me on these occasions—and also told us that the sewer partly was in Leonia, and they had no jurisdiction in Leonia, but Mr. Thacher had put them in—the father of Judge Thacher, and they were connected in the Englewood sewer on which they charged a fee, of which he gave us a list of what the fees would be for each fixture so connected.

Q After looking over the property with Mr. Grant, did he make any proposition for interesting you in the property, either with him or otherwise? A He then got me interested in this way: That we take this property and for his service he wanted fifty per cent. of the profits.

Q Well, now, what service did he say he would perform? A Now, he came along and he said, "Now, Mr. Steenland, we have been going over this; you know that the golf club, the Englewood Golf Club, has got to have this property or you will shut them off, or you can shut them off or—because they announced if you shut them off—and they will have to come to you to buy it."

Q Now, did Mr. Grant say what he would do in connection with the golf club's purchase of this property? A He told me that he would, no doubt, be able to get that around, because his

connection was very well; he knew the fathers, he knew friends and their fathers were connected with the golf club and some of the members were members of the golf club themselves and personal friends of his.

Q Was Mr. Grant a member of the golf club at that time? A No; he was not. 10

Q Did he become one later? A Yes, sir.

Q What conversation, if any, did you have with Mr. Grant in reference to that? A Mr. Grant came to me and he says, "Now, Mr. Steenland, in order for me to consummate this sale, I ought to really belong to the golf club and be one of their members. Of course, I don't want it to be known that I have any connection with this property whatever. Now, if I join this golf club I will get some inside information." I 20 told Mr. Grant that I didn't think that that was so very profitable, because my business has always been up and above board, but I says, "You claim that you want to make this sale and we are going to share fifty-fifty," or, I says, "do as you think best."

Q Well, now, is this before or after the time that you and Mr. Grant had obtained the option, C. 2, from Judge Thacher's company, which was dated on December 10, 1923? A This was after 30 we got the option from Mr. Thacher.

Q Let me direct your attention to the time before that option was made, the option C. 2, dated December 10, 1923. What negotiations were there on your part with Mr. Grant and Judge Thacher leading up to the signing of that option? A The occasion that Mr. Grant—he came often; in fact, he came almost every day for a time, to this office, to our office, and the Palisades Park, and he always saw me. In fact, 40

he never spoke to my brother, who was there most of the time, but all my dealings, all our dealings were together, and his proposition to me simply was this, that he would see to it that this deal would go through, that he would make the sale of this property and we would get a handsome profit; at least, so he said, of a quarter of a million each.

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Q Now, what had you to do in order to reap that profit? A When he got the option from Thacher we were to build six houses, if I remember correctly, if we would take up the deed, we had to take up—give a guarantee that we build six houses.

Q Now, you took up the deed, Exhibit C. 10, on February 13, 1924, did you not? A Yes.

Q Now, between the signing of this option of December 10, 1923, Exhibit C. 2, and the execution and delivery of the deed, February 13, 1924, C. 10, what was done by you and Mr. Grant in reference to the property? A Mr. Grant and myself went and saw the Public Service—the gas company, who is the Public Service, but we had to see another official in regard to it. Saw the sewer company and also saw the Hackensack Water Company. All of these firms, of course, I am acquainted with.

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Q Those were in reference to the improvements on the property? A Correct.

Q Was anything done prior to the delivery of the deed in an attempt to sell the property? A There was. We employed the engineer to measure up the property. That engineer was employed by the Steenland Construction Company; Roderick D. Grant was with us every time, all the time, practically, on these visits.

Q Other than having the property laid out during that interval—(interrupted). It was not

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laid out, no; do not say that. You see, the measurements were made in order to describe or prescribe the property in the deed, and also in the mortgage.

Q Was any attempt made before the delivery of the deed to sell the property? A Oh, yes, we tried to. 10

Q Who tried and what efforts were made? A Mr. Grant thought he could sell it to the Englewood Golf Club.

Q Now, what was done in that effort? A Well, the only thing that was done in that effort was to tell it around, and show it, that we had this option, and the Englewood Golf Club sent a man by the name of Reeves over to see us. He came to our office one evening by an appointment that he got and he says, "Mr. Steenland, I want to speak to you about the Englewood Golf Club. 20 I understand that you have got an option on that property above the golf links."

Mr. Whinery: With whom was this, Mr. Read?

The Witness: Mr. Reeves, I think his name is; R-e-e-v-e-s, from Englewood.

Mr. Whinery: Can you fix the date?

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Q When was it? A No; I have no date; I have no diary.

The Court: Before you took the deed, wasn't it?

The Witness: Oh, yes; it was before the deed. We had the option. And Mr. Reeves came over on an evening by appointment and talked to us with reference—about what could be done about the golf club, if anything could be done. 40

Q Did that negotiation ever result in a sale? A No.

Q Now, when the time came to take the deed, the option, C. 2, of December 10, 1923, had been made out to Mr. Grant and your company, had it not? A Yes, sir.

10 Q And the deed was made out to your company only? A Yes, sir.

Q Now, will you explain how that came to pass, please? A The reason the deed is made out to the Steenland Construction Company, because Mr. Grant had no interest into the deed outside of that he depended upon us—

Mr. Whinery: I object to any conclusion, may it please the Court.

20 (Previous questions and answers read as follows: Did that negotiation ever result in a sale? A No. Q Now, when the time came to take the deed, the option, C. 2, of December 10, 1923, had been made out to Mr. Grant and your company, had it not? A Yes, sir. Q And the deed was made out to your company only? A Yes, sir. Q Now, will you explain how that came to pass, please? A The reason the deed is made out
30 to the Steenland Construction Company, because Mr. Grant had no interest into the deed outside of that he depended upon us—")

The Court: Proceed.

Mr. Whinery: There was an objection, your Honor.

(Objection read as follows: "I object to any conclusion, may it please the Court.")

The Court: Proceed.

40

A (Continuing.) Because Mr. Grant depended upon us dealing fair with him in regard to what was due him in the line of profits.

The Court: What would become due.

The Witness: What would become due, correct.

10

Q Well, now when you say that—(interrupted).

The Court: Do you still object, Mr. Whinery?

Mr. Whinery: No, sir; I withdraw my objection on that testimony.

Q When you say that, did you at that time have any agreement with Mr. Grant as to what his rights were and what yours were? A No; there was no agreement except verbal and the verbal agreement was simply this, Mr. Morrison, that we was to pay him—or he wanted it that way, rather—that I was to pay him fifty per cent. of the profits and he was going to see that I was to receive my—at least my quarter of a million profits in less—well, in less than a year's time.

20

Q Well, now, what were you supposed to do under that agreement? A I was to build the six houses on Broad avenue, or anywheres where I choose to.

30

Q What else? A What else was I to do?

Q Yes. A Under the option—under the mortgage?

Q Under this arrangement you have just spoken of? A I was not to do anything else outside of deliver the goods.

Q Who was to pay Judge Thacher's Company the payments required by the purchase money

40

mortgage? A They were to come from the profits of the sale of the property.

Q Who was to make the sale of the property? A Mr. Grant promised me faithfully he would see to that.

Q When the time came to pay Judge Thacher's company, what arrangements were made to raise the money? A When Mr. Thacher sent us a letter, I think it was the first part of November, 1924, telling us that we had to pay around $30,000—when we built these six houses we had to get a release from the Guarantee Title & Mortgage—for the Guarantee Mortgage & Title Insurance Company in order to get a first mortgage on the six houses. Mr. Harris of the Guarantee Mortgage Title Insurance Company prepared the release and sent it to Mr. Thacher's office at New York and it was deducted from payment that was made to us from—it was paid to Mr. Thacher and deducted from the mortgage money.

Q You mentioned a letter from Judge Thacher?

The Court: I do not understand that answer. Do you get any meaning from that?

Mr. Morrison: I thought I did. Perhaps I can develop it from another question or two.

(Preceding answer read as follows: "When Mr. Thatcher sent us a letter, I think it was the first part of November, 1924, telling us that we had to pay around $30,000—when we built these six houses we had to get a release from the Guarantee Title & Mortgage—for the Guarantee Mortgage & Title Insurance Company in order to get a

first mortgage on the six houses. Mr. Harris of the Guarantee Mortgage Title & Insurance Company prepared the release and sent it to Mr. Thacher's office at New York and it was deducted from payment that was made to us from—it was paid to Mr. Thacher and deducted from the mortgage money.") 10

The Court: I do not understand it.

Q The money which was paid to Mr. Thacher as required by his purchase money mortgage came, as I understand you, from moneys advanced by the Guarantee Company on new first mortgages for the construction of these buildings? A Of these six houses.

Q Of these six houses? A You see, our mortgage covered the whole property. 20

The Court: All right. Wait. Mortgages that you raised from the Title Company—(interrupted).

The Witness: Had to be subordinated.

The Court: The moneys that you raised on the mortgages of the Title Company were paid to Mr. Thacher; is that right. 30

The Witness: No; only $3,000 of it.

The Court: Of each?

The Witness: No; six houses.

Q Was there $3,000 paid out of the construction mortgage—

The Court: To Thacher for his release.

The Witness: To Thacher for his release for the building of his six houses. 40

Q And there were six houses? A Correct.

Q You have mentioned a letter from Judge Thacher, giving a notice that those payments of about $30,000 would be required at that time. Is this the letter—(showing witness letter)? A That is the letter, correct.

10 Mr. Morrison: I offer it and also offer D. 1 and D. 2 for identification as exhibits.

(Papers originally marked D. 1 and D. 2 for identification, now marked Exhibits D. 1 and 2.)

(Letter from Judge Thacher marked Exhibit D. 3.)

Q As to the balance of the money required to pay Judge Thacher, how was that obtained, 20 or what efforts were made to obtain it? A When we got this letter from Mr. Thacher, I gave a copy of it to Mr. Grant and told him this money had to be raised on or before the expiration of the date when same became due, or otherwise we would be in default and our company would have to be sued or foreclosed against. "Now," I says, "Mr. Grant, this is quite a serious matter; I would like you to go ahead and get this money as you promised you 30 would."

Q What did you mean by that? A Because he promised me that I would not have to put in any money outside of the building of these six houses.

Q When was that promise made? A At the time we made the—when he came with the first option, when I had told him that I had no money to put in any other property.

Q Now, what was the promise or statement 40 that he made at that time? A That he said

I would not have to put in any money at that time, but he would see to it that this money was forthcoming, or rather, that the property would be sold before that time.

Q Well, now, when you came down to the letter from Judge Thacher, requiring approximately $30,000, which has just been marked D. 3, you paid part of that by moneys out of your construction mortgage? A No; that is in addition. 10

Q Well, you paid some part of Judge Thacher's money for this real estate?

The Court: $3,000.

A Yes, $3,000, but in addition we had to get this thirty.

The Court: You get twenty-seven. 20

The Witness: Yes, twenty-seven. I think it says thirty.

Q Twenty-seven? A Twenty-seven is right.

Q Now, go on and tell us, please, what efforts were made by you or Mr. Grant, or both of you, in respect to getting the rest of the money for Judge Thacher's company? A I went and gave Mr. Grant this—a copy of that letter. He said, "Well, I will have to go to Cleveland and see if 30 I can get this money; my friends here around New York, I am not able to do anything with, but I will go to Cleveland and I wish you would give me the carfare to go there." "Well," I says, "Now, Mr. Grant, I am not going to give you any more than I am giving you now. I am paying you now $50 a week; I have been paying you $75 a week, and you have not done anything. You will have to make good on this proposition." So he said, "Well, all right; I 40

will go and see what I can do." He went to Cleveland. While he was there he wrote me a letter, asking me to forward his $50.

Q I show you a letter and ask you if this is the one to which you now refer? A Yes, sir; that is the one.

10

Mr. Morrison: We offer that as D. 4.

(Letter marked Exhibit D. 4.)

Q Did Mr. Grant return from Cleveland shortly after that? A I guess he was gone about two weeks.

Q Did he get the money? A No.

Q What did he say when he came back? A He said he felt awful sorry, but he couldn't raise any money.

20 Q Then what did you do? A I said, "Grant, if you don't raise the money, I shall have to, and, if you don't sell it, I shall have to sell to get this money."

Q Now, what did you do? A I didn't want them to foreclose against the mortgage of the Steenland Construction Company and I went and got Dr. Rosinoff, who we had been negotiating with and he came over to my office and he says he wanted me to go in an agreement with

30 him whereby he would get a purchaser for that piece of property and that was in the way of an auction sale.

Q Now, Mr. Steenland, come back, please, to the time when Grant came back from Cleveland and without the money. You were owing money to Mr. Thacher's company?

The Court: On a mortgage or on an option?

40 Mr. Morrison: On the mortgage.

The Witness: On the mortgage.

Mr. Morrison: This was the first payment under the purchase money mortgage.

Q Now, what did you or your company do with respect to paying this money to Thacher? A We went and put second mortgages that we had and also mortgages that I put on through Dr. Rosinoff and got the money and paid Mr. Thacher. 10

Q Your company paid Mr. Thacher? A Yes, our company paid it—were compelled to.

Q Now, as to the payments which subsequently became due on the purchase money mortgage held by Mr. Thacher's company, have they been paid? A Yes, sir.

Q And by whom? A By the Steenland Construction Company. 20

Q Have you prepared, at my request, a statement of the moneys paid out by your company to Judge Thacher's company in respect to this property? A And others; yes, sir.

Q I show you this statement and ask you whether that is a correct statement of the moneys laid out by the Steenland Construction Company on this property so far as the Thacher expenditures go—or, perhaps, I might better say, excluding the construction of the six houses? A That is right, excluding the six houses, taxes, and so forth. 30

Q And that shows an aggregate amount of how much? A $92,551.

Mr. Morrison: We offer that statement.

(Statement marked Exhibit D. 5.)

Mr. Whinery: Taken from your books, Mr. Steenland?

The Witness: Yes, sir. 40

Mr. Whinery: The various amounts copied from your books—

The Court: Take him up on cross examination.

Mr. Whinery: All right, sir.

10 Q Have you prepared, at my request, a statement of the moneys paid to Mr. Grant, in respect to this transaction? A Yes.

Q I show you this statement and ask you whether that correctly shows the dates and amounts paid to him? A Yes, sir.

Q And the total is how much? A $3,765.

Mr. Morrison: We offer that statement.

(Statement marked Exhibit D. 6.)

20 Q How much money has your company laid out in and about the construction of the six houses, which you have mentioned? A Approximately $14,000, above the mortgages, between twelve and fourteen.

Q Have you prepared a statement as of March 1, 1925, of the expenditures on those six houses? A Yes, sir.

Q I show you this paper and ask you whether that is the statement? A Yes, sir; that is the
30 statement I sent you.

Q And does that correctly show the moneys laid out? A At that time?

Q In and about the construction of these six houses? A Yes, sir.

Mr. Morrison: We offer this statement.

(Statement marked Exhibit D. 7.)

Q Mr. Steenland, why did you stop paying Mr. Grant these weekly payments, as indicated
40 on Schedule D. 6?

The Court: And they are all indicated as of what date?

Mr. Morrison: As beginning January 8, 1924, and weekly until January 24, 1925, one instance, two weeks' payment being merged in one.

The Court: Why did you stop? 10

The Witness: The reason why I stopped is because he refused to work or do anything.

Q What had you asked him to do? A I had asked him to go ahead and sell this property or give me the money so we can make the payments for it.

Q Had he done that? A No.

Q What had he done during the time that you had been associated with him? A He hadn't done anything for me in the line of what would be of any benefit to the Steenland Construction Company, or their associates, anything that would be of any—(interrupted). 20

Q You mean, he had not sold any land; is that what you mean? A Hadn't sold anything, hadn't sold a thing.

Q Did he spend his time at your office? A A great deal of it.

Q What did he do while he was there? A He, first off, was at the main office and when he came to us, quite often, sometimes daily, I took him home to lunch, quite frequent; we went along to see what could be done in regards to the property; if he told me of anything that was on, I was always ready to go with him. In fact, I sacrificed a great deal of time with him to make this property sale, or go see if we could get this money. Then I put—when we hired the Leonia office in June, the real estate office, I said 30 40

to Mr. Grant, "Well, it is better that you go down there and see if you can get some leads on selling a piece of property there, rather than from the lumber company's office," which he went and done, but always on holidays or days when they were good to sell real estate, such as the houses, Mr. Grant was not to be found. When he got his pay, Saturday afternoon or dinner time, which I generally go around paying the mechanics, Mr. Grant was generally at the office waiting for his envelope and took the next trolley car back away.

Q I call your attention to the fact, Mr. Steenland, that on Exhibit D. 6, the payment, prior to October 18th for moneys, had been $75 a week, and that payments subsequent to that were $50 a week; October 11, 1924, there was a reduction in the amount paid. How did that come about? A When Mr. Grant don't develop anything in that real estate office, wouldn't as much as take anybody through the houses to sell them or try to sell them, I took him in my car one day and I says, "Now, Mr. Grant, you haven't done anything; I am going to cut out your payments entirely; I need every dollar I have got without putting any more in. You are not doing anything, you are not earning anything and why should I continue to pay you $75 for nothing—occupying a chair here? They tell me that you are walking the floor here. Some of my other agents want to know what I got you here for."

Q What did Mr. Grant say when you told him you were not going to pay him any more? A Why, he said, "Mr. Steenland, you ain't going to cut me off entirely?" "Why," he said, "I got to pay my board bill and I can't go around and

sell this property or go to my friends without having anything in my pockets; I got to pay my bills." "Well," I said, "don't you think you ought to work somewhere else then to get that money? You are not doing anything for us." So we stopped—stopped my car—I didn't want to talk in the office, and we stopped outside and I told him, "Now, Mr. Grant, you will have to do something." "Well, Mr. Steenland, I will do my best. I was studying law on this option of yours and thinking I was doing a very good thing for you." "Well," I says, "You may think so, but I don't. You was going to sell this property, but you don't do it. You don't sell these houses or make any effort and all you do is to wait for me Saturdays to give you your envelope and then you run off." Well, he said that he would do better and try to, at least, but I ought to give him at least $50, at least I should give him that in order to maintain himself.

Q And that is what you did, as shown by this statement, is it not? A Yes, sir.

Q The last payment shown by this statement is January 24, 1925, $50. What happened at that time?

The Court: Why did you stop then? Why did you stop then?

The Witness: The reason why I stopped that is because he refused to do anything for me.

Q Had Grant had anything—(interrupted).

The Court: In what way?

The Witness: In selling the property or disposing of it or giving me back my money I had already put in.

The Court: Well, he hadn't been doing anything before.

The Witness: No.

The Court: Then what did he stop doing?

The Witness: Well, he promised when I gave him the $50 that he would try to do better and make some sale. He thought when he was studying law that he was helping me out, I wouldn't have to employ an attorney, I suppose. He didn't say that, but I supposed that, and I told him I didn't need him for that, I never understood him to come with us for that purpose. There was only one reason why he came with us and that was with the proposition of the company, this property from the Nordhoff Land Company, to sell it and take the profits. He knew very well that I had no money to put into this property unless I sacrificed others.

Q Have you realized anything on the land? A Not to this very day, no.

Q How much of the property has been sold? A Of the six houses three are occupied; one is sold for cash, another one is sold on a second mortgage and one of them is sold for $100 down and $100 a month which is simply a contract.

Q The one sold for cash. How much was it sold for? A Including the land it sold for $13,000, but they got an extra—(interrupted).

The Court: Have you a statement of his income from this land?

Mr. Morrison: There is not any income; it is vacant land.

The Witness: No. Wait a minute. These are houses, no vacant land.

Mr. Morrison: No, sir; I haven't had that property—

(Argument.)

Q The house, which you say was sold for cash to Mr. Steenland, did you receive the full purchase price in cash or only the equity above the mortgage on the property? A The equity above the mortgage. 10

Q (By the Court.) And do you remember how much that was? A The one house was sold, the adjoining lot.

Q You have taken in less than $10,000? A Oh, yes; less than that.

Mr. Morrison: You may take the witness. 20

Cross examination by Mr. Whinery.

Q When Mr. Grant came to see you in the fall of 1923 and made this proposition to you, it was the proposition by which you and he would become jointly interested in the property, was it not? A Absolutely no.

Q Is that not what the contract said? A The contract? 30

Q The option agreement? A The contract—the first agreement may say that, but that was not my understanding, our understanding between Mr. Grant and myself, because Mr. Grant didn't have anything. All he had was the option, and the option, he said—(interrupted).

The Court: You didn't have anything, not even the option, did you?

The Witness: No, I didn't have anything. 40

Q And doesn't that option still run as to part of the property, Mr. Steenland? A On one part it does.

Q And isn't that still in the names of you and Mr. Grant? A Absolutely.

Q And it is effective still, is it not? A I suppose so.

10

Q He has an interest in that property that is left, has he not? A I suppose so, if he lives up to what he agrees to.

Q Do you still say that he has no interest in the balance of the property? A If he lives up to what he agrees to.

Q Answer my question, if you will, please. Do you still say that he has no interest in the first part of the property to which title was taken? A He has no more interest in that, absolutely not.

20

Q Did he have any interest under the original optional agreement? A Yes, sir.

Q And when did that interest in the property terminate? A When he failed to live up to what he agreed to.

Q And when was that? A In November—in December; in the end of the year when he was to put up this money.

30

Q In 1924? A Yes, sir.

Q Then you say his interest in the property did not expire until more than a year after the making of his optional agreement? A Yes, sir; when he failed to live up to what he agreed to.

Q And up to that time he had an interest in the property? A Yes, sir.

Q And he had a half interest in the property? A No; I didn't say that.

Q What did he have? A He said he would have to—he wanted me to pay him $100 and fifty per cent. of the profit, but I never agreed to that.

40

Peter M. Steenland, cross.

Q What did you agree to? A I agreed to deal fair and square with him.

Q Wasn't there any agreement made as to the amount? A No, sir; absolutely none.

Examined by the Court.

Q You took the deed in February? A Yes, sir; February 13, 1924. 10

Q Put up $30,000? A I put up $30,000 at the end of the year.

Q At the end of the year? A At the end of the year.

Q You put up nothing when you took the deed? A No; nothing at all. Mr. Thacher took our bond and mortgage.

Q Yes; I see. A He was—used our name on the option. 20

Examined by Mr. Whinery.

Q Whose bond and mortgage was that, Mr. Steenland? A Steenland Construction Company's.

Q And did Mr. Grant sign any papers there? A Yes; he signed the bond.

Q And he became liable on the bond? A Yes, but he isn't worth anything.

Q He became jointly liable with you for the payment of the moneys, did he not? A Yes; but he refused to work. 30

Mr. Whinery: May I ask he be more responsive to my questions, may it please the Court?

The Court: He said "Yes."

Q The proposition that he made to you, when he first came to you, was that you would put up 40

the money to take this property? A No; no money was to be passed up.

Q Well, then, the proposition was that you were to put up the money to complete the six houses? A Yes; but he was to have no interest in the houses.

10 Q Did he ever sign a release for those six houses? A He didn't have to.

The Court: Answer.

The Witness: He never signed a release as I know of.

Q Did you ever ask him for any release? A No.

Q That was part of the original proposition? A My responsibility—(interrupted).

20 Q Will you answer my question? That was part of the original proposition? A The responsibility was to build the six houses; that was mine.

Q The property on which these six houses was located is part of the original property?

The Court: Yes.

A Oh, yes; sure.

30 Q Did you ever ask Mr. Grant to put up any money for the completing of these houses? A No.

Q Never got any quittance or release from him at any time? A No.

Q Did you ever ask Grant to put up any money to pay any of these bills? A Which bills?

Q Any of the bills in connection with this property. A Certainly; he went to Cleveland. I gave him a copy of the letter to ask him to

40 pay this $30,000.

Q Did you do it at any other time? A No; but he knew it was due. He tried hard to sell it to get the money.

Q Tried hard to sell the property to get the money? A He said he did.

Q Did you believe him? A No. Finally, I did not.

Q Did you then? A I always believed him. That is why I took him home for dinner; I took him home a number of times. I believed that man absolutely.

Q When you first entered into this arrangement with him in the fall of 1923, you knew that Grant didn't have much money, didn't you? A Certainly; he told me he didn't have any.

Q You didn't expect him to put up any of this money if he had to put it up? A He said he had good friends that could put up the money.

Q You didn't expect him personally to put up the money, did you? A He was going to get it for me.

Q You did not expect him personally to put up the money? A I expected him to get me the money; I didn't ask where from.

Q You knew he couldn't put it up, didn't you? A I knew he could not personally, but he had friends that could put it up. He told me so.

Q And knowing that, you went into this proposition and signed the bond and mortgage? A Yes.

Q You agreed to build the houses? A Yes, sir.

Q You paid the engineers' charges? A Yes.

The Court: Do not argue with him, please. You are not developing any facts.

Mr. Whinery: All right, sir.

Q When was this effort made to sell the property to the golf club? A It was made before we had the deed.

Q When did you make any definite written propositions with the golf club? A They came down on April the 10th, if I remember correctly, or about that date, when Mr. Franklin, no—Mr. Turner, and Mr. Franklin, I am correct, came over in reference to an exchange that they wanted, and I gave them the amount that we wanted for the exchange of a certain piece of property on the north and we wanted a piece on the south end.

Q And that was on April 10th? A Yes.

Q About April 10th? A Yes, about that time, I said.

Q Did you consult Mr. Grant relative to that? A Yes, he knew all about it.

Q And were there any other propositions made to the golf club? A No; that was the only one that I know of. That was really him did that.

Q Was any cash to pass in this transaction with the golf club? A Oh, yes.

Q How much? A I don't know exactly, quite a good deal.

Q Roughly? A Roughly, about a quarter of a million.

Q And that was the time that you attempted to sell the property to the golf club? A Yes, sir.

Q Do you know how many propositions were put up to the golf club? A That was the only one I know of.

Q And who made the proposition to the club, or did the club make it to you? A The club made it—no; we made the proposition to the

club, but the president and Mr. Turner, one of the governors, came over to our office.

Q No sale resulted, of course, in that? A No, sir.

Q There were other efforts made to sell the property during the year, were there not? A I believe there was.

Q And were some of those made with auctioneers? A Yes; there was some of them partly made with auctioneers, that they would try to.

Q Were you willing to accede to the sales made in that manner? A Any way, as long as we got the money.

Q Did you have any difficulty with—was there any other trouble; anybody object to it in your company? A No; the only objection was the improvement of the streets. In order to have an auction sale you have got to—we had to spend at least $20,000. Mr. Grant didn't have the money.

Q And were you willing to spend that? A And Mr. Steenland did not have the money or did not want to spend it because he would have to sacrifice other properties that he held and he did not feel like doing that.

Q Therefore, you were not willing at that time to go into the deal? A Oh, yes.

Q With the auctioneers? A Willing if Mr. Grant would raise his portion as he said he would do.

Q But only on those conditions? A Yes, sir.

Q Do you remember the date when you went over to Mr. Thacher's office to close this title? A February 13th.

Q And at that time the bond and mortgage were also signed, and the supplemental agree-

ment prepared? A The supplemental agreement, I guess, was drawn before, wasn't it?

Q Was there a supplemental agreement drawn at that time relative to the remainder of the property? A No; I don't think it was that same day.

10 Q Now, Mr. Steenland, you testified that you refused to make any further payments of fifty dollars because Mr. Grant was not doing anything for you. That was in January, 1925. You had had trouble, a dispute during that month, had you not; and what was that dispute over? A Over the meeting of the payments of the $30,000.

Q Didn't it concern Grant's interest in the property? A Yes; when he refused to get that 20 money I told him to walk out of the office, I had no more use for him.

Q And you told Grant you would not pay him any more money because you were through with him and he had no more interest in the property? A Right.

Q And that is the reason you did not pay him any more? A That is the reason I did not pay him any more because he had no more interest, right.

30 Q It was at your request Mr. Grant went to Leonia, wasn't it? A Yes, sir.

Q And were people coming in there who would be interested in large tracts of land such as this was? A Yes; wait a minute—I mean—through other agents.

Q I am speaking now of the selling of large tracts such as this Nordhoff property. A And the houses; that is what Mr. Grant put the thing.

Q There were six houses there to sell, and 40 Mr. Grant was only there to sell the large tract,

was he not? A He was there to sell the six houses, which he claimed he would get the money from. I was to build them, but he was to see that the profits made came in.

Q He was to be interested in the profits in that, too? A If he wanted any of it.

10

Examined by the Court.

Q Weren't you at that time to sell the land by lots? A No, not at that time; not originally.

Q Not originally, but in January, 1925? A Oh, yes, sir.

Q Weren't you making efforts then to sell the land by lots? A We were, the six houses.

Q Only? A Yes; we had not—(interrupted).

Q The rest of the land had not been subdivided into blocks? A No. 20

Q And lots? A The map had not been filed—laid out, though.

Q There had been no effort to sell by plan? A Off the map, no; not yet, not at that time, because the streets had to be cut through and there was too much expense.

Examined by Mr. Whinery.

Q Then you never requested Grant to sell any individual lots off of the plan? A He could not, because there were no—(interrupted). 30

The Court: Wait. Just answer.

The Witness: No.

The Court: Except the lots?

The Witness: Except the houses.

Q The six houses? A And the lots alongside of the houses.

40

Peter M. Steenland, direct.

Q And what you wanted Mr. Grant to do there was to sell the big tract? A No; houses also, and the lots next to the houses.

Q You did not want him to sell the big tract, however? A Well, of course, I did, positively; that is what he came there for mostly.

10

The Court: Have you since subdivided?

The Witness: No. You see, since they put the attachment on there, it hasn't been any good.

Mr. Morrison: You mean the lis pendens?

The Witness: Lis pendens.

Q This first statement that you offered, Mr. Steenland, Exhibit D. 1, contains your entire disbursements connected with this property? A Right, correct.

20

Q Including your salary, the payment you made to Grant, the payments made to him and including the payments made on account of these six houses? A No; not the houses.

Q They were left out of it entirely? A The houses were separate.

Q The first proposition that Mr. Grant made to you was that he was to receive one hundred dollars a week, was it not? A Yes; he wanted that.

30

Q Didn't you agree to do that the first time? A No, sir; no, sir; no, sir.

Q You did agree to give him a drawing account of fifty dollars a week? A After he said he had to have some money to go around with his friends; he had to have money in his pocket to go around.

Q Was this to be charged against the property as part of the expenses of developing the

40

property? A Yes. I may say, he asked me this when we went to the gas company one time in my automobile. He did not ask me this in the office.

Q Can you tell us why on February 2nd or February 9th the amount was changed from fifty to seventy-five dollars? A Yes, sir. 10

Q Why? A For the simple reason—(interrupted).

The Court: '24?

Q Nineteen twenty-four? A Yes, 1924.

Q Yes. A Mr. Grant at that time said, "Mr. Steenland, I have another piece of property I wish you would take." I says, "Where, Mr. Grant?" "Why, over here in Englewood, called the Brinkerhoff estate, and," he said, "the 20 Bankers Trust Company has got that for sale; would you mind coming over there?" I said, "Grant, I have enough property now." "Well," he says, "we can get that right; we can get that right." "Yes," I said, "I suppose so." "Will you come over there with me, Mr. Steenland?" I said, "Yes, I will go over with you, but I don't think I should go, but nevertheless, I will go with you." He went over there with me to show me that Brinkerhoff estate, and there was 30 also a piece of property called the Jones estate right in back of it. "Now," he says, "if you could get a hold of this here property and we developed that, we could get a nice profit from that." I says, "How do you know?" "Well," he says, "I have some friends in New York; they live right here across the street from this property, a party by the name of Du Bois"—if I remember correctly—"and they tell me that this is splendid property for houses selling from around 40

twenty to twenty-five thousand dollars." I believed Mr. Grant all the time, and I took him to my house many a time and I believed him at that time. I went into this proposition with him. Then he says to me, "Mr. Steenland, couldn't you raise my fifty dollars to seventy-five, so that I could go around my friends a little? Now, if I put this deal over, I certainly should have earned that much, don't you think so?" I says, "I presume you would, if you put that deal over satisfactorily to me, I don't doubt that I could pay you the seventy-five dollars. I can; I will," and I did.

Q And did you take title to the Brinkerhoff property? A Yes, sir.

Q And when did you do that? A I think that was taken in April. There was some delays in it for the simple reason this Mr. Grant introduced me to—or Mr. Grant wanted to negotiate with the Bankers Trust Company or a party by the name of Michaels, also was a party by the name of Reilly, and there was on—estate by the name—and Duncan from Englewood, in reference to this property.

Q And your purchase of this property, of the Brinkerhoff property, was through the assistance and aid of Mr. Grant; is that correct? A Correctly, but let me correct here. When Mr. Grant told me this, I told him to get the agreement and he said the Bankers Trust Company wouldn't let any agreements go out of their office. I must go over there. When I got to the Bankers Trust Company, Mr. Grant or Mr. Reilly showed me the contract agreement, which was made out to Roderick D. Grant. After I read the contract, I said, "Say, Mr. Reilly, who is buying this property?" "Why," he says, "I

suppose you are." That is the first time I met Mr. Reilly. "Well," I said, "why have you got Mr. Roderick D. Grant's name in there?" "Why," he says, "I thought he was buying it." "Oh," I said, "then you better get the money from him. Here is your contract." He says, "What do you wish to have done?" I said, "I wish to have it changed to the Steenland Construction Company, if you want the deal with the Steenland Construction Company; otherwise our deal is off." 10

Q The only question I wanted you to answer there, you answered in the first place, namely, that Mr. Grant—(interrupted).

The Court: Do not rehearse it. He went way out of the line. Now you want to do it, too. 20

Q Mr. Steenland, if this property had been sold in the fall of 1924, you would have expected to get back all of this money that you paid in here, before any division was made, would you not? A If it had been sold in 1924, Mr. Roderick Grant would have gotten his fifty per cent., don't you think he wouldn't.

Q After deducting all these expenses you have here? A Oh, yes, excuse me; the overhead here would come off first. 30

The Court: What did you mean, he should have his fifty per cent.? You said to me a little while ago you didn't promise fifty per cent. unless he did what was right.

The Witness: Right.

The Court: Why do you say he would have had his fifty?

40

The Witness: I would have given it to Mr. Grant if he had made that sale the way he said he would, after deducting the overhead and expenses.

The Court: Not because of any agreement?

10 The Witness: No, not because of any agreement.

Q Just out of your own good will? A There was no agreement.

Q And that was your understanding of the rights that you had with Mr. Grant in the beginning, that if a sale was made, after deducting all the disbursement that you made, then there would be an equal division of the profits? A Equal division, if he made the sales agreed to.

20 Q Yes. Whether he made the sale or you made the sale? A No; he was to make the sale.

Q You would first deduct your expenses? A Oh, yes.

Q And then there would be a division of the profits? A Expenses had to be deducted, surely.

Q And then would be a division of the profits? A Yes, sir, but there was no agreement to that effect.

30

The Court: You mean, no written agreement?

The Witness: No written agreement. He simply said he would get me a half a million dollars.

The Court: Word of mouth?

The Witness: He said he would get me that, and I said, "If you get me that I will certainly give you half."

40 Mr. Whinery: That is all.

The Court: Any more?

Mr. Morrison: No, sir.

CARL E. HEDER, sworn for the defendant.

Direct examination by Mr. Morrison. 10

Q Mr. Heder, where do you live? A Palisade Park.

Q By whom are you employed? A By the Steenland Construction Company.

Q How long have you been employed by that company? A Four years.

Q Did you have anything to do with the building of the six houses on Broad avenue on the Nordhoff Land Company contract? A Yes; superintendent. 20

Q You were the superintendent. Did you ever see Mr. Grant in respect to the building of those houses? A Not in the details; no, sir.

Q Did he ever come there and give you any instructions what to do, or anything of that sort? A No, sir.

Q What plans were those houses built from? A Why, we had plans, stock standard plan they had used for several years. 30

Q When you say "they," who do you mean? You say "they have used." A The construction company.

Q The Steenland Construction Company. Where had they used it? A Where we had built, on Brinkerhoff Terrace, in 1923.

Q And the same plans that had been used there were used in these Broad avenue houses? A Yes, sir.

40

Carl E. Heder, cross.

Cross examination by Mr. Whinery.

Q These plans were given to you, weren't they, to use for building these houses? A Yes, sir.

10 The Court: Stock plans, Mr. Whinery?

Mr. Whinery: I want to find out where he got them, may it please your Honor.

Q Who gave these plans to you? A Mr. Peter Steenland.

Q And did you erect the other houses from those plans? A Yes, sir.

Q Exactly the same plans? Haven't they been changed in any way? A No, sir.

20 Q When were those houses built that were built like these? A In the fall of 1923.

Q And can you give us the locations of these houses? A Yes.

The Court: Which ones, the six, you mean?

Mr. Whinery: No, sir. The twenty-three houses that were like the six.

30 The Witness: Brinkerhoff Terrace.

Q Is that in this Brinkerhoff tract? A Yes, sir.

Q Are these six houses all alike? A No, sir; the floor plans are practically alike.

Q The floor plans are alike. Are the outsides of the houses alike? A No, sir.

Q Are the outside of those houses like the houses that were built in 1923 on the Brinkerhoff

40 tract?

The Court: Do not take up so much time on unimportant matters.

The Witness: Yes, sir.

Mr. Morrison: Defendant rests.

CARL O. KAISER, sworn for complainant. 10

Direct examination by Mr. Whinery.

Q Mr. Kaiser, did you ever have any business dealings with the Steenland Construction Company? A Yes, sir.

Q Did you have anything to do with these six houses that were erected on Broad avenue? A Yes, sir.

Q What? A I designed them. 20

Q Were they taken from any stock designs? A No.

Q Were they designed specially for that location? A Those six houses were designed especially for the Broad avenue job.

Mr. Whinery: That is all. Oh, I will ask another question.

Q Did Mr. Grant work with you on those plans at all? A Why, yes; Mr. Grant gave me quite a number of suggestions and went over the plans with me as I designed them. 30

Mr. Morrison: No questions.

40

RODERICK D. GRANT, recalled in rebuttal.

Direct examination by Mr. Whinery.

Q Mr. Grant, you heard the testimony of Mr. Steenland on the stand?

10

The Court: No, no. I heard it.

Mr. Whinery: All right, sir.

The Court: There is no use asking him whether he heard it. That is of no importance. Ask him what you want.

Q Mr. Grant, did you ever promise Mr. Steenland that you would find a buyer, that you would be liable to find a buyer, for this property? A Absolutely not.

20 Q By that I mean—(interrupted).

The Court: He has already given his story. How is this rebuttal?

Mr. Whinery: All right, sir. That is all, then.

The Court: Is that all, gentlemen?

Mr. Morrison: That is all.

Mr. Whinery: That is all.

30

TESTIMONY CLOSED.

40

EXHIBIT C. 1.

THIS AGREEMENT, made this 5th day of November, 1923, by and between the NORDHOFF LAND COMPANY, a corporation organized and existing under the laws of New Jersey, and RODERICK D. GRANT, 10

WITNESSETH:

That in consideration of the payment of One Dollar ($1) by the said Roderick D. Grant to the Nordhoff Land Company, the receipt of which is hereby acknowledged by said Company, the said Company has agreed to, and does hereby, give to the said Grant an option until December 15, 1923, to purchase all lands now owned by it of approximately 105 acres, located in the City of Englewood and in the Town of Leonia and Fort Lee, in Bergen County, in the State of New 20 Jersey, for the sum of Two hundred thousand dollars ($200,000). This option may be exercised only in the following manner: If the said Grant shall intend to exercise his option to purchase said lands for said sum he shall give to the Nordhoff Land Company at least five days' notice of his intention so to do by delivering, or causing to be delivered, such notice directed to said Company care of Simpson, Thacher & Bartlett at 30 their office, 62 Cedar Street, New York City, stating the time, during ordinary business hours, when said purchase prise will be paid by him at the office of Simpson, Thacher & Bartlett, 62 Cedar Street, New York, and calling for the delivery of a deed to said premises at such time and place, and shall thereafter, and on or before December 15, 1923, attend at said office and make proper tender of said sum of Two hundred thousand dollars ($200,000). On tender of such deed 40

in accordance with such notice the Nordhoff Land Company shall be entitled to receive the payment of said Two hundred thousand dollars ($200,000) from said Grant. Unless this option shall be exercised in the foregoing manner within the time specified for its exercise, it shall lapse and become of no effect whatsoever.

10

In Witness Whereof the Nordhoff Land Company has caused its corporate name to be hereunto subscribed by its President, and its corporate seal to be hereto affixed, attested by its Secretary, and the said Roderick D. Grant has hereunto subscribed his name the day and year first above written.

NORDHOFF LAND COMPANY,

By THOMAS D. THACHER,
President.

20

Attest:

H. F. Halsted,
Secretary.

(seal)

EXHIBIT C. 2.

30

Agreement made this 10th day of December, 1923, between Nordhoff Land Company, a corporation of the State of New Jersey, (hereinafter described as the "Vendor"), and The Steenland Construction Company, a corporation of the State of New Jersey, and Roderick D. Grant, (hereinafter described as the "Optionees"),

Witnesseth:

That in consideration of the sum of One Dollar (1.00) paid by the Optionees to the Vendor,

40

the Vendor grants to the Optionees the right and option, to be exercised at any time within the times hereinafter provided, but subject to and only in accordance with the terms hereinafter provided, to purchase the following described parcels of land situated in the Boroughs of Leonia and Fort Lee, and in the City of Englewood, all in the County of Bergen and State of New Jersey:

PARCEL A.

I. Beginning at a point in the center line of Jones Road, being the point of termination of the first course of a certain tract of land described in a certain deed from Thomas Thacher and Sarah McC. Thacher, his wife, to Nordhoff Land Company, dated April 24, 1902, and recorded in the office of the Clerk of Bergen County on June 23, 1903, in Book 564 of Deeds for said County, pages 365 &c., said point of beginning being distant 1,835.48 feet from the northwesterly corner of the tract conveyed by said Thacher Deed, measured along a line running from said northwesterly corner south 43° 7′ east along the southerly line of land formerly of the Estate of William Walter Phelps and the northerly line of said tract; running thence (1) along the said center line of Jones Road, being also the easterly boundary of the tract of land conveyed by the aforesaid Thacher Deed, south 14° 59′ 30″ west 289 feet; thence (2) still along said center line south 12° 48′ 30″ west 442 feet; thence (3) still along said center line south 19° 15′ 30″ west 363.48 feet; thence (4) still along said center line south 14° 14′ 30″ west 375.70 feet; thence (5) still along said center line south 21° 36′ 30″ west 634.33 feet to the southeasterly corner of the tract of land conveyed by said Thacher Deed; thence (6) still along said center line of Jones Road, being also the easterly boundary of a tract of land described in

Exhibit C. 2.

a certain deed from Angela Warneken and husband to Nordhoff Land Company, dated March 2, 1904, and recorded in the office of the Clerk of the County of Bergen on March 30, 1904, in Book 579 of Deeds for said County, pages 218 &c., south 28° 5′ 30″ west 310.73 feet to the southeasterly corner of the tract conveyed by the said Warneken Deed;
10 thence (7) still along the center line of Jones Road and along the easterly boundary of a tract of land described in a certain deed from E. Ellery Anderson and wife to Nordhoff Land Company, dated November 3, 1902, and recorded in the office of the Clerk of the County of Bergen on June 25, 1903, in Book 564 of Deeds for said County, pages 446 &c., south 28° 5′ 30″ west 147.13 feet; thence (8) still along the center line of Jones Road and the easterly boundary of the land described in said Anderson Deed
20 south 34° 50′ 30″ west 175.88 feet to the southeasterly corner of the tract described in said Anderson Deed; running thence (9) along the southwesterly boundary of the tract of land described in said Anderson Deed north 44° 23′ 30″ west 727 feet; running thence (10) still along the said southwesterly boundary of the land described in said Anderson Deed north 45° 53′ 30″ west 292.13 feet; running thence (11) still along the said southwesterly boundary of the tract described
30 in said Anderson Deed north 50° 53′ 30″ west 946.06 feet to a point where the easterly line of property formerly belonging to the Christie Estate intersects the northerly line of Riley Avenue; running thence (12) along the westerly boundary of the tract of land described in said Anderson Deed, being also the easterly line of property formerly belonging to the Christie Estate, north 35° 7′ 30″ east 332.41 feet more or less to the southeasterly corner of the tract of land described in a certain deed from Anna C.
40 Stagg and Edward Stagg, her husband, and

Exhibit C. 2.

Minnie Christie to Nordhoff Land Company, dated October 1, 1903, and recorded in the office of the Clerk of Bergen County on December 7, 1903, in Book 573 of Deeds for said County, pages 316 &c.; running thence (13) along the southerly boundary of the tract of land described in said Stagg Deed north 49° 0′ 30″ west 125.72 feet; running thence (14) still along the boundary line of lands described in said Stagg Deed north 36° 22′ 30″ east 62.84 feet to a point which would be in the prolongation of the northerly line of a private roadway commonly called Harold Avenue; running thence (15) southeasterly along the said prolongation of Harold Avenue and along lands conveyed to Harry Stark by deed dated July 31, 1923, and recorded in the office of the Clerk of Bergen County, to the westerly boundary line of lands of Niblick Realty Company; running thence (16) along the said boundary line of lands of Niblick Realty Company south 18° 8′ 30″ west to an angle point in the boundary line of said lands of Niblick Realty Company; thence (17) still along lands of said Niblick Realty Company south 36° 14′ 30″ east 244.60 feet; thence (18) still along lands of said Niblick Realty Company south 13° 58′ east 235.50 feet to a point; thence (19) still along lands of Niblick Realty Company, north 63° 5′ east 437.38 feet to a point; thence (20) still along lands of said Niblick Realty Company, 856.59 feet on a curve bearing to the left with a radius of 2,249.60 feet, (the chord of said curve bearing north 52° 13′ east 851.42 feet) to a point, said point bearing north 48° 41′ 30″ west 45.0 feet from a stone monument; running thence (21) still along lands of Niblick Realty Company north 41° 18′ 30″ east 91.60 feet to a point, said point being in the westerly side of Nordhoff Drive; running thence (22) still along lands of Niblick Realty Company, being also the westerly side of Nordhoff

10 20 30 40

Exhibit C. 2.

Drive north 4° 36′ 30″ east 56.20 feet to a point, said point bearing north 85° 23′ 30″ west 5.0 feet from a stone monument; thence (23) still along lands of said Niblick Realty Company, being also the westerly side of Nordhoff Drive 684.35 feet on a curve bearing to the right with a radius of 1,129.98 feet, (the chord of said curve bearing north 21° 57′ 30″ east 673.94 feet) to a point, said point bearing north 50° 41′ 30″ west 5.0 feet from a stone monument; running thence (24) still along lands of said Niblick Realty Company and along the westerly side of Nordhoff Drive to the intersection of this last-mentioned course with the northerly boundary of the tract of land described in the Thacher Deed hereinabove referred to; running thence (25) easterly along the said northerly boundary of the lands described in said Thacher Deed to the point or place of beginning.

II. Beginning at a point in the westerly line of lands conveyed by Nordhoff Land Company to Niblick Realty Company by deed dated May 20, 1910, and recorded in the office of the Clerk of Bergen County, where said westerly line is intersected by the northwesterly line of lands conveyed by Nordhoff Land Company to Niblick Realty Company by a certain other deed dated February 2, 1920, and recorded in the office of the Clerk of Bergen County; running thence (1) north 10° 21′ west along lands of Niblick Realty Company described in said first-mentioned deed 156.58 feet; running thence (2) still along said lands of Niblick Realty Company north 32° 37′ 30″ east 309.70 feet; running thence (3) still along lands of Niblick Realty Company north 44° 47′ 30″ west 94.46 feet to a point in the center line of Broad Avenue; running thence (4) along the said center line of Broad Avenue South 38° 12′ 30″ west to a point where the said center line of Broad Avenue would be intersected by the projection westerly of the northerly line of

the tract of land conveyed by Nordhoff Land Company to Frank Walker and Ida Walker, his wife, by deed dated April 28, 1921, and recorded in the office of the Clerk of Bergen County; running thence (5) easterly along the said projection westerly of the northerly boundary line of the tract described in said Walker Deed and along the said northerly boundary line of the said tract described in said Walker Deed to the point of intersection of said northerly boundary line of said Walker Tract with the northwesterly boundary line of the tract described in the deed from Nordhoff Land Company to Niblick Realty Company, dated February 2, 1920, hereinabove referred to; running thence (6) northerly along said northwesterly boundary line of said tract described in said last-mentioned deed to Niblick Realty Company, to the point or place of beginning.

PARCEL B.

All other lands owned by the Vendor lying between Broad Avenue on the west, Jones Road on the east, Walton Street (or Place) on the north, and the northerly boundary of the tract numbered "I" in Parcel A above described, on the south.

It is expressly understood and agreed that as to any land lying in the bed of any street, road or avenue, opened or proposed, within the limits of the foregoing description, only such right, title and interest as the Vendor may have are included in this option or will be included in any conveyance made pursuant to this agreement.

The acreage of both Parcel A and Parcel B shall be determined by means of a survey to be produced by the Optionees, said survey to be made by a surveyor approved by New Jersey Title Guarantee and Trust Company; and the

determination of said surveyor as to said acreage shall be conclusive and binding upon the parties to this agreement.

The purchase price of Parcel A shall be a sum equivalent to the value of Parcel A computed at the rate of Two thousand Dollars ($2,000) per
10 acre, plus the sum of Two thousand Dollars ($2,-000), and shall be payable by the Optionees executing and delivering to the Vendor their joint and several bond in such sum, bearing interest at the rate of six per cent. (6%) per annum, said interest to be payable January 1, 1927, and semi-annually thereafter, and the principal of said bond to be payable January 1, 1934, together with a mortgage securing said bond. Said bond shall be in the form usually employed by Peoples Trust & Guaranty Company, of Hackensack, New
20 Jersey, but shall also contain a provision to the effect that should any default be made under any of the terms, conditions or covenants of the mortgage securing said bond, which default shall continue for thirty days, then and from thenceforth, that is to say, after the lapse or expiration of said thirty-day period, the principal of said bond, with all arrearage of interest thereon, shall, at the option of the Vendor, its suc-
30 cessors or assigns, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired. The prompt payment of the principal of said bond, together with interest thereon, shall be guaranteed by Peter M. Steenland and Rollo Steenland. The mortgage securing said bond shall be in the form usually employed by Peoples Trust & Guaranty Company, of Hackensack, New Jersey, but shall contain further special provisions as follows:
40

Exhibit C. 2.

(a) In case any instalment of interest payable pursuant to the mortgage shall remain unpaid for thirty days after the same shall become due, or in case any taxes on the mortgaged property shall remain unpaid thirty days after the same shall become due, or in case of any default under any of the terms, conditions or covenants of the bond or mortgage which shall be continued for a period of thirty days, the principal of said mortgage, together with all interest accrued thereon, shall immediately become and be due and payable.

(b) When not in default under any of the provisions of the mortgage, any owner of the mortgaged premises shall be entitled to releases of portions of the mortgaged premises in lots of not less than 50 feet in width and not more than 115 feet in depth fronting on streets or avenues to be laid out through said premises, provided that no release shall be required which shall result in leaving under the lien of the mortgage any lot less than 50 feet in width or less than 100 feet in depth, or any lot without street frontages; the consideration for all such releases to be at the rate of $10. per front foot plus the interest accrued on the amount of the consideration for any such release, whether otherwise payable or not, and the releasee to pay the cost of preparing such releases, not exceeding Fifteen Dollars ($15.) for any such release. All payments for releases, except the amount representing interest on such payments and the cost of preparing such releases, shall be deemed payments in reduction of the principal indebtedness secured by the mortgage.

(c) The Mortgagors will covenant to erect and complete on the mortgaged premises on or before July 1, 1924 at least six dwelling houses in accordance with plans identified by the signatures of Roderick D. Grant and Peter M. Steenland, in the possession

Exhibit C. 2.

of the Vendor, provided that if such completion be delayed by strikes, extraordinary weather conditions or other causes beyond the control of the Mortgagors, the time for such completion shall be extended for a period equal to such delay but not exceeding three months in any event.

10 (d) The holder of the mortgage shall accept in lieu of cash for releases of lots from the lien of the mortgage, second mortgages on any property so released within the limits of the mortgaged premises which shall have been improved with dwelling houses built in accordance with the plans hereinabove referred to, or in accordance with plans hereafter approved by the Mortgagee, provided that no such second mortgages shall be subordinate to more than one prior mortgage and that the aggregate amount of such second mortgages and such prior
20 mortgage shall not exceed 75% of the price for which the property covered thereby shall have been sold by the Mortgagors upon a bona fide sale to an actual occupant, and provided further that the payment of each such second mortgage and the bond secured thereby shall, by a sufficient instrument in writing, be jointly and severally guaranteed by The Steenland Construction Company. Roderick D. Grant, Peter M. Steenland and Rollo Steenland. All such second mortgages shall
30 be due and payable within three years after the delivery thereof, shall bear interest at the rate of six per centum (6%) per annum, payable in monthly instalments, and shall also provide for payment of one per cent. (1%) of the principal indebtedness monthly with each interest payment until three years after the date of such mortgage, when the residue of the principal shall be and become due and payable. All such second mortgages and the bonds secured thereby shall be in the forms usually employed by Peoples Trust &
40 Guaranty Company, with a provision for ac-

celeration of maturity of the entire principal in the event of failure for thirty days to pay interest, any instalment of principal, taxes or assessments, or in case of any default under the prior mortgage.

(e) The Mortgagors will covenant to pay for and obtain releases, during the calendar year 1924 and during each calendar year thereafter, of at least ten per cent. (10%) of the area of the mortgaged premises until the said mortgage shall be fully paid and satisfied. 10

(f) The Mortgagors will covenant to observe the restrictions to be contained in the deed to the mortgaged premises as hereinafter in this agreement provided.

The option hereby granted shall lapse unless exercised strictly in the manner and within the time hereinafter provided and limited, and unless so exercised shall be deemed not to have been exercised and to have lapsed. To exercise any option hereunder the Optionees shall deliver to Simpson, Thacher & Bartlett, the attorneys for the Vendor, at their office, No. 62 Cedar Street, in the Borough of Manhattan, City, County and State of New York, a notice in writing signed by them stating that the Optionees thereby exercise said option and designating a time during ordinary business hours and a date for the delivery of a deed of the property as to which said option is exercised, which date shall be not more than thirty days and not less than fifteen days after the service of such notice. 20 30

No right to exercise any option hereunder shall exist with respect to Parcel A after March 3, 1924, and with respect to Parcel B after January 1st, 1929, and in case the Optionees shall fail to exercise the option with respect to Parcel A strictly in the manner and within the time limited 40

as aforesaid, or if after exercising said option the Optionees shall default in the performance of any obligation hereunder or under any instrument given pursuant to the provisions hereof, the option with respect to Parcel B which might otherwise be available to the Optionees hereunder shall be deemed to have lapsed, and the Optionees shall have no further right to purchase said Parcel B, and said Optionees shall have no further claim whatsoever against the Vendor under this agreement.

If the Optionees shall exercise the option with respect to Parcel A, taxes shall not be apportioned at the closing of title to said parcel, but the Optionees will pay or assume responsibility for the payment of all taxes on said parcel for the calendar year 1924.

If the Optionees shall so exercise any option hereunder they shall jointly and severally be bound and do hereby agree to purchase the parcel with respect to which the option is so exercised and to take title to the same in accordance with the provisions hereof promptly on the date designated in the notice exercising such option, and subject to the following encumbrances and circumstances so far as the same may affect the parcel in question:

(a) Any state of facts which an accurate survey may show.

(b) All taxes which become a lien on Parcel A on or after January 1, 1924.

(c) Any and all assessments, confirmed or otherwise, imposed subsequent to the date of this agreement.

(d) Restrictions and regulations heretofore or which hereafter may be adopted or imposed by any governmental authority having jurisdiction over the said premises.

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(e) Rights of others, if any, in brooks crossing or bordering the premises.

(f) Telephone and telegraph wires crossing the premises, and the existence of such other easements, if any, as an inspection of the premises would disclose.

(g) Rights of any persons, firms or corporations under any of the following agreements: 10

(1) Agreements between Nordhoff Land Company and Englewood Sewerage Company dated March 12, 1903 and June 8, 1903, and agreement between Estate of Wm. Walter Phelps, Nordhoff Land Company and Englewod Sewerage Company, dated July 6, 1905;

(2) Agreement between Nordhoff Land Company and Hackensack Water Company dated March 17, 1903;

(3) Agreements, understandings and arrangements between Nordhoff Land Company 20 and Gas and Electric Company of Bergen County or Public Service Gas Company as set forth in Correspondence between said Companies, Chas. W. Leavitt, Jr., Thomas Thacher and others;
the Vendor expressly reserving the right to receive any and all sums which may hereafter become payable under the terms of any of said agreements, understanding or arrangements.

If any of the premises herein described be 30 taken in condemnation proceedings before the delivery of a deed to the Optionees, the Optionees shall nevertheless take title to the residue of any parcel with respect to which they may have exercised an option, without deduction or any allowance of any kind whatsoever on account of purchase price, except that the amount of the purchase money mortgage to be given by the Optionees shall be reduced by the amount of any compensation which the Vendor may have re- 40

ceived for the taking of land wholly within the parcel so to be conveyed.

All bonds and mortgages required to be executed and delivered by the Optionees pursuant to the provisions of this agreement shall at the time of the execution and delivery thereof be
10 valid first liens upon the premises respectively covered thereby. They shall be drawn by counsel for the Vendor but the Optionees shall pay the expense incurred by the Vendor for the drawing of said bonds and mortgages, not exceeding $25. each, and shall also pay for all revenue stamps required to be affixed to said bonds, any mortgage tax or similar tax, if any, which may at the time of the execution and delivery of said mortgages be payable on the recording of said mortgages; and all charges for recording said mortgages;
20 and the Optionees shall also pay to the Vendor the amount of all other taxes and charges, if any, which by virtue of any future law may be payable on account of this transaction.

All second bonds and mortgages, if any, delivered in exchange for releases from the lien of the mortgages given hereunder shall be drawn by counsel for the Vendor, but the Optionees shall pay the expense incurred by the Vendor for the
30 drawing of said second bonds and mortgages, not exceeding $20. each, and shall also pay for all revenue stamps required to be affixed to said bonds, any mortgage tax or similar tax, if any, which may at the time of the execution and delivery of said mortgages be payable on the recording of said mortgages, and all charges for recording said mortgages; and the Optionees shall also pay to the Vendor the amount of all other taxes and charges if any, which by virtue of
40 any future law may be payable on account of any such transaction.

Exhibit C. 2.

All deeds to be delivered by the Vendor shall be warranty deeds and shall contain a restrictive covenant running with the land and binding the grantees and all successors in interest of the grantees and providing that until 1939 or until the grantor in said deeds pursuant to the right which shall thereby be reserved to it so to do, shall sooner declare said restrictive covenant null and void; 10

(a) No building of any kind whatsoever shall be erected upon any part of the premises, except dwellings constructed for the private use of one family only and costing not less than $5,000., with not more than one private garage appurtenant to each such dwelling; provided, however, that two-family houses may be constructed on land fronting on Broad Avenue.

(b) No building or any part thereof shall be erected within 15 feet of the line of any street. 20

(c) No such dwelling shall be erected on any plot having a street frontage of less than 40 feet.

(d) For the purpose of these restrictions, corner plots shall be deemed as fronting on the street on which any such corner plot has the lesser dimension.

The purchase price of Parcel B shall be a sum equivalent to the value of Parcel B, computed at the rate of Two Thousand Dollars ($2,000.) per acre, plus whatever amounts shall have been paid by the Vendor for assessments affecting said property subsequent to the date of this agreement, and shall be payable by the Optionees executing and delivering to the Vendor their joint and several bond in such sum, bearing interest at the rate of six per cent. (6%) per annum, payable semi-annually, the principal to 30

40

Exhibit C. 2.

be payable on January 1, 1934, together with a mortgage securing said bond. Said bond shall be in the form usually employed by Peoples Trust & Guaranty Company, of Hackensack, New Jersey, but shall also contain a provision to the effect that should any default be made under any
10 of the terms, conditions or covenants of the mortgage securing said bond, which default shall continue for thirty days, then and from thenceforth, that is to say, after the lapse or expiration of said thirty-day period, the principal of said bond, with all arrearage of interest thereon, shall, at the option of the Vendor, its successors or assigns, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired. The prompt payment of
20 the principal of said bond, together with interest thereon shall be guaranteed by Peter M. Steenland and Rollo Steenland. The mortgage securing said bond shall be in the form usually employed by Peoples Trust & Guaranty Company, of Hackensack, New Jersey, but shall contain further special provisions similar to those hereinabove described in connection with the mortgage to be given on Parcel A, except that in the
30 mortgage affecting Parcel B the Mortgagors shall be required to obtain and pay for releases of twenty per cent. (20%) of the ground area covered by the mortgage in each year after the execution and delivery of said mortgage.

In case pursuant to the terms of this agreement title to Parcel A shall be closed and the deed thereof delivered and the purchase money bond and mortgage given on or prior to January 1, 1924, the purchase price of said parcel pay-
40 able hereunder shall be reduced by the sum of

Exhibit C. 2.

Two thousand Dollars ($2,000.); in case said closing shall take place and said deed, bond and mortgage shall be delivered after January 1, 1924 but before January 15, 1924, said purchase price shall be reduced by the sum of One thousand six hundred sixty-six and 67/100 Dollars ($1,666.67); if on or after January 15, 1924 but before February 1, 1924, by the sum of One thousand three hundred thirty three and 33/100 Dollars ($1,333.33); if on or after February 1, 1924 but before February 15, 1924, by the sum of One thousand Dollars ($1,000); if on or after February 15, 1924 but before March 1, 1924, by the sum of Six hundred sixty six and 67/100 Dollars ($666.67); if on or after March 1, 1924 but before March 15, 1924, by the sum of Three hundred thirty three and 33/100 Dollars ($333.33).

In case the Optionees shall not exercise their option to purchase Parcel A within the time and in accordance with the provisions herein provided, the Optionees shall be under no legal or moral obligation whatsoever to the Vendor.

The rights of the Optionees hereunder shall not be assignable and no one other than the Optionees shall have any rights hereunder.

In case prior to the closing of title to Parcel A above described, either Peter M. Steenland or Rollo Steenland, the guarantors of the bond to be given at said closing, shall die, this agreement and all rights hereunder shall terminate and be of no further force and effect. In case either Peter M. Steenland or Rollo Steenland shall die after the closing of title to said Parcel A, the Optionees shall, in any case where the guaranty of such deceased person is required by this agreement, procure and substitute for any such de-

Exhibit C. 2.

ceased person a surety or sureties satisfactory to the Vendor, and such surety or sureties satisfactory to the Vendor shall, in place of such deceased person, execute the guaranty or guaranties required to be given under this agreement, and the Vendor will accept guaranty or guaranties
10 by any such surety or sureties in lieu of the guaranty of any such deceased person.

In Witness Whereof, the parties hereto have duly executed this agreement the day and year first above written.

NORDHOFF LAND COMPANY,

By THOMAS D. THACHER,
President.

THE STEENLAND CONSTRUCTION
20 COMPANY,

By PETER M. STEENLAND,
President.

(seal) RODERICK D. GRANT.

Witness to execution by all parties:

Durand H. Van Doren.

30

40

EXHIBIT C. 3.

SIMPSON, THACHER & BARTLETT
Attorneys and Counsellors at Law
62 Cedar Street, New York.

December 18, 1923.

The Steenland Construction Company,
Roderick D. Grant,
Commercial Avenue,
Palisades Park, N. J.

Dear Sirs:

We are in receipt of your letter of December 17, and note that you have exercised the option with respect to Parcel A under the agreement between you and Nordhoff Land Company, dated December 10, 1923, and that you have fixed January 2, 1924 as the date for the closing of title to this parcel.

We will accordingly prepare and submit for inspection by your attorney as soon as possible forms of deed, bond and mortgage. The amounts will, of course, have to be left blank until the survey is completed and the acreage determined.

Very truly yours,

SIMPSON, THACHER & BARTLETT.

EXHIBIT C. 4.

(Also Exhibit C. 12)

Dec 31/23

Simpson Thatcher & Barlett
62 Cedar St
10 New York City

Gentlemen:

Referring to our letter of December 17th in which we designated January 2, 1924 as the probable closing date for transfer of The Nordhoff Land Property, wish to say that owing to the various delays in preparation of the necessary papers, the engineer's report and the time which will be necessary for the Title Company to make examination would suggest that some time 20 during the last week in January would be the earliest possible date for this closing.

Will you kindly indicate agreement to this arrangement and will later let you know the exact day?

Very truly yours
STEENLAND CONSTRUCTION CO.
Peter M. Steenland, Pres.

30 RODERICK D. GRANT.

RDG/AVC

40

EXHIBIT C. 5.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties that the closing of title to Parcel A described in a certain agreement between NORDHOFF LAND COMPANY, THE STEENLAND CONSTRUCTION COMPANY and RODERICK D. GRANT, dated December 10th, 1923, be and it hereby is adjourned to Wednesday, January 30th, 1924, at 10 o'clock in the forenoon, at the office of Messrs. Simpson, Thacher & Bartlett, 62 Cedar Street, New York, N. Y., the amount of the mortgage to be given at said closing to be reduced by the sum of $1,333.33, in the manner provided in said agreement, in case of closing of title after January 15, 1924, but before February 1, 1924.

10

20

NORDHOFF LAND COMPANY,

By Thomas D. Thacher,
President.

STEENLAND CONSTRUCTION COMPANY,

By

....
President.

30

....

(Note:—The above exhibit was the one produced by Steenland Construction Co. The copy signed by Steenland Construction Co. and Roderick D. Grant was given to Nordhoff Land Co.)

(See admission on page 75.)

40

EXHIBIT C. 6

(Envelope)

Simpson, Thacher & Bartlett,
62 Cedar Street, New York.

10 Roderick D. Grant, Esq., and
Peter M. Steenland, Esq., President,
Steenland Construction Company,
Commercial Avenue,
Palisades Park, N. J.

Hud. Term. Sta. N. Y. 10 Jan 2 1924 8-PM

EXHIBIT C. 7.

20 (Envelope)

Simpson, Thacher & Bartlett,
62 Cedar Street, New York.

Roderick D. Grant, Esq., and
Peter M. Steenland, Esq., President,
Steenland Construction Company,
Commercial Avenue,
Palisades Park, N. J.

30 Hud. Term. Sta. N. Y. 3 Jan 23 1924 7 PM

40

EXHIBIT C. 8

135248

230512

Nordhoff Land Company to Steenland Construction Company	Deed dated February 13 1924

10

This indenture made the 13th day of February 1924 between Nordhoff Land Company a corporation of the State of New Jersey party of the first part and Steenland Construction Company a corporation of the State of New Jersey party of the second part Witnesseth that the said party of the first part for and in consideration of the sum of one dollar ($1) lawful money of the United States of America and other valuable considerations to it in hand well and truly paid by the said party of the second part at or before the sealing and delivery of these presents the receipt whereof is hereby acknowledged and the said party of the first part therewith fully satisfied contented and paid has given granted bargained sold aliened remised released enfeoffed conveyed and confirmed and by these presents does give grant bargain sell convey and confirm to the said party of the second part and to its successors and assigns forever

20

30

All those certain tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the Borough of Leonia and Fort Lee, and in the City of Englewood, all in the County of Bergen and State of New Jersey:

* * * * *

40

Exhibit C. 8.

Together with all and singular the tenements, hereditaments and appurtenances to the same belonging or in anywise appertaining Also all the estate right title interest property claim and demand whatsoever of the said party of the first part of in or to the above described premises and
10 to every part and parcel thereof with the appurtenances

To have and to hold all and singular the above described tracts or parcels of land and premises, with the appurtenances unto the said party of the second part its successors and assigns to its and their own proper use benefit and behoof forever subject however to (1) Any state of facts which an accurate survey may show (2) Taxes becoming a lien on said premises on or after January 1 1924 (3) Any and all assessments con-
20 firmed or otherwise imposed subsequent to December 10 1923 (4) Restrictions and regulations heretofore or which hereafter may be adopted or imposed by any governmental authority having jurisdiction over the said premises (5) Rights of others if any in brooks crossing or bordering the premises (6) Telephone and telegraph wires crossing the premises and the existence of such other easements if any as an inspection of the
30 premises would disclose (7) Rights of any persons firms or corporations to maintain existing gas water and sewer pipes mains and connections across through or under said premises the party of the first part expressly reserving the right to receive any and all sums which may hereafter become payable under the terms of any agreements understandings or arrangements heretofore made or had with reference thereto (8) Rights of any persons firms or corporations to use any streets roads or drives including (but
40 without being limited to) Nordhoff Drive and

Club House Road, within the boundaries of the premises herein described and conveyed (9) Mortgage securing the principal sum of one hundred fifty-three thousand one hundred seventy-eight dollars ($153,178.00) and interest delivered and intended to be recorded simultanously herewith; said mortgage being given by the party of the second part to the party of the first part to secure a part of the purchase price for this conveyance.

The party of the second part for itself its successors and assigns doth covenant and agree to and with the party of the first part its successors and assigns that until the year **1939 or** until the party of the first part its successors and assigns shall sooner declare this covenant null and void (the right so to do being hereby espressly reserved to the party of the first part its successors and assigns) the party of the second part its successors and assigns will not erect or cause or procure permit or suffer to be erected upon any part of the premises above described any building of any kind whatsoever except dwellings constructed for the private use of one family only and costing not less than five thousand dollars ($5,000.) with not more than one private garage appurtenant to each such dwelling (provided, however, that two family houses may be constructed on land fronting on Broad Avenue) and will not construct, or permit to be constructed upon any part of said premises any building or any part thereof which shall be within fifteen (15) feet of the line of any street and will not erect or cause or procure permit or suffer to be erected any such dwelling on any plot having a street frontage of less than forty (40) feet; corner plots for the purpose of these

Exhibit C. 8.

restrictions to be deemed as fronting on the street on which any such corner plot has the lesser dimension; and the party of the second part its successors and assigns further covenants and agrees to and with the party of the first part its successors and assigns that the above cove-
10 nants shall be deemed and taken to be covenants running with the land And the said party of the first part for itself its successors and assigns does covenant and agree to and with the party of the second part its successors and assigns that it the said party of the first part is the true right and lawful owner of all and singular the above described land and premises and of every part and parcel thereof with the appurtenances thereunto belonging and that the said land and premises or any part thereof at the time of the
20 ensealing and delivery of these presents are not encumbered by any mortgage judgment or limitation or by any encumbrance whatsoever by which the title of the said party of the second part hereby made or intended to be made for the above described land and premises can or may be changed charged altered or defeated in any way whatsoever except as aforesaid and also that the said party of the first part now has good right and full power and lawful authority
30 to grant bargain sell and convey the said land and premises in the manner aforesaid and also that the said party of the first part will warrant secure and forever defend the said land and premises unto the party of the second part its successors and assigns forever against the lawful claims and demands of all and every person and persons freely and clearly freed and discharged of and from all manner of encumbrances whatsoever except as aforesaid

40

Exhibit C. 8.

In witness whereof the party of the first part has caused its common corporate seal to be hereunto affixed attested by its Secretary and its corporate name to be hereunto signed by its President the day and year first above written

Attest Nordhoff Land Company (SEAL)
A F Halsted Secretary By Thomas D Thacher 10
Signed sealed and delivered President
in the presence of
A F Halsted
Durand H. Van Doren

State of New York
County of New York SS Be it remembered that on this 13th day of February in the year of our Lord one thousand nine hundred and twenty-four before me the subscriber a Notary Public 20 in and for the State and County aforesaid personally appeared A F Halsted who being by me duly sworn doth depose and make proof to my satisfaction that he well knows the common corporate seal of Nordhoff Land Company the party of the first part named in the foregoing deed that the seal thereto affixed is the proper common corporate seal of the said corporation and that the same was so affixed thereto and the said deed 30 signed and delivered by Thomas D Thacher who was at the date of the execution thereof the President of said corporation as the voluntary act and deed of the said corporation and by authority of the Board of Directors of said corporation in the presence of said deponent and that the said deponent subscribed the same as witness to the execution thereof

40

Exhibit C. 8.

Subscribed and sworn to
before me this 13th day
of February 1924

John P Daly (SEAL) A F Halsted
Notary Public
N Y County Clerk's No 262
10 N Y County Register's No 4251
Queens County Clerk's No 1909
Commission Expires March 30 1924

State of New York
County of New York SS I James A Donegan
Clerk of the County of New York and also Clerk
of the Supreme Court for the said County the
same being a Court of Record having a seal do
20 hereby certify that John P Daly whose name is
subscribed to the deposition or certificate of the
proof or acknowledgment of the annexed instrument and thereon written was at the time
of taking such deposition or proof and acknowledgment a Notary Public in and for such County
duly commissioned and sworn and authorized by
the laws of said State to take depositions and to
administer oaths to be used in any Court of said
State and for General purposes and also to take
30 acknowledgments and proofs of deeds of conveyances for land tenements or hereditaments in
said State of New York and further that I am
well acquainted with the handwriting of such
Notary Public and verily believe that the signature to said deposition or certificate of proof or
acknowledgment is genuine

In testimony whereof I have hereunto set my
hand and affixed the seal of the said Court and
County the 14th day of February 1924

James A Donegan Clerk (SEAL)

40 ($143.50 Revenue stamps canceld)

Exhibit C. 8.

Received in the office and recorded February 14 1924 at 3.51 PM

William P Eager Clerk

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

10

I, WILLIAM P. EAGER, Clerk of the County of Bergen, in the State of New Jersey, and also Clerk of the Circuit and Common Pleas Courts, in and for said County (Courts of Record), do hereby certify that I have compared the copy of the Deed hereto annexed, with the original record thereof in Liber 1256 of Deeds at pages 165, &c., in my office at Hackensack in said County, and that the same is a true copy thereof, and of the whole of such original record.

20

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Courts and County, at Hackensack, aforesaid, this Twenty-second day of October, A. D. one thousand nine hundred and Twenty-five

WM. P. EAGER,
Clerk.

(SEAL)

30

40

EXHIBIT C. 9.

Whereas, on Oct. 30th, 1923 R.D.G. approached P.M.S. for The S. Con. Co. with a proposition to buy the property of the N. Land Co. consisting of approximately 105 acres lying in the City of E and the Boroughs of L. and F. L. for the purpose of developing said property, and,

Whereas, the terms specified were as follows: that The S. Con. Co. should do the necessary financing of said development and that R.D.G. should devote himself to this work at a salary of 100.00 per week, and that the profits should be divided equally between The S. Con. Co. and R.D.G. and

Whereas, The S. Con. Co. and R.D.G. did, jointly, on Dec. 10th, 1923 enter into an agreement with The Nordhoff Land Co. to take over said property upon terms and conditions as set forth in said agreement of Dec. 10th, 1923, and

Whereas, it was decided that it would be better that title to the property should be taken in and development work should be done under the name of The S. Con. Co. and

Whereas, on Feb. 13th, 1924 The S. Con. Co. did take title to said property, in part, with proper option on the balance, giving mortgage for same and also bond signed by The S. Con. Co., P.M.S., R.C.S. and R.D.G. all as set forth in said Deed, Bond and Mortgage together with Supplemental Agreement covering part of this property,

Now therefore it is hereby agreed that the above agreement between The S. Con. Co. and R. D. G. is confirmed in all respects and that The S. Con. Co. shall carry out the terms of the said Deed, Bond and Mortgage and shall, after de-

ducting the costs of said development, divide the profits with R. D. G. when and if they accrue. If the Golf Club property should be taken over in connection with this development, it is to come under the same terms as above set forth.

10

EXHIBIT C. 10.

SUPPLEMENTAL AGREEMENT made this 13th day of February, 1924, between NORDHOFF LAND COMPANY, a corporation of the State of New Jersey (hereinafter called "Land Company") and STEENLAND CONSTRUCTION COMPANY, a corporation of the State of New Jersey, and RODERICK D. GRANT, (hereinafter collectively called the "Purchasers"). 20

WHEREAS, under date of December 10, 1923, the Land Company entered into an agreement with the Purchasers granting to the Purchasers the right and option to be exercised as therein provided to purchase certain premises in the Boroughs of Leonia and Fort Lee and in the City of Englewood, Bergen County, New Jersey, the said premises being therein described as "Parcel A" and "Parcel B"; and

WHEREAS, pursuant to the terms of said option agreement, the Purchasers exercised their option with respect to "Parcel A" by serving a notice upon the attorneys for the Land Company as provided by said agreement; and 30

WHEREAS, the Purchasers desire that the option exercised by them with respect to "Parcel A" shall also include that portion of "Parcel B" lying between the northerly boundary of "Parcel A", the southerly boundary of lands conveyed by the Land Company to one Herbert 40

Exhibit C. 10.

Barber in 1915 and the streets or roads known as Jones Road and Nordhoff Drive, respectively, and also the bed of Club House Road between Nordhoff Drive and Jones Road and that portion of the bed of Nordhoff Drive not included in the description of "Parcel A" in said option agreement.

10

Now, Therefore, This Agreement Witnesseth:

That in consideration of One Dollar ($1.00), lawful money of the United States, to each of the parties in hand paid by the other, the receipt whereof is hereby acknowledged, it is agreed as follows:

The said agreement of December 10, 1923, between the Land Company and the Purchasers is hereby in all respects ratified and confirmed except as follows: (1) "Parcel A" as therein described shall be deemed to include in addition to the lands therein so designated that portion of "Parcel B" described in said agreement bounded on the south by the northerly boundary of "Parcel A", on the west by the easterly side of Nordhoff Drive, on the north by the southerly boundary of lands conveyed by Nordhoff Land Company to Herbert Barber in 1915 and on the east by the westerly side of Jones Road; and also the bed of Club House Road between Nordhoff Drive and Jones Road and that portion of the bed of Nordhoff Drive not included in the description of "Parcel A" in said agreement; (2) the Purchasers will take and pay for all of said lands, including all lands in the beds of Nordhoff Drive, Club House Road, and other streets and roads included within the limits of "Parcel A" as so defined, except such as may have been dedicated to and accepted by the City or Borough

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30

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Exhibit C. 10.

in which they are located as public streets, on an acreage basis in the manner described in said option agreement with a deduction, however, from the principal amount of the purchase-money mortgage to be given pursuant to said option agreement, of Five thousand Dollars ($5,000); (3) the deed of "Parcel A" as so defined to be given by the Land Company pursuant to the said option agreement will contain an express reservation to and for the benefit of the Land Company, so long as it owns any lands in the City of Englewood, Bergen County, New Jersey, lying between Walton street (or Place) on the north, Jones Road on the east, Broad Avenue on the west, and Nordhoff Drive and Club House Road on the south, and to and for the benefit of any future owner or owners of any of said lands, of a right of way over any street, road or drive crossing the premises thereby conveyed; and (4) "Parcel B" shall be deemed to include the lands in said agreement designated as constituting said "Parcel B" except such portion of said "Parcel B" as shall be added to "Parcel A" under and by virtue of this supplemental agreement.

In Witness Whereof, the parties have duly executed this agreement the day and year first above written.

NORDHOFF LAND COMANY,

By Thomas D. Thacher,
President.

STEENLAND CONSTRUCTION COMPANY,

By Peter M. Steenland,
President.

RODERICK D. GRANT (L. S.)

EXHIBIT C. 11.

Nov 13 1923

Mr. Thomas D. Thatcher
62 Cedar St
New York City N.Y.

10 Dear Sir:—

Mr Grant has just submitted to me your outline of proposed transfer of your property. It would not be possible for me even to consider the proposition under these terms.

To be perfectly frank with you I am not looking for any more property; and have consented to continue my conversations with Mr Grant only on the basis, which he tells me, he has submitted to you. Mr. Grant states that you feel
20 you should have much better terms than these which your memo suggests. On the other hand, no responsible person would be justified in offering any better terms than Mr Grant has laid before you.

I do not think any one is better able than myself to know the possibilities in this section, coming, as I do, in contact with them both from the real estate and material side as also from the banking side.

30 If you are determined to hold to those terms, I will have to respectfully decline to consider the matter further. I have been persuaded to consider the matter only in connection with Mr. Grant taking charge of the development work and, as I have said, upon terms as outlined by him. He appears to be anxious to take the responsibility and under those conditions I think we could come to an agreement. There is so much property, not only avaliable, but offered to
40 us on even better terms than yours, that it would

Exhibit C. 11.

be foolish on my part to take upon myself the development of such a large tract at one time on any harder terms, no matter how I might like to let him make the start he wishes to make on your property.

Mr. Grant states that you say you are open to reason on all points and desires that I take up some of your points in detail. I think that I have covered that situation already but on his account I will state briefly some answers: 10

As to item #1, it is my understanding that this was agreed upon by yourself and Mr. Grant, as being $10.00 per front foot based on an average lot about 50x100. This unit price being double the approximate unit price for the whole tract. Under this arrangement there would be only two parcels, each approximately one half of the whole. 20

Nov 13/23

Mr. Thomas D. Thatcher Sheet #2

As to item #2, 3, & 4, I think there should be no trouble.

Referring to item #5. It is my understanding from Mr. Grant that you are desirous of selling the property so as to be relieved of the carrying charges. That we propose to do, if we take over the property. We would assume the taxes and the interest but as to the deferred interest we frankly feel that you should have enough faith in your own property to consider it ample security under our terms, especially when we would always be in your hands to the extent of many thousands of dollars in labor and material which are cash items so far as we are concerned. 30

40

Exhibit C. 11.

In regard to Item #6, we might make this confession: that the second half of the property should be taken over at the rate of 20% each year. All other conditions, however, to be the same as for the first half. This would mean a maximum of ten years for the entire tract.

10 Referring to the matter of total mortgages of which you are to take second, I would like to say that we would have to be able to borrow 75% of the selling price of each place. As for the loans being based on the cost of the houses, I could not for a moment consider such a proposition which, if the agreements should pass from your hands, and if anyone were disposed to be technical, might entail endless trouble and delay. You would be amply protected by the banks or loaning agency which would make the loans. If

20 you so desire our books would at all times be open to your inspection so you could know all sales would be reported to you as actually made and we would be only too willing to forfeit our agreements should you be able to show any collusion in connection with any sales as Mr. Grant said you mentioned.

I could not agree that all houses would cost $7500.00, at least, as it my judgment some of the

30 property would not stand that price. It would seem to me that our own interest would be sufficient guarantee to you that we would not build any house that our mature judgment could not sustain. While we, in general, are willing that you should pass upon the proposed houses, we certainly do not understand that every building operation must await upon your detailed study. We can not entirely control what some purchaser might do one, two or three years later.

I think I have fully covered all the points

40 raised by you,

PETER M. STEENLAND.

EXHIBIT C. 12.

(Exhibit C. 12 is the same as Exhibit C. 4.)

EXHIBIT C. 13.

10

STEENLAND CONSTRUCTION CO
(Established 1900)
BUILDERS OF
SUBURBAN HOMES
WILL BUILD TO SUIT
PALISADES PARK, N. J.

Nov 28/23

Mr. Thomas D. Thacher
62 Cedar St
New York City N Y

20

Dear Sir:

Mr. Roderick D. Grant informs me that you are willing to prepare the papers for the transfer of part of the Undoff Land Company property and for the option on the balance; but that you desire some expression from me regarding our serious consideration to undertake the development.

30

In this connection I would say that the many and long conference between Mr. Grant and myself should be sufficient assurance that we are in earnest in our consideration. As Mr. Grant has stated to you, we desire this option to March 1st. not with the idea of using that time before making up our minds; but in order that we may immediately undertake, under proper protection, further investigation to determine whether the facts concerning the property, and the possibili-

40

ties of development, are as we at present think them to be.

Mr. Grant has carried on these negotiation for himself and ourselves jointly but if you desire, we would be glad to have either you or your representative call on us here and discuss the
10 matter further, if you think that necessary.

The papers would be made out in the name ~~of R. D. Grant~~ and The Steenland Construction Company.

It is hereby understood that in no sense are we obligating ourselves either legally or morally in this connection.

Very truly yours

P M STEENLAND

Pres

20 PMS/AVC

option
The ^ papers should be made out jointly to Mr. Roderick D. Grant and The Steenland Construction company.

EXHIBIT C. 14.

30

Know All Men By These Presents, that Steenland Construction Company, a corporation of the State of New Jersey, is held and finally bound unto Nordhoff Land Company, a corporation of the State of New Jersey, in the penal sum of Three hundred six thousand three hundred fifty-six dollars ($306,356.00), lawful money of the United States, to be paid to the said Nordhoff Land Company, its successors or assigns:

40

Exhibit C. 14.

For which payment well and truly to be made, it binds itself and its successors firmly by these presents. Sealed with its corporate seal and signed by its President. Dated the 13th day of February, One thousand nine hundred and twenty-four.

The condition of the above obligation is such that if the above bounden corporation or its successors shall well and truly pay, or cause to be paid, unto the above-named Nordhoff Land Company, its successors or assigns, the just and full sum of One hundred fifty-three thousand one hundred seventy-eight Dollars ($153,178.00) on the 1st day of January which will be in the year One thousand nine hundred and thirty-four, or sooner as provided herein or in the mortgage collateral hereto, and the interest thereon, to be computed from the 13th day of February, 1924 at and after the rate of six per cent. (6%) per annum, and to be paid on the 1st day of January, 1927 and semi-annually thereafter without any fraud or other delay, then the above obligation to be void, otherwise to remain in full force and virtue.

And It Is Hereby Expressly Agreed that should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond, and become due and payable, or should any default be made under any of the terms, covenants or conditions of this bond or the mortgage, accompanying this bond; and should the said interest re-

Exhibit C. 14.

main unpaid and in arrear for the space of thirty (30) days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them, remain unpaid and in arrear for the space of thirty (30) days, or should any such
10 default under any of the terms, conditions or covenants of this bond or of the mortgage accompanying this bond be continued for a period of thirty (30) days, then and from thenceforth, that is to say, after the lapse or expiration of any of the said periods, as the case may be, the aforesaid principal sum of One hundred fifty-three thousand one hundred seventy-eight dollars ($153,178.00) with all arrearage of interest thereon, shall, at the option of the said Nordhoff Land Company, its successors or assigns, be-
20 come and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding, and the said Nordhoff Land Company may, at its option, pay such tax, assessment or water rent in arrear, and the amount so paid shall be added to and become part of the principal sum secured by the
30 said mortgage and by this bond, and shall be payable on demand with interest at six per cent. per annum.

STEENLAND CONSTRUCTION COMPANY,

By (Signed) Peter M. Steenland,
President.

Attest:
WILLIAM F. SCHUBERT,
Secretary.

(CORP.
40 SEAL)

Exhibit C. 14.

Signed, sealed and delivered in
the presence of:

William F. Schubert
Durand H. Van Doren.

For Value Received, the undersigned, Roderick D. Grant, Peter M. Steenland and Rollo Steenland, hereby jointly and severally guarantee the prompt payment of the principal of the within bond, together with the interest thereon; and Roderick D. Grant unconditionally guarantees the performance of all the terms, covenants and conditions of the within bond and of the mortgage accompanying said bond. 10

In Witness Whereof, we have hereunto set our hands and seals this 13th day of February, 1924. 20

(Signed) RODERICK D. GRANT (seal)
PETER M. STEENLAND (seal)
ROLLO STEENLAND (seal)

State of New York, } *ss.*
County of New York. }

Be It Remembered, That on this 13th day of February, in the year of our Lord One thousand nine hundred and twenty-four, before me the subscriber, a notary public in and for the State and County aforesaid, personally appeared William F. Schubert, who, being by me duly sworn on his oath, says that he is the Secretary of Steenland Construction Company, the obligor named in the within instrument; that Peter M. Steenland is the President of said corporation; that deponent well knows the corporate seal of said corporation; and the seal affixed to said instrument is such corporate seal and was thereto 30 40

Exhibit C. 14.

affixed, and said instrument signed and delivered by said President, as and for his voluntary act and deed and as and for the voluntary act and deed of said corporation, in presence of deponent, who thereupon subscribed his name thereto as witness.

10 (Signed) WILLIAM F. SCHUBERT.

Subscribed and sworn to before me
this 13th day of February, 1924.

John P. Daly,
(seal) Notary Public.
N. Y. County Clerk's No. 262.
N. Y. County Register's No. 4251.
Queens County Clerk's No. 1909.
Commission Expires March 30, 1924.

20

State of New York, }
County of New York. } *ss.*

Be It Remembered, that on this 13th day of February, in the year of our Lord one thousand nine hundred and twenty four, before me, the subscriber, a notary public in and for the State and County aforesaid, personally appeared Roderick D. Grant, who I am satisfied is the
30 individual described in and who executed the within instrument, and I having first made known to him the contents thereof, he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

(seal) (Signed) JOHN P. DALY
N. Y. County Clerk's No. 262.
N. Y. County Register's No. 4251.
Queens County Clerk's No. 1909.
40 Commission expires March 30, 1924.

Exhibit C. 14.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } *ss.*

BE IT REMEMBERED, that on this 13th day of February, in the year of our Lord one thousand nine hundred and twenty-four, before me, the subscriber, a notary public in and for the State and County aforesaid, personally appeared PETER M. STEENLAND, who I am satisfied is the individual described in and who executed the within instrument, and I having first made known to him the contents thereof, he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

(Signed) JOHN P. DALY,
(SEAL) Notary Public.
N. Y. County Clerk's No. 262.
N. Y. County Register's No. 4251.
Queens County Clerk's No. 1909.
Commission expired March 30, 1924.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } *ss.*

BE IT REMEMBERED, that on this 13th day of February, in the year of our Lord one thousand nine hundred and twenty-four, before me, the subscriber, a notary public in and for the State and County aforesaid, personally appeared ROLLO STEENLAND, who I am satisfied is the individual described in and who executed the within instrument, and I having first made known to him the contents thereof, he did thereupon acknowledge that he signed, sealed and de-

livered the same as his voluntary act and deed for the uses and purposes therein expressed.

(Signed) JOHN P. DALY,
(SEAL) Notary Public.
N. Y. County Clerk's No. 262.
N. Y. County Register's No. 4251.
10 Queens County Clerk's No. 1909.
Commission expires March 30, 1924.

EXHIBIT C. 15.

THIS INDENTURE, made the 13th day of February, in the year of our Lord one thousand nine hundred and twenty-four, between STEENLAND CONSTRUCTION COMPANY, a corporation of the
20 State of New Jersey, party of the first part, and NORDHOFF LAND COMPANY, a corporation of the State of New Jersey, party of the second part.

WHEREAS, the said Steenland Construction Company, the party of the first part aforesaid, is justly indebted to the said party of the second part in the sum of One hundred fifty-three thousand one hundred seventy-eight Dollars ($153,-178.00), lawful money of the United States of America, secured to be paid by its certain bond
30 or obligation bearing even date with these presents, in the penal sum of Three hundred six thousand three hundred fifty-six Dollars ($306,-356.00), lawful money as aforesaid, conditioned for the payment of the said first-mentioned sum of One hundred fifty-three thousand one hundred seventy-eight Dollars ($153,178.00), lawful money as aforesaid, to the said party of the second part, its successors or assigns, on the 1st day of January, which will be in the year One
40 thousand nine hundred and thirty-four, and in-

Exhibit C. 15.

terest thereon, to be computed from the 13th day of February, One thousand nine hundred and twenty-four, at and after the rate of six per centum (6%) per annum and to be paid on the 1st day of January, 1927, and semi-annually thereafter.

And It Is Thereby Expressly Agreed that should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable, or should any default be made under any of the terms, covenants or conditions of this mortgage or the bond collateral hereto, and should the said interest, or any part thereof, remain unpaid and in arrear for the space of thirty (30) days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of thirty (30) days, or should any such default under any of the terms, conditions or covenants of this mortgage or of the bond collateral hereto be continued for a period of thirty (30) days, then and from thenceforth, that is to say, after the lapse or expiration of any of the said periods as the case may be, the aforesaid principal sum of One Hundred fifty-three thousand one hundred seventy-eight Dollars ($153,178.00), with all arrearage of interest thereon, shall, at the option of the said party of the second part, its successors or assigns, become and be due and payable immediately thereafter although the period above limited for the payment thereof may not then

Exhibit C. 15.

have expired; anything thereinbefore contained to the contrary thereof in anywise notwithstanding; and the said party of the second part may, at its option, pay any such tax, assessment or water rent in arrear, and the amount so paid shall be added to and become part of the principal sum secured by the said bond and this mortgage, and shall be payable on demand with interest at six per centum (6%) per annum, as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

And It Is Hereby Further Expressly Agreed that any owner of the mortgaged premises when not in default under any of the provisions of this mortgage shall be entitled to releases of portions of the mortgage premises in lots of not less than fifty (50) feet in width and not more than one hundred and fifteen (115) feet in depth fronting on streets or avenues to be laid out through said premises, provided that no release shall be required which shall result in leaving under the lien of this mortgage any lot less than fifty (50) feet in width or less than one hundred (100) feet in depth, or any lot without street frontages; the consideration for all such releases to be at the rate of Ten Dollars ($10.) per front foot plus the interest accrued on the amount of the consideration for any such release whether otherwise payable or not, and the releasee to pay the cost of preparing such releases not exceeding Fifteen Dollars ($15.) for any such release; all payments for releases except the amount representing interest on such payments and the cost of preparing such releases being deemed payments in reduction of the principal indebtedness secured by this mortgage.

Exhibit C. 15.

And It Is Hereby Further Expressly Agreed that the party of the first part will erect and complete on the mortgaged premises on or before July 1, 1924 at least six dwelling houses in accordance with plans heretofore or hereafter furnished to and approved by the party of the second part, provided that if such completion be delayed by strikes, extraordinary weather conditions or other causes beyond the control of the party of the first part, the time for such completion shall be extended for a period equal to such delay, but not exceeding three months in any event. 10

And It Is Hereby Further Expressly Agreed that the holder of this mortgage will accept in lieu of cash for release of lots from the lien of this mortgage second mortgages on any property so released within the limits of the mortgaged premises which shall have been improved with dwelling houses built in accordance with the plans hereinabove referred to or in accordance with plans hereafter approved by the party of the second part, provided that no such second mortgages shall be subordinate to more than one prior mortgage and that the aggregate amount of such second mortgages and such prior mortgage shall not exceed seventy-five per cent. (75%) of the price for which the property covered thereby shall have been sold by the party of the first part upon a bona fide sale to an actual occupant, and provided further that the payment of each such second mortgage and the bond secured thereby shall, by a sufficient instrument in writing, be jointly and severally guaranteed by Steenland Construction Company, Roderick D. Grant, Peter M. Steenland and Rollo Steenland, or in case any of the above- 20 30 40

Exhibit C. 15.

named individuals shall be dead, by a surety or sureties satisfactory to the party of the first part. All such second mortgages shall be due and payable within three years after the delivery thereof, shall bear interest at the rate of six per cent. (6%) per annum, payable in 10 monthly instalments, and shall also provide for payment of one per cent. (1%) of the principal indebtedness monthly with each interest payment until three years after the date of such mortgage when the residue of the principal shall be and become due and payable. All such second mortgages and the bonds secured thereby shall be in forms usually employed by Peoples Trust & Guaranty Company with a provision for acceleration of maturity of the entire principal in the event of failure for thirty (30) days to 20 pay interest, any instalment of principal, taxes or assessments, or in case of any default under the prior mortgage.

And It Is Hereby Further Expressly Agreed that the party of the first part will pay for and obtain releases during the calendar year 1924 and during each calendar year thereafter of at least ten per cent. (10%) of the area of the mortgaged premises until this mortgage shall 30 be fully paid and satisfied.

And It Is Hereby Further Expressly Agreed that the party of the first part will observe the restrictions contained in the deed from the party of the second part to the party of the first part delivered and intended to be recorded simultaneously herewith.

Now This Indenture Witnesseth, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obli- 40

Exhibit C. 15.

gation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of One Dollar ($1.) to it in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, release, convey and confirm unto the said party of the second part, and to its successors and assigns forever, ALL those certain tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the Boroughs of Leonia and Fort Lee, and in the City of Englewood, all in the County of Bergen and State of New Jersey: 10

(Premises here described in mortgage are same as fully described in bill of complaint.) 20

Being the same premises conveyed to the party of the first part by the party of the second part by deed delivered and intended to be recorded simultaneously herewith, this mortgage being a purchase money mortgage given to secure a part of the purchase price for said conveyance.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, and remainder and remainders, rents, issues and profits thereof. 30

AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD the above granted and described premises, with the appurtenances, unto 40

New Jersey State Library

Exhibit C. 15.

the said party of the second part, its successors or assigns, to its and their own proper use, benefit and behoof forever.

Provided Always, and these presents are upon this express condition, that if the said party of the first part, or its successors shall well
10 and truly pay unto the said party of the second part, its successors or assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void.

And the said party of the first part for itself and its successors does covenant and agree to
20 pay unto the said party of the second part, its successors or assigns, the said sum of money and interest, as mentioned above and expressed in the conditions of the said bond.

And It Is Also Agreed, by and between the parties to these presents, that the said party of the first part, shall and will keep any buildings erected, or to be erected upon the lands above conveyed, insured against loss or damage
30 by fire, by insurers, and in an amount approved by the said party of the second part, its successors or assigns, and assign the policies and certificates thereof to the said party of the second part; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, payable on demand,
40 with interest at the rate of six per cent. (6%)

Exhibit C. 15.

per annum, from the time of payment of such premium or premiums.

AND THE said party of the first part, the owner of the lands above described, for itself, its successors and assigns, does further covenant and agree to and with the said party of the second part, its successors and assigns, that it will pay in full, all taxes levied, or to be levied upon the lands embraced in this mortgage, and will not claim any credit on, or make any deduction from the interest or principal hereby secured by reason of the payment of any taxes so levied, or to be levied, during the continuance of the lien of this mortgage, and upon the breach of this covenant or any part thereof, this mortgage may become and be due and payable immediately, at the option of the said party of the second part hereto.

AND the said party of the first part, for itself, its successors and assigns, does covenant with the party of the second part, its successors and assigns that it is seized of an indefeasible estate in fee simple in said premises, and will warrant and forever defend the title thereof unto the party of the second part, its successors and assigns, against all lawful claims whatsoever.

IN WITNESS WHEREOF, the said party of the first part hath caused its corporate seal to be hereto affixed and attested by its Secretary, and these presents to be signed by its President, the day and year first above written.

STEENLAND CONSTRUCTION COMPANY,
By (Signed) Peter M. Steenland,
President.

Attest:

(Signed) William F. Schubert,
(SEAL) Secy.

Exhibit C. 15.

Signed, sealed and delivered
in the presence of:

William F. Schubert
Durand H. VanDoren.

10 State of New York, } ss.
County of New York. }

Be It Remembered, that on this 15th day of February, in the year of our Lord One thousand nine hundred and twenty-four, before me, the subscriber, a notary public in and for the State and County aforesaid, personally appeared Williad F. Schubert, who, being by me duly sworn on his oath, says that he is the Secretary of Steenland Construction Company, the mort-
20 gagor named in the within instrument; that Peter M. Steenland is the President of said corporation; that deponent well knows the corporate seal of said corporation; and the seal affixed to said instrument is such corporate seal and was thereto affixed, and said instrument signed and delivered by said President, as and for his voluntary act and deed and as and for the voluntary act and deed of said corporation, in presence of deponent, who thereupon sub-
30 scribed his name thereto as witness.

(Signed) WILLIAM F. SCHUBERT.

Subscribed and sworn to before me
this 13th day of February, 1923.

John P. Daly,
(seal) Notary Public.
N. Y. County Clerk's No. 262.
N. Y. County Register's No. 4251.
Queens County Clerk's No. 1909.
40 Commission expires March 30, 1924.

Exhibit C. 15.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } *ss.*

No. 72652 Series B.

I, JAMES A. DONEGAN, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of record, having a seal, DO HEREBY CERTIFY, that John P. Daly whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such deposition, or proof and acknowledgment, a Notary Public in and for such County, duly commissioned and sworn, and authorized by the laws of said State, to take depositions and to administer oaths to be used in any Court of said State and for general purposes; and also to take acknowledgments and proofs of deeds, of conveyances for land, tenements or hereditaments in said State of New York, And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition or certificate of proof or acknowledgment is genuine.

10

20

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 14 day of Feb. 1924.

30

(Signed) JAMES A. DONEGAN,
Clerk.

Received in the Office of the Clerk of Bergen County, New Jersey, on the 14th day of Feb. A. D. 1924 at 3:51 o'clock P. M. and recorded in Book 646 Page 655 &c. of Mortgages.

WM. I. EAGEN,
County Clerk.

40

EXHIBIT C. 16.

November 20, 1924.

Messrs. Simpson, Thacher and Bartlett,
62 Cedar St.,
New York City.

10

Gentlemen: Attention of Mr. Thomas Thacher.

This will acknowledge receipt of your letter which was dated November 10, 1924.

First I want to thank you for having sent us this letter as it will give us a chance to go over things. We had not expected this before February as we close this matter then. We thought that the releasing part would not go into effect until that time. However, we know you are correct.

20

Mr. Grant and myself have had a talk together and Mr. Grant is going over to see you and see what arrangements can be made to to get together on the proposition.

In the mean time, we are making arrangements to dispose of the six houses that we have put up. So far we have sold one and now that the election is over, we hope also to sell others before the end of this year.

30

Very truly yours,

STEENLAND CONSTRUCTION CO.

Peter M. Steenland Pres.

PMS:EIB

40

EXHIBIT C. 17.

(Note—This exhibit consists of a number of letters of recommendation of Roderick D. Grant, some of the writers being Federal Judge R. S. Bean of Oregon, Judge Wallace McCamant of Portland Oregon, Brig. General B. P. Disque of U. S. Army, Senator Theodore E. Burton of Ohio, Prof. Jeremiah W. Jenks of New York University, J. P. Harris, vice president of Citizens Savings & Trust Co of Cleveland, President Charles F. Thwing of Western Reserve University, Myron T. Herrick, then of Cleveland. See testimony page 84.)

10

EXHIBIT C. 18.

20

Cornell Club, 245 Madison Ave.
New York City
Dec. 29, 1924.

The Steenland Construction Co.
Palisades Park, N. J.

Gentlemen:—

Pursuant to my conversation with you today it becomes necessary for me to notify you that, unless you intend to proceed with our agreement in connection with the development of the so-called Nordhoff Land Co. property as originally agreed upon, in which I am to have half the profits, I must demand the return of the property, and all pertaining thereto, to myself as I have parties now ready to take over same.

30

Furthermore I must inform you that I shall hold you entirely responsible for any acts or agreements made with any person or persons

40

and that you are not in any way authorized to make any such agreements or take upon yourself any obligations, without my consent in writing, that might in any way obligate the property or subject it to any incumbrance of whatever kind or character, or that might in any way effect the agreement between you and myself, in con-
10
nection with this property.

Because of the shortness of the time in which certain moneys must be paid to the Nordhoff Land Co. as per our agreement with them I must require that you notify me at once that you either intend to proceed as originally agreed, or return entire control to me in order that I may make the proper payments within the required time.

20 Yours truly,

RODERICK D. GRANT.

Copy to Peter M. Steenland, Pres.
Steenland Construction Co.

EXHIBIT C. 19.

30 This is to certify that we, the undersigned, have this 3d day of January 1925 agred that, as between The Steenland Construction Co. and Roderick D. Grant, this is a temporary agreement that The Steenland Construction Co. is to have 2/3 of the profits and Roderick D. Grant 1/3 of the profits of the development or sale of the property known as the Nordhoff Land Co. property in Englewood, Leonia and Fort Lee which was taken over on February 13th, 1924 by the above mentioned parties.

40

Exhibit C. 19.

We further agree that as soon as possible or by Wednesday 7th at the latest, we shall enter into another complete agreement that will set forth all the details and that that agreement shall be the only agrement between us in connection with this property and shall take the place of and render null and void all other agreements between said parties in connection with said property. 10

This temporary agreement was drawn up by me at the suggestion of Peter Steenland at his office after we had talked over such a temporary agreement and Peter rang the bell for Miss Cavalier and she came to the door and told her "to never mind" as I had suggested that we put some form at least an outline on paper before giving it to her to write up. I handed this to Peter and he wrote in the words "Wednesday 7th" himself which shows that he intended to go into such a temporary agreement. Then Rollo wanted to add a lot of other conditions and it was decided, if that was the case that we would have to draw up a complete agreement and Rollo suggested I do that and go over Wednesday. 20

R.D.G. 30

40

EXHIBIT C. 20.

(The words printed in italics represent changes or additions to the original draft.)

AGREEMENT made this 10 day of January, 1925 between RODERICK D. GRANT, of the City of New York, party of the first part, and STEENLAND CONSTRUCTION COMPANY, a corporation organized under the laws of the State of New Jersey, having its principal office at Palisades Park, New Jersey, party of the second part:

WHEREAS, the party of the first part hitherto secured an option on certain property located partly in the City of Englewood and partly in the Boroughs of Leonia and Fort Lee, in Bergen County, State of New Jersey, known as the Nordhoff Land Company property; and

WHEREAS, the party of the first part under an agreement with the party of the second part exercised said option and placed the title to said property in the name of the party of the second part; and

WHEREAS, certain questions have arisen between the parties as to the nature of the said agreement and the manner of the carrying out of the same; and

WHEREAS, such questions have been settled between the parties to their mutual satisfaction and it has been deemed advisable ~~to reduce the~~ (*that this*) agreement ~~thus made to~~ (*be in*) writing in lieu of any other agreements or understandings that may have heretofore existed:

NOW, THEREFORE, in consideration of the premises and the mutual promises hereinafter contained and other good and valuable considerations, the receipt whereof is hereby acknowledged, it is agreed:

Exhibit C. 20.

1. The party of the second part shall proceed with the development or sale of said property in such manner as shall secure for the parties hereto the largest profit that may be reasonably secured from such development or sale.

2. The party of the second part agrees to use its utmost endeavor to promote as soon as possible the development and sale of said property for the mutual profit of the parties hereto as hereinafter set forth. 10

3. The party of the second part shall receive out of the net profits secured from the development of said property as hereinafter in more detail set forth two-thirds (2/3) thereof and the party of the first part shall receive the other one-third (1/3) thereof.

4. The party of the second part shall secure for the development and sale of such property payments in cash or the equivalent thereof, which shall be readily and conveniently divisible as profits to the parties hereto. 20

5. Said net profit shall be determined in the following manner:

From the gross receipts from the development or sale of said property shall be deducted the following items:

(a) Interest charges on moneys actually used in financing the purchase of said property. 30

(b) The payment of taxes and assessments against said property.

(c) Interest actually paid on any subsisting mortgages or any mortgages placed upon any released portion of the said property.

(d) Payments heretofore made and hereafter to be made to the party of the first part by the party of the second part. 40

Exhibit C. 20.

(e) Moneys actually expended in the improvement of said property.

(f) Moneys paid to brokers or auctioneers upon the sale of said property or any portion thereof.

(g) Payments made for advertisements, publicity and other necessary expenses of the sale of said property.

(h) No overhead to be charged by party of the second part in excess of nine hundred per year.

6. The party of the second part shall keep true and accurate and complete records of all transactions relative to the development and sale of this property ~~showing the~~ (*cost*) ~~amounts borrowed or secured with the rates of interest thereon and the persons from whom the same shall be secured,~~ and the party of the first part shall have the right to inspect the said records and make such copies thereof as he may deem advisable at any time or times as the party of the first part may require.

7. The party of the second part shall render a complete statement in writing to the party of the first part of the receipts, expenditures and obligations incurred, etc. within two (2) weeks from the date of this agreement, and shall thereafter, ~~as of April 10th, 1925 and each three months ensuing~~ (*within two weeks of written notice by party of the first part,*) render a similar statement ~~on or before the 20th of April and of each third month thereafter;~~ (*to party of the first part.*)

8. Upon the same dates as hereinabove provided for the rendering of statements, the party of the second part shall pay to the party of the

first part his one-third (1/3) portion of the net profits as hereinabove defined, if any, which may have accrued at that time, it being understood that said payment on account of said profits, if any, shall take place not less frequently than each three (3) months, but that if a large item of profit shall be realized within said period it shall be paid over within two (2) weeks after such realization, and it being further understood that as soon as all of the property has been disposed of an accounting and payment of the profits to the party of the first part shall be had forthwith. 10

8. *All moneys securities or other evidences of value received in connection with the sale or development of this property shall be kept separately in such bank or Trust Co. (in the names of the parties hereto) as may be mutually agreed by both parties from time to time, and, the parties to this agreement shall be entitled to their respective share of the returns from such moneys or their equivalent; (but the party of the first part shall be entitled to his share of (from time to time) and such moneys or their equivalent shall be divided between the parties provided that such disbursement can be made without impairing the safety or security of the proposition involved under this agreement.* 20 30

9. The party of the first part shall receive weekly, *for a period not to exceed two years from the signing of this agreement,* the sum of Seventy-Five ($75.00) Dollars, which shall be charged against his share of the net profits.

10. In determining the amount of interest to be charged upon the securing of moneys for the purchase of the property for the payment of taxes and other actual disbursements made under this agreement to be deducted from the gross re- 40

ceipts as hereinabove set forth, the amount actually paid to secure said moneys shall (*be,*) ~~be the amount of interest so charged, it being understood and agreed, however, that~~ in no event, ~~shall~~ a greater amount than twelve per cent. (12%) ~~be charged as the amount of said interest to be deducted from said gross receipts.~~

11. And it is further understood and agreed that if moneys must be raised for expenditures to be made in carrying out this contract as hereinabove mentioned, the party of the first part shall have the right if he so desires to secure such moneys, provided he can do so at a rate of interest which shall be less than that then being paid or thereafter to be paid for said moneys; but it is understood and agreed that no obligation whatsoever rests upon the party of the first part to secure any funds whatsoever or to do any other acts in connection with this transaction except with his consent.

12. It is understood and agreed that upon all matters of policy, such as the manner in which this property is to be developed or offered for sale or substantial sums borrowed for the expenses of this enterprise, the party of the second part and the party of the first part shall mutually agree thereon and no action shall be taken by either of the parties hereto in connection with the aforesaid matters without first notifying the other party and securing his or its consent thereto.

13. It is further understood and agreed that (*neither of*) the party (*ies to this agreement*) of the second part shall not assign, sell, encumber or otherwise dispose of this contract or any portion thereof without the written consent of the (*other*) party of the first part.

Exhibit C. 21.

In Witness Whereof, the parties hereto have hereunto caused this instrument to be signed the day and year first above written.

In the Presence of: (L. S.)

STEENLAND CONSTRUCTION COMPANY,

10

Attest: By

In the event of the death of the party first all rights and privileges belonging to him under this agreement shall pass to his executors or administrators.

EXHIBIT C. 21.

20

Agreement Made this 10th day of January, 1925 between Roderick D. Grant, party of the first part, and Steenland Construction Co., party of the second part, a corporation organized under the laws of the State of New Jersey and having its principal office at Palisades Park, New Jersey:

Whereas, the party of the first part hitherto secured an option on certain property located partly in the City of Englewood and partly in the Boroughs of Leonia and Fort Lee, in Bergen County, State of New Jersey, known as the Nordhoff Land Co. property; and

30

Whereas, the party of the first part under an agreement with the party of the second part exercised such option and placed the title to said property in the name of the party of the second part; and

Whereas, certain questions have arisen between the parties as to the nature of the said agreement and the manner of the carrying out of same; and

40

Exhibit C. 21.

Whereas, such questions have been settled between the parties to their mutual satisfaction and it has been deemed advisable that this agreement be in writing in lieu of any other agreements or understandings that may have heretofore existed:

10 Now, Therefore, in consideration of the premises and the mutual promises hereinafter contained and other good and valuable considerations, the receipt whereof is hereby acknowledged, it is agreed:

1. The party of the second part shall proceed with the development or sale of said property in such manner as shall secure for the parties hereto the largest profit that may be reasonably secured from such development or sale.

20

2. The party of the second part agrees to use its utmost endeavor to promote as soon as possible the development and sale of said property for the mutual profit of the parties hereto as hereinafter set forth.

3. The party of the second part shall receive out of the net profits secured from the development or sale of said property as hereinafter in more detail set forth two-thirds (2/3) thereof

30 and the party of the first part shall receive the other one-third (1/3) thereof.

4. The party of the second part shall secure for the development and sale of such property payments in cash or the equivalent thereof, which shall be readily and conveniently divisible as profits to the parties hereto.

5. Said net profits shall be determined in the following manner:

40

Exhibit C. 21.

From the gross receipts from the development or sale of said property shall be deducted the following items:

(a) Interest charges on moneys actually used in financing the purchase of said property.

(b) The payment of taxes and assessments against said property. 10

(c) Interest actually paid on any subsisting mortgages or any mortgages placed upon any released portion of the said property.

(d) Payments heretofore made and hereafter to be made to the party of the first part by the party of the second part.

(e) Moneys actually expended in the improvement of said property.

(f) Moneys paid to brokers or auctioneers upon the sale of said property or any portion 20 thereof.

(g) Payments made for advertisements, publicity and other expenses of the sale of said property.

(h) No overhead to be charged in excess of nine hundred dollars (900) per year.

6. The party of the second part shall keep true and accurate and complete records of all transactions relative to the development and sale 30 of this property, and the party of the first part shall have the right to inspect the said records and make such copies thereof as he may deem advisable at any time as the party of the first part may require.

7. The party of the second part shall render a complete statement in writing to the party of the first part of the receipts, expenditures and obligations incurred, etc. within two weeks from the date of this agreement, and shall thereafter, 40

Exhibit C. 21.

within two weeks of written notice by party of the first part, render a similar statement to the first party.

8. All moneys, securities or other evidences of value received in connection with the development or sale of this property shall be kept
10 separately in the name of the parties hereto in such bank or trust company as may be mutually agreed upon by the parties from time to time, and the parties to this agreement shall be entitled to their respective share of the returns from such moneys, securities etc. and such moneys or their equivalent shall be divided between said parties from time to time, provided such disbursement can be made without impairing the safety or security of the proposition involved under this agreement.
20

9. The party of the first part shall receive weekly, for a period not to exceed two years from date, the sum of seventy-five (75) dollars, which shall be charged against his share of the net profits.

10. In determining the amount of interest to be charged upon the securing of moneys for the purchase of the property for the payment of taxes and other actual disbursements made
30 under this agreement to be deducted from the gross receipts as hereinabove set forth, the amount actually paid to secure said moneys shall be, in no event, a greater amount than twelve per cent. (12)

11. And it is further understood and agreed that if moneys must be raised for expenditures to be made in carrying out this contract as hereinabove mentioned, the party of the first part shall have the right if he so desires to secure
40 such moneys, provided he can do so at a rate of

interest which shall be less than that then being paid or thereafter to be paid for said moneys; but it is understood that and agreed that no obligation whatever rests upon the party of the first part to secure any funds whatsoever or to do any other acts in connection with this transaction except with his consent. 10

12. It is understood and agreed that upon all matters of policy, such as the manner in which this property is to be developed or offered for sale or substancial sums borrowed for the expenses of this enterprise, the party of the second part and the party of the first part shall mutually agree thereon and no action shall be taken by either of the parties hereto in connection with the aforesaid matters without first notifying the other party and securing his or its assent thereto. 20

13. It is further understood and agreed that neither of the parties to this agreement shall sell, assign, encumber or otherwise dispose of this agreement or any portion thereof without the written consent of the other party. In the event of the death of the party of the first part all rights and privileges belonging to him under this agreement shall pass to his legal executor or administrator.

In Witness Whereof, the parties hereto have hereunto caused this instrument to be signed the day and year forst above written. 30

In the Presence of (L. S.)

STEENLAND CONSTRUCTION COMPANY,

Attest By

Sec'y Pres.

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EXHIBIT C. 22.

(Note—This exhibit consisted of forty-six small envelopes, in which weekly payments were made to Roderick D Grant by Steenland Construction Co. Each envelope bears the name of
10 Grant. See testimony pg.)

EXHIBIT C. 23.

SIMPSON, THACHER & BARTLETT,
Attorneys and Counsellors at Law,
62 Cedar Street, New York.

November 5th, 1923.

20 Roderick D. Grant, Esq.,
New York, N. Y.

Dear Sir:

With reference to the option this day granted to you by the Nordhoff Land Company, I wish to advise you that I was in error when I told you that the land in question was assessed at something over $2,000 per acre. I find, on checking my records, that the assessed value for
30 the entire tract amounts to $152,100.

Should you succeed in interesting any of your friends in the development of this tract and be unable to finance the purchase upon a cash basis, as provided in the option, I should be glad to discuss with you plans upon which payment of the purchase price might be deferred upon proper security.

Very truly yours,

THOMAS D. THACHER.

40

Exhibit C. 24.

EXHIBIT C. 24.

STEENLAND CONSTRUCTION CO.
Established 1900
Builders of Suburban Homes
Will Build to Suit
Palisades Park, N. J.
Dec 29/23

10

Mr. Roderick D. Grant
540 West 136th St
New York City

Re: Gas Main on Nordhoff Drive

Dear Sir:

Mr. Ackerman of the Public Service Gas Company of Englewood called us up on the wire stating that he thought it best that we take over the road and to be sure that the gas main is mentioned in said Deed. Otherwise, arrangements will have to be made with the Nordroff Land Company and with The Public Service and he thought that would be a long way about and a great deal of technical questions may arrive.

20

I told Mr. Ackerman we would take this matter up as soon as we received a copy of the Deed and see what we can do in this matter.

Mr. Ackerman further stated that he was trying to save us as much expense as he possibly could, so he said.

30

Very truly yours
PETER M. STEENLAND, Pres.

PM S

Exhibits D. 1., D 2., are photographs.

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EXHIBIT D. 3.

SIMPSON, THACHER & BARTLETT,
Attorneys and Counsellors at Law,
62 Cedar Street, New York.

November 10, 1924.

10

Peter M. Steenland, Esq., President,
The Steenland Construction Company,
Palisades Park, New Jersey.

Dear Sir:

In view of the fact that only a small proportion of the property required to be released during the calendar year 1924 from the mortgage given by The Steenland Construction Company to Nordhoff Land Company has as yet been released, we are writing to advise you of the further releases which must be procured before January 1st, 1925.

20

The mortgage requires that 10% of the area of the tract covered thereby must be released during the calendar year 1924. The entire area of the tract described in the mortgage was 78.589 acres according to the computation of the surveyors employed by you whose figures were accepted at the closing. Accordingly 7.8589 acres must be re-leased during the calendar year 1924.

30

On June 24, 1924, The Steenland Construction Company procured a release of two tracts, one of which had a frontage of 200 feet and a depth of 100 feet, and the other of which had a frontage of 101.22 feet and a depth of 101.21 feet.

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Exhibit D. 3.

—2—

Peter M. Steenland, Esq., President.

November 10, 1924.

The aggregate area of these two tracts was .6943 acres and the consideration paid for the release based on the frontage was $3,012.20 and interest.

There accordingly remains to be released during the calendar year 1924, 7.1646 acres. For releases of this additional area, the minimum payments (based on releases of lots with the maximum depth of 115 feet), will be in excess at $27,000.00.

Please advise us at an early date how soon we may expect to receive your application for release of lots from the lien of the mortgage and how quickly the release transactions can be closed and the payment made.

Yours very truly,

THOMAS D. THACHER
President,
Nordhoff Land Co

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20
30
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EXHIBIT D. 4.

14807 Shaker Blvd Cleveland, O. Wednesday.

Dear Mr. Steenland,—

Just a few lines as am in a hurry. Haven't
10 been able to see any one yet and am afraid
there's too much rush on account of Thanks-
giving. Wish you would have Martinus mail
me check so I can get it Saturday as shall
surely need it as am very close and if you can
spare an extra 25 or 50 *will you please do it*
as you know what a little entertaining means on
a trip like this as business is done today. Please
tell him to put a special delivery stamp on it so
I'll be sure to get it or by Monday A. M. at the
20 latest as I'm afraid I'll not get away till the
first or middle of the week as Saturday is a bad
day you know. Hope this finds you well. Best
wishes.

R. D. GRANT.

30

40

Exhibit D. 5.

EXHIBIT D. 5.

EXPENSES IN CONNECTION WITH GOLF LINKS PROPERTY
TO JANUARY 10, 1926. PURCHASED FROM
NORDHOFF LAND COMPANY

Date	*To Whom Paid*		*Amounts*	
12-27-23	Myron Hendee	Surveys	100.00	1
1-22-24	"	"	135.00	2
2-13-24	Nordhoff Land Co.	Bond, Etc.	106.85	
2-21-24	Walter W. Jones	Salary	25.00	
2-25-24	Hudson News	Advertising	25.00	5
	H. Stark	Services	75.00	
2- 7-24	Myron Hendee	Surveys	74.00	7
	Lozier Z & Van Kueren	Blue Prints	5.80	8
3- 8-24	J. A. Reynolds	Signs	73.00	10
3-31-24	Palisades Pk L & S Co.	Material for Improv.	279.71	6
3-31-24	Pay Roll	Labor on Improv.	81.84	
4-30-24	Palisades Pk L & S Co.	Material for Signs	5.25	4
4-30-24	Myron Hendee	Surveys	35.00	11
4-30-24	R. D. Grant	Services Jan Feb Mar April	1,180.00	
4-30-24	Palisades Pk L & S Co.	Material for entrance	150.08	12
4-30-24	Pay Roll	Labor Building Fence	75.00	
5- 9-24	Myron Hendee	Surveying	40.00	13
5-31-24	R. D. Grant	Services May	375.00	
6-30-24	Pay Roll	Labor on Improv.	48.23	
6-30-24	Palisades Pk L & S. Co.	Material for Improv.	70.49	14
6-30-24	R. D. Grant	Services June	300.00	
7- 5-24	J. A. Reynolds	Signs	76.49	15
7-14-24	Hackensack Water Co.	Water	6.26	
7-31-24	R. D. Grant	Services July	300.00	
8- 9-24	Myron Hendee	Engineer Services	460.00	17
8-30-24	"	"	170.00	18
8-30-24	R. D. Grant	Services August	375.00	
9-19-24	Myron Hendee	Engineer Services	170.00	19
9-19-24	R. D. Grant	Services September	300.00	
10-15-24	Myron Hendee	Engineer Services	105.00	20
10-31-24	R. D. Grant	Services October	285.00	
12-31-24	"	" Nov & Dec	450.00	
12-31-24	Tax Collector Englewood	1924 Taxes	804.00	21
12-31-24	" Fort Lee	"	426.75	22
12-31-24	" Leonia	"	4,141.25	23
6-19-24	G. H. Richenaker services		200.00	24
12-31-24	Leonia Assessment with interest curb & gutter		2,475.26	29
			14,005.26	
			8,497.26	
			5,508.00	

Exhibit D. 5.

Date	*To Whom Paid*			*Amounts*
1- 1-25	Payment on account Mortgage			27,000.00
1-31-25	R. D. Grant	Services January		250.00
2-17-25	Simpson Thacher & Bartlett	Drawing Release		15.00—35
6- 1-25	Tax Collector Englewood	1st half of 1925		403.75—26
6- 1-25	" Leonia	" " & Int		1,955.45—27
6- 1-25	" Fort Lee	" "		202.88—28
8-31-25	Labor repairing gate			3.93—30
10-31-25	A. A. Cianni	Blue Prints		1.80—31
11-23-25	Tax Collector Englewood	Taxes 2nd half 1925		403.75—26
	" Fort Lee	" "		202.87—28
	" Leonia	" "		1,951.53—27
11-30-25	O. Nordstrom	Blue Prints		4.45—32
12- 8-25	Simpson Thacher & Bartlett	Drawing Release		15.00—33
12-23-25	E. R. Burt & Co.	Services		115.00
6-30-24	Amount paid to release lots for building operations Six (6) houses on Broad Ave.			3,012.20
12- 2-25	Payment to release lots with interest			5,675.71—34
12-23-25	" on account			25,000.00—35
1- 4-26	" " with interest		12,349.89	
		Less overcharge	18.47	
		Simpson Thatcher & Bartlett check #914	———	12,331.42
				92,551.00

EXHIBIT D. 6.

STEENLAND CONSTRUCTION COMPANY

Statement of Mr. R. D. Grant's account.

1924		
Jan. 8—	Paid by Cash	50.00
12—	" " "	50.00
19—	" " "	50.00
26—	" " "	50.00
Feb. 2—	" " "	50.00
9—	" " "	75.00
16—	" " "	70.00
23—	" " "	80.00
Mar. 1—	" " "	75.00
8—	" " "	75.00
15—	" " "	75.00
22—	" " "	105.00
29—	" " "	75.00
Apr. 5—	" " "	75.00
12—	" " "	75.00
19—	" " "	75.00
26—	" " "	75.00
May 3—	" " "	75.00
10—	" " "	75.00
17—	" " "	75.00
24—	" " "	75.00
31—	" " "	75.00
June 7—	" " "	75.00
14—	" " "	75.00
21—	" " "	75.00
28—	" " "	75.00
July 3—	" " "	75.00
12—	" " "	75.00
19—	" " "	75.00
26—	" " "	75.00
Aug. 2—	" " "	75.00
9—	" " "	75.00

Exhibit D. 6.

	Date		Amount
	16—	" " "	75.00
	23—	" " "	75.00
	30—	" " "	75.00
	Sept 6—	" " "	75.00
	13—	" " "	75.00
	20—	" " "	75.00
	27—	" " "	75.00
10	Oct. 4—	" " "	75.00
	11—	" " "	75.00
	18—	" " "	50.00
	21—	" " "	35.00
	25—	" " "	50.00
	Nov. 1—	" " "	50.00
	8—	" " "	50.00
	15—	" " "	50.00
	22—	" " "	50.00
	29—	" " "	50.00
20	Dec. 6—	" " "	50.00
	13—	" " "	50.00
	20—	" " "	50.00
	27—	" " "	50.00
	1925		
	Jan. 3—	" " "	50.00
	10—	" " "	50.00
	17—	" " "	50.00
	24—	" " "	50.00
30		Total Paid	3765.00

40

EXHIBIT D. 7.

March 1, 1925.

Statement of Houses erected on Broad Ave., Leonia, formerly Nordhoff Land Property, now owned by

STEENLAND CONSTRUCTION COMPANY

Job No.	Lots No.	Dated	MORTGAGES DUE Due	Mortgagee	Amt.	Mthly pay'ts on Mortgages	TAXES 1925 About	Total against cost	Cost of house
1	1-2	6-19-24	6-19-27	Gte Mtge & Title	5,000	Int. 25.00	200.00	8,255	9,218.08
		1- 3-25	1- 3-28	N Y Mtge Co.	3,000	Int. & Prin. 30.00			
2	3-4	6-19-24	6-19-27	Gte Mtge & Title	5,000	Int. 25.00	200.00	8,255	9,660.57
		1- 3-25	1- 3-28	N Y Mtge Co.	3,000	Int. & Prin. 30.00			
3	5-6	6-19-24	6-19-27	Gte Mtge & Title	5,000	Int. 25.00	200.00	8,255	9,284.71
		1- 3-25	1- 3-28	N Y Mtge Co.	3,000	Int. & Prin. 30.00			
4	7-8	6-19-24	6-19-27	Gte Mtge & Title	5,000	Int. 25.00		5,025	11,020.84
5	21-22	6-19-24	6-19-27	Gte Mtge & Title	5,000	Int. 25.00	200.00	8,255	9,509.65
		1- 3-25	1- 3-28	N Y Mtge Co.	3,000	Int. & Prin. 30.00			
6	23-24	6-19-24	6-19-27	Gte Mtge & Title	5,000	Int. 25.00	200.00	8,255	8,786.08
		1- 3-25	1- 3-28	N Y Mtge Co.	3,000	Int. & Prin. 30.00			
				TOTALS	45,000	300.00	1,000.00	46,300	57,479.93

Date			Amount
Dec. 19-24	—PAID to Gte. Mtge. & Title Co. INTEREST on 1st Mtges.	$30,000—6 houses—	$900.00
Jan. 26-25 / Feb. 26-25	—PAID to N Y Mtge Co. INTEREST & PRINC. on 2nd Mtges.	15,000—5 " —	300.00
June 19-25	—TO BE PAID to Gte. Mtge. Co. INTEREST on 1st Mtges.	30,000—6 " —	900.00
MONTHLY	—TO BE PAID to N Y Mtge Co. INT. & PRIN. on 2nd Mtges.	15,000—5 " —	150.00
		TOTAL	59,729.93

OPINION.

For complainant, Andrew J. Whinery.

For defendants, Morrison, Lloyd & Morrison.

Backes, *V.-C.*

The complainant Grant obtained an option
10 from the Nordhoff Land Company to purchase a tract of land, about 105 acres in Bergen County, of which the parcel in controversy is a part. Before his option expired he interested Peter M. Steenland and his brother Rollo, the stockholders of the defendant, Steenland Construction Company, in his enterprise, and on December 10, 1923, secured a second option running jointly to himself and the Steenland Company, by the terms of which they acquired the right to pur-
20 chase parcel A of said land, about 75 acres, at $2,000 per acre and to pay for the same by their joint and several bonds for the total of the purchase price, payable January 1, 1934, with six per cent. interest, payable January 1, 1927, and semi-annually thereafter, secured by mortgage on the land. If the option as parcel A be exercised, executed and performed, then the option as to parcel B, constituting the remainder of the Nordhoff tract, should be available until
30 January 1, 1929, upon substantially the same terms. The option as to parcel A was duly exercised by the complainant and the Steenland Company December 17, 1923. By a supplemental agreement a few acres of parcel B were added to parcel A and included in the deed and mortgage. The deed and bond and mortgage were delivered February 13, 1924. The deed was made to the Steenland Construction Company and it executed the bond and mortgage for $153,-
40 178 in the terms of the option. Grant and the

two Steenlands signed a guarantee annexed to the bond in this language:

> "For value received the undersigned, Roderick D. Grant, Peter M. Steenland and Rollo Steenland hereby jointly and severally guarantee the prompt payment of the principal of the within bond together with the interest thereon, and Roderick D. Grant unconditionally guarantees the performance of all the terms, covenants and conditions of the within bond and of the mortgage accompanying said bond."

10

The land was bought for subdivision and development and by arrangement between the optionees and owner the title was taken in the name of the Steenland Construction Company for greater facility and convenience in selling and conveying lots, with the understanding that it was to be held for the joint benefit of the optionees. Grant had no money; that was well known to the Steenlands. He was to have a drawing account of $100 per week during the promotion. He brought the proposition to the Steenlands to finance and promote, with his help, and they were to share the profits equally. It was thought and hoped that the cost of development and payment of the mortgages could be anticipated from the proceeds of the sale of lots and that there would be a handsome profit. In this they were disappointed. During the first year, despite the activities of both Grant and the Steenlands, six houses were built but only one was sold. The Steenlands became dissatisfied and abruptly repudiated Grant's interest in the interprise on December 29, 1924. They had spent $5,500 in surveys, blue prints, engineers, etc., in preparing the tract for market

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and for advances to Grant and the due date was rapidly approaching for part payment on the mortgage—payment for releases on ten per cent. of the area of the tract. It is open to suspicion that the reason for the Steenlands' conduct was that they saw large profits ahead and felt that
10 Grant's share was disproportionate. Grant insisted that they carry out their bargain or return the property to him so that he could seek capital elsewhere to promote the scheme, and after considerable futile negotiations to reach a working agreement, in which Grant offered to take a third instead of half of the profits, this bill was filed for an accounting and a declaration of the complainant's rights to an equitable estate or interest in an undivided half of the tract and a conveyance thereof of the legal title.
20 The complainant's case cannot be sustained upon the theory of a resulting trust. In order that a trust result in his favor it must appear that at the time of purchase he paid his share of the purchase price, or bound himself by an absolute obligation to pay it. 2 Pom. Eq. Jur. Section 1037; Krauth *v.* Thiele, 45 N. J. Eq. 407; Down *v.* Down, 80 N. J. Eq. 68; Phillips *v.* Phillips, 81 N. J. Eq. 457, aff. 83 N. J. Eq. 345. He
30 did neither. The Steenland Company alone, by its bond, secured by mortgage, incurred the obligation to pay the consideration. The complainant's guaranty of the bond and mortgage was a separate and independent contract with the holder to pay according to the tenor of the bond and mortgage in the event that the Steenland Company failed to pay. It was collateral to, not a part of, the original obligation of the Steenland Company. 12 R. C. L. 1053; Perkins-Goodwin Co. *v.* Hart, 83 N. J. L. 471. A trust may
40

result in favor of one who obligates himself to pay the consideration price but not to one who guarantees the obligation. The principle upon which this type of resulting trust rests limits the equity.

A trust does not result to the complainant because he and the Steenland Company were equitable owners in common of the land by their joint acceptance of the option, and because he, in effect, conveyed his equitable estate to the Steenland Company, by consenting to the conveyance by the Nordhoff Company to it of the legal title, upon its promise to hold a moiety to his use. Had he held the legal title and conveyed it to the Steenland Company upon parol trust to his use, no trust would have resulted, and his right of recovery of his equitable estate is no better than would be his right to recover his legal estate. In the Down case, which expresses the views of the authorities on the subject in this State, it is held that upon a conveyance of the legal estate to the use of the grantee no trust results upon his promise to hold it to the use of the grantor, and that unless the promise is in writing it is not provable under the Statute of Frauds to establish an express trust; and this concise statement of the law is quoted from Fretz *v.* Roth, 70 N. J. Eq. 767: "Where a use is declared by a deed operating under the statute of uses, no other use or trust not expressed in writing can be shown."

The action cannot be maintained upon the ground of a joint venture in the sale of real estate. The contract was not in writing. The point is decisively settled, so far as this Court is concerned, by Vice-Chancellor Leaming in the recent case of Partridge *v.* Cummings, 4 Adv. Rep. 143, in which he held that a parol contract

of joint venture for speculation in real estate in which one party engages to acquire in his own name a contract of purchase of certain land and to hold the contract of purchase and to cause operations under it in equal interest with the other party who advanced no money, was one
10 that concerned an interest in land and to be within the fifth section of our Statute of Frauds, which provides that no action shall be brought upon a contract concerning an interest in land unless the contract shall be in writing signed by the party to be charged; and he further held that equitable as well as legal interests in land were embraced within the statute. The Vice-Chancellor referred to the conflict of opinion as disclosed in the note in 18 A. L. R. 484, and adopted as sound in principle the doctrine of
20 Justice Story in Smith *v.* Burham, 3 Summ. 435, which was followed in substance by Vice-Chancellor Pitney in Schultz *v.* Waldons, 60 N. J. Eq. 71. The rule of the *Partridge* case is limited in its scope to simple contracts of joint venture in the sale of lands; other attending circumstances may render the statute inapplicable, as the authorities show, but the fact that in the present case the complainant surrendered his
30 option as part consideration for the joint venture, a feature absent in the cited case, is not sufficient to take it out of the statute.

The bill will be dismissed.

40

FINAL DECREE.

Filed May 18, 1926.

This cause having come on to be heard before the Honorable John H. Backes, the Vice-Chancellor to whom it was referred, in the presence of Andrew J. Whinery, counsel for the complainant, and William J. Morrison, Jr., of Morrison, Lloyd & Morrison, counsel for the defendant, Steenland Construction Company, no one appearing for the defendant Nordhoff Land Company, but the solicitor for the complainant having stated in open court that no affirmative relief was sought against the last-name defendant;

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And the pleadings having been read, the testimony of the witnesses for the respective parties having been heard and the argument of the respective counsel having been heard and considered, and it appearing to the Court that the complainant is not entitled to the relief sought and prayed for by him in his bill of complaint:

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It is on this 18th day of May, 1926, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, hereby ORDERED, ADJUDGED and DECREED that the complainant's bill be and is hereby dismissed with costs;

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And it is further ORDERED, ADJUDGED and DECREED that the complainant pay to the defendant, Steenland Construction Company, its costs in this suit, to be taxed.

E. R. WALKER,
C.

Respectfully advised,
JOHN N. BACKES,
V.-C.

A true copy.
THOMAS BARBER,
Clerk.

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NOTICE OF APPEAL.

The complainant, Roderick D. Grant, hereby appeals from the final decree made in the above-entitled cause by the Chancellor on the advice of Vice-Chancellor Backes, on May 18, 1926, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all cases.

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Dated July 15, 1926.

ANDREW J. WHINERY,
Solicitor for and of Counsel
with the Complainant,
Roderick D. Grant.

I conceive that there is good cause for Appeal in the above-entitled cause.

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ANDREW J. WHINERY,
Of Counsel with Complainant.

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PETITION OF APPEAL.

New Jersey Court of Errors and Appeals

Between

RODERICK D. GRANT,
Complainant-Appellant,

and

STEENLAND CONSTRUCTION COMPANY and NORDHOFF LAND COMPANY,
Defendants-Appellees.

On Bill, etc.

Petition of Appeal.

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

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The petition of Roderick D. Grant, the appellant in the above-entitled cause, respectfully shows that

1. Petitioner finds himself aggreived by a final decre made in the Court of Chancery by His Honor Edwin Robert Walker, Chancellor of the State of New Jersey, (advised by Vice-Chancellor John H. Backes) bearing date the 18th day of May, 1926, in a certain cause in said Court of Chancery wherein the said Roderick D. Grant was complainant and the said Steenland Construction Company and Nordhoff Land Company were defendants, in this respect, to wit: that the said decree adjudges that the complainant is not entitled to the relief sought for by him in his bill of complaint and that the complainant's bill be dismissed with costs.

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And petitioner appeals from the decree of the Chancellor which decrees as aforesaid upon the

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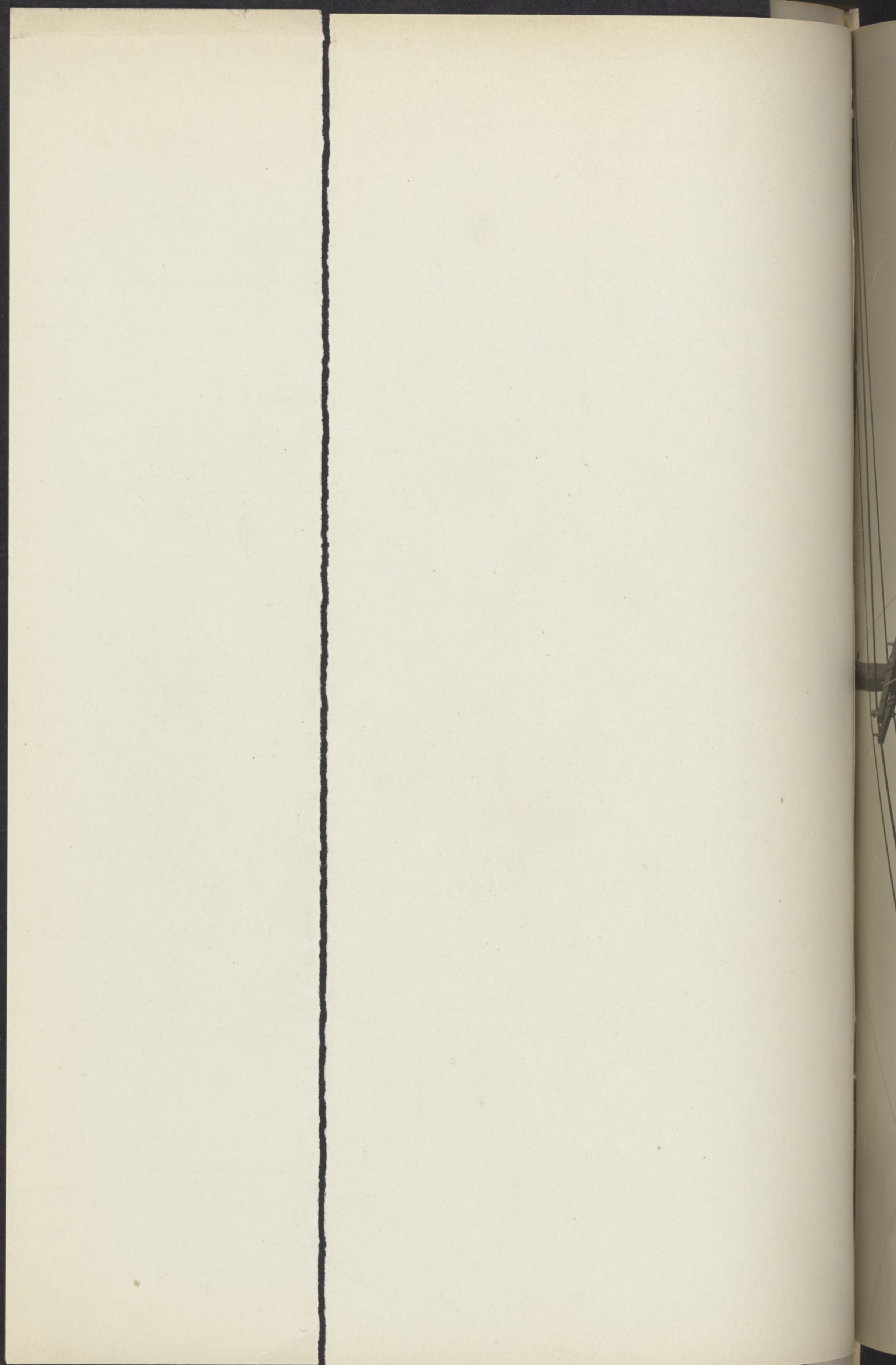
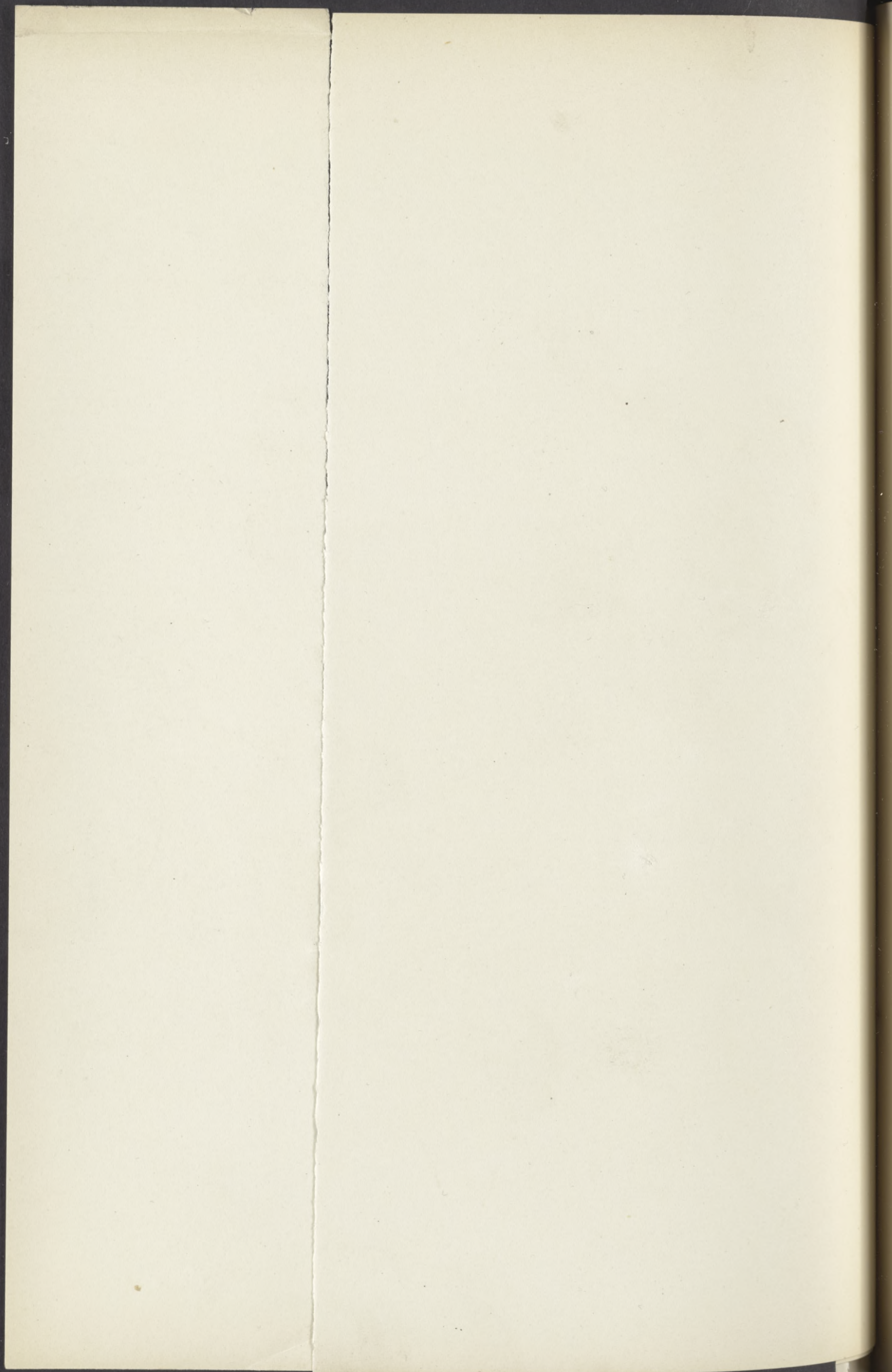
ground that the same is erroneous in that it decrees that complainant's bill be dismissed with costs, whereas the said complainant's bill should have been sustained, and the prayers therein contained granted, and for the further reason that the said Chancellor should have decreed that the property described in the bill and conveyed to the Steenland Construction Company, is the property of the complainant and the said Steenland Construction Company jointly and further that the Chancellor should have decreed that the Steenland Construction Company received title to said property for the mutual benefit of the complainant and the Steenland Construction Company and that it secured such title as the agent and trustee for the complainant and the said defendant and for the mutual benefit of said complainant and said defendant, and for the further reason that the Chancellor should have decreed that the complainant and the Steenland Construction Company have a joint and equal interest in said property and in any profits to be derived therefrom, and for the further reason that the Chancellor should have decreed that the complainant has an undivided one-half interest in the fee of said premises, and for the further reason that the Chancellor should have decreed that the Steenland Construction Company execute, acknowledge and deliver a proper deed or other instrument in writing to legally vest in the complainant the one-half interest in the fee of said premises, and that the complainant be entitled to the right of joint possession and control of said premises and for the further reason that the Chancellor should have decreed that the Steenland Construction Company report a just, true and full account of all moneys received, laid out or expended in connection with said premises.

ENTRANCE TO
THE PROPERTY OF
STEENLAND CONST. CO.
This Entrance is Owned By
Steenland Const.
ANY ONE USING THIS ROAD
DOES SO AT HIS OWN RISK
The Steenland Const. Co.



WONDERFULLY
LOCATED PROPERTY
OVERLOOKING GOLF COURSE
STEENLAND
BUILT HOMES
STEENLAND
BUILT HOMES



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

ANDREW J. WHINERY, 10
Solicitor for and of Counsel with Appellant.

ANSWER TO PETITION OF APPEAL.

The answer of Steenland Construction Company, the above-named appellee, to the petition of appeal of Roderick D. Grant, the above-named appellant.

This appellee, not admitting the truth of all 20 or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that a decree was, on May 18, 1926, made and entered in the Court of Chancery of New Jersey, in the above-entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, this appellee begs leave to refer thereto when the same shall be produced. 30

This appellee is advised and believes that the said decree is agreeable to equity; and it prays that the same may be affirmed with costs to be taxed in favor of this appellee.

MORRISON, LLOYD & MORRISON,
Solicitors for and of Counsel with Appellee,
Steenland Construction Company.

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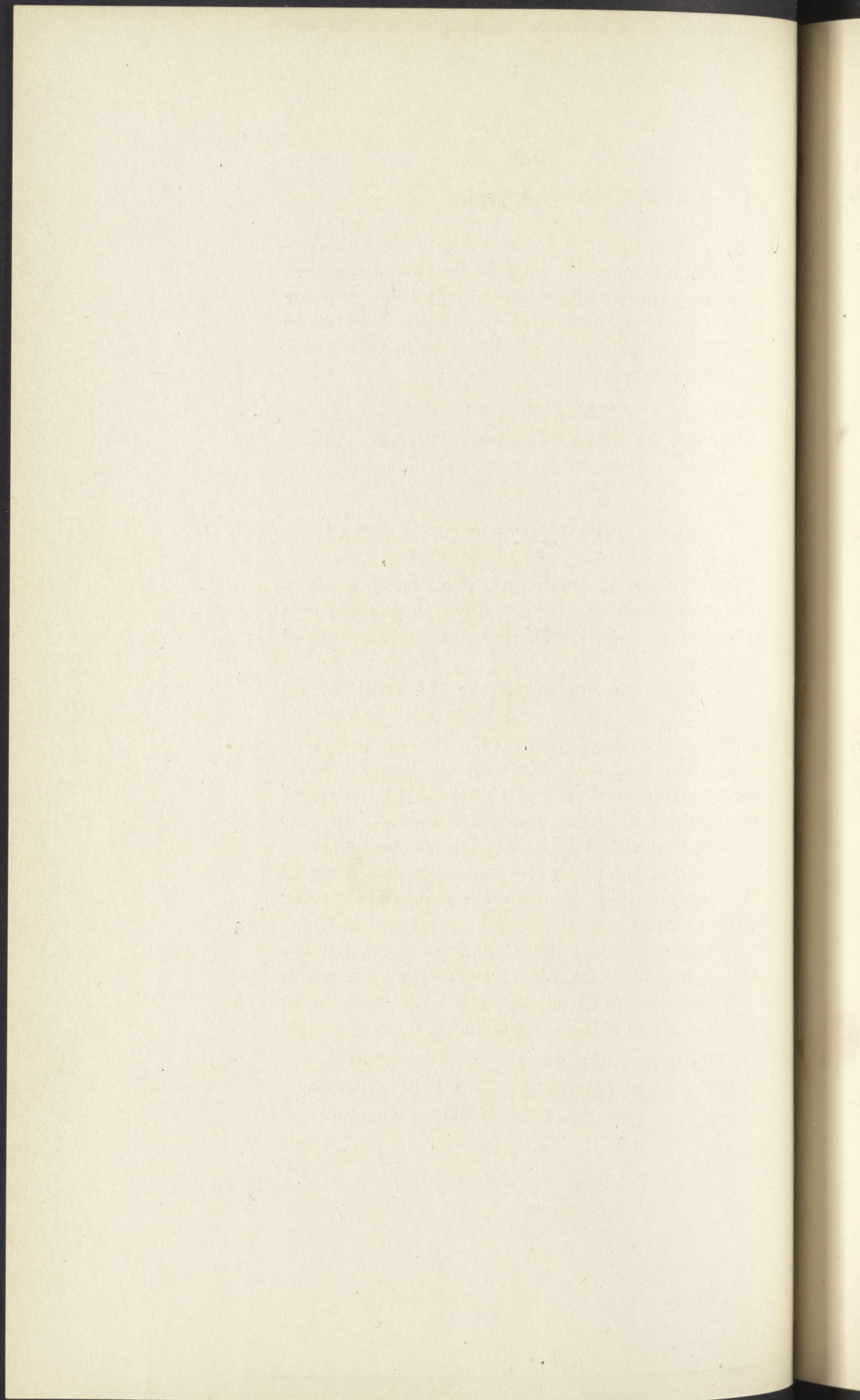

New Jersey Court of Errors and Appeals

Between RODERICK D. GRANT, *Complainant-Appellant,* *and* STEENLAND CONSTRUCTION COMPANY and NORDHOFF LAND COMPANY, *Defendants-Appellees.*	*On Bill,* *On Appeal from Court of Chancery.*

BRIEF OF COMPLAINANT-APPELLANT.

This is an appeal from an order of the Chancellor, per Vice-Chancellor Backes, dismissing the bill of complaint.

The complainant seeks to establish his equal one-half interest in property situate in Leonia, Fort Lee and Englewood, N. J., which property was estimated on the trial to have a minimum value of $500,000, and a possible value of $1,000,000 or more. The legal title is now vested in Steenland Construction Company. The property is in Bergen County and is situate a short distance from the terminus of the proposed bridge over the Hudson River from New York City to Bergen County. The various prayers for relief are fully set forth in the bill of complaint; generally speaking, they seek to establish the complainant's equitable half interest in the property and to obtain a decree which will consummate that result.

Pleadings.

COMPLAINT. On November 5, 1923, complainant secured from Nordhoff Land Company an option to purchase 105 acres in Bergen County. Thereafter, defendant Steenland Construction Company, agreed to enter the venture with him and to become mutually and jointly interested with him in securing and developing the lands, the profits derived therefrom to be equally divided. Prior to the expiration of the first option Grant obtained, on December 10, 1923, a joint option to himself and Steenland Construction Company, in which the owner agreed to sell to the joint optionees, who were thereby to become joint purchasers and joint obligors on bonds and mortgages to be given pursuant to said joint option. Thereafter, defendant, on plea of convenience in handling the property, persuaded complainant to agree to a variation in the terms of said joint option and permit title to a parcel of seventy-eight acres to be taken in its name alone but for their joint benefit. On February 13, 1924, title to this seventy-eight-acre tract was conveyed to the defendant, the sole consideration being a bond and mortgage, on which bond complainant executed an agreement to pay the money due thereunder and to see to the full performance of all terms, covenants and conditions of the bond and mortgage. On December 29, 1924, defendant repudiated its agreement with complainant and asserted that he had no interest in the property and that it owed him no obligation whatever. It also threatened to dispose of the property for its sole use and benefit, without recognition of complainant's rights. THE PRAYERS sought a decree that the property belonged jointly to complainant and defendant, that title thereto was held for

their mutual benefit; that defendant held title as trustee for complainant; that both had a joint interest in the lands and profits therefrom; that an accounting be made; that complainant has an undivided half interest in the land; that the defendant be ordered to execute and deliver to complainant a deed for his half interest, and that if a sale be ordered by the court, the proceeds be equally divided between the parties.

ANSWER. In effect, it admits that there had been an agreement between the parties, but it asserts that complainant was jointly liable to pay all monies required under the option agreement, the mortgage and other documents. It claims expenditures and asserts repeated demands for payment by complainant of his alleged share thereof. It alleges complainant's failure to furnish the monies required for such payments and claims that his interest in the property is thereby terminated.

REPLICATION. Complainant says the joint option was predicated on the original option held by him. He admits that the joint option provided that he and defendant were to be jointly and severally liable to Nordhoff Land Company for the payments due it. He alleges. however, an agreement between them, separate from the joint option, under which the defendant was to advance all monies required for the venture, he having secured the option; that any payments made by defendant were pursuant to this agreement; that it was to give Grant a drawing account of $100 per week to be charged as development expense of the property. He says that no demand has ever been made upon him to furnish any money in the transaction prior to bringing this action.

REBUTTER. This generally denies the allegations of the replication as to special arrangements between the parties.

It will be noted that the statute of frauds is not pleaded, either in the answer or the replication.

Facts.

On November 5, 1923, the complainant, Roderick D. Grant, secured an option in his own name for the purchase of land in Fort Lee, Leonia and Englewood from the Nordhoff Land Company, of which Thomas D. Thacher was president. This option would expire December 15, 1923 (Ex. C. 1). He was also given a letter from the owner of the property, advising him that if he desired to find an associate in the matter, another option would be given on satisfactory terms (Ex. C. 23).

He advised Steenland Construction Company of the opportunity to purchase the land advantageously and in November persuaded them to enter the transaction with him (p.). He then, after much negotiation, secured a further option from the Nordhoff Land Company *in the joint names of himself and the Steenland Construction Company* on December 10th (Ex. C. 2).

The agreement made with Steenland Construction Company provided that they would *jointly take title to the property;* that the Steenland Construction Company would furnish any financial requirements; that no overhead charges would be made against the property except a weekly drawing account of $100 to Grant; that they *would jointly control the property and have an equal interest therein* and share equally in the profits (pp. 36 and 38).

The joint option agreement (Ex. C. 2) provided that the "optionees" might purchase the property therein described, *the entire consideration* therefor to be paid *"by the optionees executing and delivering to the vendor their joint and several bond in such sum,"* the amount to be computed at the rate of $2,000 per acre. The principal of said bond was to be payable January 1, 1934, and *no interest was to be due until January 1, 1927.* The mortgagors agreed to release during 1924 and yearly thereafter at least ten per cent. of the area of the mortgaged premises. *No payment of principal was therefore due until the expiration of 1924.* Grant and the Steenland Construction Company are therein designated as "optionees," "mortgagors" and "grantees." They agree to erect six houses in accordance with plans identified by their signatures. The notice of exercising the option was to be signed by the optionees jointly. The agreement provided that if the option was exercised, the optionees *"shall jointly and severally be bound and do hereby agree to purchase the parcel with respect to which the option is so exercised and to take title to the same in accordance with the provisions hereof, promptly on the day designated in the notice exercising such option."* The land was divided into Parcel A and Parcel B. Parcel A was to be conveyed first. Parcel B was to be acquired later. The price for both parcels was $2,000 per acre, plus assessments. The full purchase price was to be payable *"By the optionees executing and delivering to the vendor their joint and several bond in such sum."* The option for Parcel A was valid until March 3, 1924, and on Parcel B until January 1, 1929.

Reference is made at length to this joint option agreement, because it was under it that title to the property was acquired, and the relative duties of the optionees to the vendor are fully set forth therein.

The joint interest of the parties was also evidenced by a letter dated November 28, 1923 (Ex. C. 13), from Steenland Construction Company to Thacher. It states: *"Mr. Grant has carried on these negotiations for himself and ourselves jointly * * *"*

After they had agreed to the joint adventure in November, Peter Steenland, the president of the defendant, and Grant inspected the property, investigated gas, sewer and water connections, and started engineering work for plotting the property into lots. In all conferences, the joint interest of the Steenland Construction Company and Grant is constantly mentioned; their conduct confirmed it (see Ex. C. 24). About December 17th the Steenland Construction Company, *on the plea of convenience in handling the property,* persuaded Grant to permit title to Parcel A to be taken in its name alone and not jointly as provided in the agreement, but nevertheless for their joint interest (p. 51). Grant, *relying on the good faith of his associate,* signed a letter on December 17th, exercising the option and requesting that the deed to Parcel A be made to Steenland Construction Company alone (pp. 49-51).

Subsequently, the date for closing title was postponed, the letters and agreements relating thereto being signed by both parties (see Exs. C. 4, C. 5 and C. 6). Communications from Nordhoff Land Company were addressed to both Steenland Construction Company and Roderick

D. Grant (see Exs. C. 6 and C. 7). In January, 1924, a weekly drawing account to Grant started and continued until January 24, 1925 (see Ex. C. 22, envelopes for payments).

On February 13th, 1924, Grant, Steenland Construction Company and the Nordhoff Land Company met in New York City to close title. Steenland first met Judge Thacher on this occasion (p. 121). Before passing title, a supplemental agreement (C. 10), was prepared and executed by all parties, the execution of the deed bond and mortgage being held up meanwhile (p. 67). It referred to the joint option (Ex. C. 2) and stated that the property to be conveyed included substantial additions to Parcel A, and diminished to that extent the land within Parcel B. It provided for a conveyance of 78 acres out of a total of 105 acres. **Throughout this supplemental agreement Grant and Steenland Construction Company are specifically designated as "purchasers" and it provides that "THE PURCHASERS WILL TAKE AND PAY FOR all of said lands within the limits of Parcel A * * * on an acreage basis in the manner described in the option agreement."**

Immediately after the execution and delivery of this supplemental agreement, a deed (Ex. C. 8) was executed and delivered to Steenland Construction Company, conveying 78 acres. This is the land involved in this case. The entire consideration for the transfer was a purchase money bond and mortgage of $153,178 and agreement on the bond. The bond and mortgage (Exs. C. 14 and C. 15) were executed and delivered by the Steenland Construction Company to Nordhoff Land Company, the bond being in double the amount, namely, $306,356. (See Ex. C. 2.)

This mortgage provided that if second bonds and mortgages should later be executed by the mortgagor "such second mortgages and bonds secured thereby shall, by sufficient instrument in writing, be jointly and severally guaranteed by the Steenland Construction Company, Roderick D. Grant, Peter M. Steenland and Rollo Steenland." Thus, on subsequent bonds and mortgages Grant would become liable under the terms of the mortgage.

On the bond (Ex. C. 14) was written the following:

> **"For value received, the undersigned, Roderick D. Grant, Peter M. Steenland and Rollo Steenland hereby jointly and severally guarantee the prompt payment of the principal of the within bond, together with interest thereon; AND RODERICK D. GRANT UNCONDITIONALLY GUARANTEES THE PERFORMANCE OF ALL THE TERMS, COVENANTS AND CONDITIONS OF THE WITHIN BOND AND OF THE MORTGAGE ACCOMPANYING SAID BOND."**

This contract was duly executed, acknowledged and delivered by Grant.

Steenland asked Grant to prepare an agreement relative to Grant's interest in the property, because "If anything happened between us, because if anything happened to him, he did not want him to have any trouble with his family" (p. 65). Grant prepared this agreement in longhand (C. 9); he submitted it to Peter Steenland, who approved it and requested Grant to type them, which he did. Steenland took these copies to execute them (see pp. 65-66). If this agreement was ever executed by the defendant, it was not delivered to Grant, who subsequently, however, inquired about it. Although requested to

produce these typed copies at the trial, defendant failed to do so.

Before and after the passing of title, Grant and Steenland Construction Company worked *jointly* for the development, improvement and sale of the property. They were on intimate, friendly terms until December 29, 1924; they saw each other almost daily (p. 110); they *exercised joint control* of and had a *joint interest* in the land. Grant participated in all negotiations and conferences relative to it. In litigation with Englewood Golf Club, he and Steenland frequently conferred with Mr. Morrison, their attorney (p. 110). He devoted practically all of his time for more than a year to the enterprise.

Grant participated in numerous efforts to sell the property. The original plan was to sell it in a development scheme (pp. 116, 118, 119); subsequently efforts were made to sell it as an entirety. Grant assisted in preparing maps, planning houses and designing signs and other advertisements (pp. 83, 108). He conferred with Steenland at least 198 times and with their attorney 16 times (p. 110). He was constantly consulted by the defendant relative to questions pertaining to the property and exercised equal authority in their determination. He personally made expenditures relative to the property and was reimbursed by the defendant (see p. 104). No demand was ever made upon him for the payment or contribution of any money for the development or expense of the property, nor did he ever guarantee to find a buyer for it (pp. 103-104, 162).

On December 29, 1924, while Peter M. Steenland was negotiating relative to the property without Grant's knowledge, he, Grant, arrived on

the scene. Steenland became angry and immediately *repudiated all of Grant's interests in the venture* (pp. 84-87). Grant then sent a letter to the defendant, demanding that it proceed with their agreement to finance the property or turn it back to him so that he could arrange to make the payments within the required time (see Ex. C. 18).

Following this repudiation, Grant sought an amicable adjustment of their difficulties and conferred many times with the two Steenlands for that purpose. In one conference with Rollo Steenland (see p. 91) he said to Grant: "We have to put up all the money for this development and it does not seem as if you ought to get fifty per cent." Nothing was ever said to Grant about furnishing money in these negotiations (pp. 103-104). The purport of these negotiations after repudiation is found in the unsigned memoranda which were prepared by Grant at the request of the Steenlands (see Ex. C. 19, Ex. C. 20 and Ex. C. 21). Exhibit C. 20 contains erasures and changes, which were agreed upon by the parties at the conference (see pp. 94 and 97). Although the defendant did not object to the terms of any of these proposed agreements, they finally declined to sign, under advice of their attorney (p. 99). During negotiations, threats were made by the defendant to deprive Grant of any right or interest in the property whatever if he went into court (pp. 101-103). The defendant did not deny the testimony relative to the repudiation or the negotiations thereafter.

The witness, Peter Steenland, did not deny the original proposal made by Grant, nor did he assert a proposition on any other terms. He testified (p. 134) that the payments required by the

mortgage were to come from the profits of sales (p. 134) (which is not consistent with his claim in the answer that Grant was to furnish money for these payments); that Grant was still interested in the 27 acres remaining subject to the joint option (p. 146), on page 147 he admits that when Grant executed the bond *he became jointly liable with the defendants* for the payment of moneys due thereunder. He knew Grant had no money and yet entered the proposition, executed the bond and mortgage and undertook the obligations thereof (p. 149). He admits the weekly payments to Grant and that they were charged against development expenses (p. 154). He admitted Grant's interest in the property in unequivocal terms (see entire p. 146; also p. 152). He admits on page 157, that *Grant's joint interest continued until December 29, 1924,* and says: "If the property had been sold in 1924, *Mr. Grant would have gotten his fifty per cent.,* don't you think he wouldn't."

Peter Steenland did not deny Grant's testimony as to the reasons for taking title in the name of Steenland Company (pp. 51-52). Nor did he deny the approval of the memorandum of agreement (Ex. C. 9, pp. 65-66).

The answer alleges repeated demands on Grant to pay one-half of the payments required for the property. No testimony was offered to sustain this allegation. Although the defendant did not so plead, it apparently sought on the hearing, to establish a claim that Grant's interest in the venture terminated because he did not sell the property by December 29, 1924, but it did not sustain that claim. The final date for the payment under the mortgage had not expired when the repudiation occurred.

The property involved in this litigation is of tremendous value, the lowest valuation being $500,000 and some evidence being intimated that it might be worth $2,000,000 to the optionees (see p. 63).

The statute of frauds was not mentioned during the trial. It had not been pleaded, and no objection to oral evidence was made. The defendant gave its version of the oral transactions. It was clear that defendant did not rely on the statute.

The above are most of the material facts as brought out in the evidence. Other facts as may be relevant are discussed in the succeeding points.

Preliminary Statement.

The circumstances of this case, simple in the last analysis, are actually complicated by many unusual circumstances appearing in the pleadings, evidence and exhibits. The Vice-Chancellor decided against complainant, not because of any lack of equity or failure to prove our contentions, but because he found no resulting trust existed and that the Statute of Frauds was a defense. We, therefore, establish both a resulting and a constructive trust and a joint venture. We then direct much of our argument to prove that the statute is not a bar. We have arranged the points in logical sequence so as to demonstrate the many distinct reasons why this statute is not applicable. A number of points necessarily overlap and a certain amount of repetition occurs in urging the same matter from different angles. The Court will appreciate our difficulty in clearly and sufficiently covering the complex questions which counsel must present at length for fear of overlooking some argument which possibly may

not seem of greatest importance, although favorable to his client, but may be of significance in the determination by this Court. Some of the points, we believe, have not yet been determined in this Court and, therefore, the questions are important, both as regards the result to this complainant and as to the determination of the law of New Jersey. The importance of the case, the great amount of money and property involved, and the feeling that a gross injustice will be done unless our client is protected, have all urged us to very earnest effort to present the law as fully and clearly as possible, to the end that justice may be done. The argument will be under the following heads:

1. Resulting trust.
2. Constructive trust.
3. Joint adventure.
4. Inapplicability of Statute of Frauds.
    - A. The Statute is waived.
    - B. Writings remove the Statute from case.
    - C. Answer removes the Statute from case.
    - D. Performance removes the Statute from case.
    - E. Joint adventure not within Statute.
    - a. Statute stated.
    - b. Decision of Court below.
    - c. Previous decisions of this State.
    - d. Fifth Provision of Statute not Applicable.
    - e. Third Provision of Statute not Applicable.
    - f. Law in other jurisdictions.
    - g. Analysis of joint adventure agreement.

i. Analysis of Grant's Consent re. Title.
F. Statute not permitted to do fraud.
G. Premises regarded as personalty.
5. Defendant's Contentions Answered.

ARGUMENT.

I. RESULTING TRUST.

The Steenland Construction Company took title to the premises subject to a resulting trust in favor of Roderick D. Grant as cestui que trust to the extent of a one-half interest therein.

Grant discovered the premises and obtained an option running to himself alone (Exs. C. 1 and C. 23). He then interested Steenland Construction Company in the property and they agreed to his terms relative thereto, the principal one being that they would jointly take over the property. He then obtained a joint option for the 105 acres in favor of himself and Steenland Construction Company, upon very favorable terms (Ex. C. 2). Shortly thereafter, being persuaded by Steenland Construction Company that it would be a far more convenient manner of handling the property, he agreed that title to the first property conveyed under the option should be taken in the name of the Steenland Construction Company, although he was to retain his half interest therein as between the company and himself (p. 51). As Backes, *V.-C.,* says in his opinion: "The land was bought for sub-division and development, and by arrangement between the optionees and owner the title was taken in the name of the Steenland Construction Company for greater facility and convenience in selling and conveying lots, with the understanding that

it was to be held for the joint benefit of the optionees'' (p. 241). The grantor, Nordhoff Land Company, was notified by a letter signed by Steenland and Grant to convey the first tract (Parcel A of the option) to the Steenland Construction Company (pp. 49-51, Ex. C. 3). However, no arrangements or suggestions were made as to any change of Grant's obligation as provided for in the option, nor was any verbal agreement made relating to his obligation. Subsequently an agreement was signed by Nordhoff Land Company, Steenland Construction Company and Grant, to extend the time for taking title (Ex. C. 4 and C. 5). Finally, on February 13, 1924, Nordhoff Land Company, Steenland Construction Company and Grant met in New York City to close title.

A supplemental agreement (Ex. C. 10) between all the parties relating to a change in the division of the tract, was there prepared and executed by all three parties (p. 64). Therein Grant and the Steenland Construction Company are specifically designated as ''the purchasers'' and after indicating therein the additions to be made to Parcel ''A'' (the tract to be conveyed) there is this significant statement on page 2 ''(2) *the purchasers will take and pay for all of said lands —included within the limits of Parcel 'A' as so defined—on an acreage basis in the manner described in said option agreement*'' (p. 194).

This statement in the supplemental agreement, signed by Steenland Construction Company and Grant at the time of passing title, clearly and positively indicates that in the minds of all parties Grant was a co-purchaser and a principal in the transaction. He agrees therein with Steenland Construction Company unconditionally to *pay the full purchase price* for all of said lands

included in Parcel "A" (being the premises in the deed to Steenland Construction Company) "on an acreage basis in the manner described in the option agreement."

Then the deed (Ex. C. 8) was delivered by Nordhoff Land Company to Steenland Construction Company and simultaneously a purchase money bond (Ex. C. 14) and mortgage (Ex. C. 15) were executed and delivered by Steenland Construction Company to Nordhoff Land Company, the amount thereof being the complete consideration for the transfer of the property. No cash was payable before or at the closing of title and none became due until nearly a year thereafter.

Attached to the bond was an agreement signed by Grant, as follows:

> "For value received the undersigned, Roderick D. Grant, Peter M. Steenland and Rollo Steenland hereby jointly and severally guarantee the prompt payment of the principal of the within bond, together with the interest thereon, *and Roderick D. Grant unconditionally guarantees the performance of all the terms, covenants and conditions of the within bond and of the mortgage accompanying said bond.*"

This agreement fully confirms the obligation already incurred by the supplemental agreement (C. 10) above mentioned and the option agreement (C. 2). It *clearly evidences the intention of the parties that Grant was a joint principal obligor.*

In the mortgage itself, the performance of all terms thereof being unconditionally "guaranteed" by him, Grant agreed to execute such documents as might later be necessary to fully protect the Nordhoff Land Company in case it later released certain portions of the tract and took

back second mortgages thereof. Under his agreement written on the bond, he "guaranteed the prompt payment of the principal of the within bond, together with interest thereon and Roderick D. Grant unconditionally guarantees the performance of all the terms, covenants and conditions of the within bond and of the mortgage accompanying the bond." Thus he agreed not only to pay the principal and interest due under the bond and mortgage when and as it became due, but he also undertook to see that at least six houses of approved plans were erected before July 1, 1924; that if lands were released and second mortgages taken back by the Nordhoff Land Company, such mortgages and bonds would be "guaranteed" by him and the two Steenlands, or if one of them be then dead he would obtain a written instrument "by a surety or sureties satisfactory" to the Nordhoff Land Company; that such second mortgages would provide for payments from time to time; that he would agree that releases would be paid for on at least 10% of the area of the mortgaged premises yearly; that he would observe the restrictions contained in the deed from Nordhoff Land Company; that he would see that the buildings erected on the premises were properly insured and that taxes would be paid with reasonable promptness, etc. In other words, Grant undertook by his agreement on the bond to see that every term, covenant and condition of the bond and mortgage should be met when due, including, of course, payment of the principal and interest thereon. His undertaking as to these things was absolute and unconditional; it was not a collateral or secondary obligation. Certainly he bound himself by *an original and absolute obligation to pay, when due, the entire purchase price* for the property, as represented by the bond and mortgage. The

Nordhoff Land Company, treating Grant as a principal, used this method of placing upon him the identical obligations imposed on Steenland Construction Company in the bond and mortgage. *There is nothing to indicate that the seller did not consider that it was getting the precise obligation that had been arranged all along.* The form that the obligation of Grant took was merely an accident, a fortuitous or chance arrangement, devised at the time by the seller to meet the circumstances occasioned by the transfer to Steenland alone. The fact that Grant signed this agreement on the bond instead of the bond itself, is not important. "*Equity looks to the intent rather than the form.*" Or as this Court has said "Equity looks at the substance and not at the form of a doubtful transaction." *Rogers* v. *Genung,* 76 N. J. E. 306, 314. *Grant had agreed under the joint option to become a joint obligor on the bond and mortgage and he considered that he had done just this when he executed the supplemental agreement and the bond agreement* (see proposed agreement, Ex. C. 9). *This was also the understanding of the defendant* (testimony, p. 147). There is absolutely no evidence of any other intention for the execution of these papers.

After the taking of title by Steenland Construction Company, Grant participated with it in all transactions relating to the property and exercised joint control over it until the repudiation by Steenland Construction Company on December 29, 1924, a few days before the first payment of principal became due. Steenland testifies that Grant was jointly interested in the property until a few days before the time for a payment under the terms of the mortgage, almost a year after the actual transfer of title

(p. 146). The answer, filed by this defendant, asserts that Grant was liable, jointly and severally, for the purchase price, secured by the mortgage, and that this defendant sought payment thereof by him. It also pleads that Grant *"refused to perform on his part the joint obligation of complainant and this defendant."* It is estopped from taking any contrary position. It cannot now allege that Grant's obligation to pay did not constitute a portion of the purchase price.

Where lands are purchased by two persons who pay the purchase price and title is taken thereto by one of them, a trust in the lands is implied or results in favor of him who paid the consideration, or part thereof, and did not take title. *Cutler* v. *Tuttle,* 19 N. J. E. 549; *Midner* v. *Midner,* 26 N. J. E. 299; *Tunnard* v. *Littell,* 23 N. J. E. 264; *Krauth* v. *Thiele,* 45 N. J. E. 407; *Warren* v. *Tynan,* 54 N. J. E. 402; *Baker* v. *Baker,* 75 N. J. E. 305; *Phillips* v. *Phillips,* 81 N. J. E. 459; *Yetman* v. *Hedgman,* 82 N. J. E. 221; 26 R. C. L. 1225, *Perry and Trusts,* Par. 133; *Moss* v. *Moss* (W. Va.) 106 S. E. 429; 42 A. L. R. 49 and cases cited.

The payment of the purchase price need not be in money, but the resulting trust may be based upon anything of value furnished by the *cestui que trust* as part or all of the consideration for the purchase. Thus if a conveyance be made on the credit of the *cestui que trust* and he, at the time of the conveyance executed his own obligation for the future payment of the purchase money, this constitutes a sufficient payment of the purchase money to create a resulting trust and the grantee cannot, by simply paying the purchase money for what the other became bound, defeat a resulting trust in favor of the latter (15 *Am. & Eng. Ency.* 1145; 26 R. C. L.

1224; 2 *Am. & Eng. Ann. cas.* 688, 670; 42 A. L. R. 50; *Bispham on Equity,* par. 81; *Perry on Trusts,* par. 133, *Erp* v. *Meacham* (Tex.) 130 SW 230; *Honore* v. *Hutchings* (Ky.) 8 Bush 687; *Lynch* v. *Lynch* (Mass.), 144 N. E. 375; *Braddock* v. *Hinckman,* 78 N. J. E. 270; *Casciola* v. *Donatelli* (*Pa.*), 67 Atl. 901, 903; *Beidler* v. *Miller,* 1 Wood. Dec. (Pa.) 223. And in *Yetman* v. *Hedgman,* 82 N. J. E. 221, Vice-Chancellor Backes says: "It is not necessary that the consideration be paid in specie, but anything representing it, coming from or in behalf of the *cestui que trust* will be equally valuable to protect the beneficial interest." And Backes, *V.-C.,* says in his head-note (132 Atl. 850): "A trust may result in favor of one who at the time of the purchase, pays the purchase price or binds himself by an absolute obligation to pay it." We find no authority contrary to this doctrine.

In this instant case, the purchase price for the property consisted *solely* of the purchase money bond and mortgage. The bond and mortgage were executed by Steenland Construction Company and a separate agreement on the bond (Ex. C. 14, quoted *supra*) was signed by Grant, in which he unconditionally "guaranteed" the full performance of the bond and mortgage, including, of course, the payment of the principal and interest when it came due. And in the supplemental agreement (C. 10), executed simultaneously with the bond and mortgage, *Grant being therein specifically designated as a "purchaser," agreed "TO TAKE AND PAY FOR all of said lands—included within the limits of Parcel A as so defined—on an acreage basis in the manner described in said option agreement."* Parcel A constituted the premises described in the deed and bond and mortgage. Thus it is clear from

the joint option, the bond and supplemental agreement, that Grant was equally liable as a principal with Steenland Construction Company for the payment of the consideration price for the property. *The Steenland Construction Company incurred no obligation different in any manner from that undertaken by Grant.* In signing the bond-agreement, Grant not only carried out his obligation shown in the supplemental agreement, but also the obligations required in the joint option.

In his opinion in this case, Vice-Chancellor Backes misconstrues the legal effect of the agreement executed by Grant on the bond. He ignores entirely the supplemental agreement executed at the same time by Grant and the others. He also ignores the joint option and the admissions of joint liability in the answer and testimony (p. 147). He treats Grant's agreement on the bond not as an absolute obligation to pay the debt but as an undertaking to pay in the event that Steenland Construction Company failed to pay and as a collateral obligation rather than as a part of an original obligation, which it really was (see opinion 132 Atl. 850; 4 Adv. Rept.). His finding against a resulting trust is based solely on his understanding that Grant was not under an absolute obligation to pay (see head note and opinion).

Grant's obligation was an absolute and original undertaking to pay the debt secured by the bond and mortgage (see bond agreement above set forth in full, option [C. 2] and supplementary agreement [C. 10]). *It does not say that if the Steenland Construction Company fails to pay, Grant will do so.* It is not a guaranty of the collection of a debt; it is a complete obligation to see to "the prompt payment of the principal of

the within bond, together with the interest thereon," meaning immediate payment when due. In addition to this obligation, "Grant *unconditionally* guarantees the performance of *all* the terms, covenants and conditions of the within bond and of the mortgage accompanying said bond." The word "guarantee" is here clearly used in a non-technical sense and carries with it the obligation, absolute, original and unconditional, to pay the debt when due. In a technical sense, "guarantee" imports a promise to be answerable for the default of another and, before the guarantor can then be held liable, an unsuccessful attempt to collect must be made against the primary debtor and notice of his default given to such guarantor. Such was not the situation in the instant case, because Grant "guaranteed" the *prompt* payment of the principal and interest and the full performance of all the terms, covenants and conditions of the bond and mortgage. *He was liable as a principal on the independent promise to pay the debt, which was the sole purchase price.* The word "guarantee" is frequently used in a non-technical and loose manner where the intention is to create some other status. It is the intention that controls the actual obligation rather than mere words used. The clear intention in this transaction in the light of all documents and explanatory circumstances was that Grant was a principal debtor. There is no reason given to show that the parties intended any different obligation than that provided for in the joint option except as to its form. *It was solely a matter of form that the separate agreement was signed rather than the bond itself.* "Equity looks to the intent rather than the form."

In the case of *Hoey* v. *Jarman* (Sup. Ct.), 39 N. J. L. 523, the agreement in litigation was as

follows: "I do hereby guarantee the payment of the said mortgage at the time therein specified, but only upon the failure of said Weswall to pay the same." *Chief Justice Beasley says* (p. 524):

> "Here, in express terms, and with the utmost perspicuity, the defendant obligates himself that this debtor will not only pay the sum designated, but that he will pay it on a certain day and, consequently, it seems illogical to contend that the failure of payment mentioned in the subsequent clause, refers to a period posterior to the day on which the defendant has just antecedently bound himself that payment shall be made."

This case clearly shows the ***absolute liability*** of the one signing an agreement to "guarantee" in this case.

In *Perkins-Goodwin Co.* v. *Hart,* 83 N. J. L. 471, the agreement was "In consideration of the execution of the within contract by Perkins-Goodwin Co., I hereby guarantee the payment to them on October 20, 1909, of the sum of $7,000 as provided for by the same." *Justice Garrison, speaking for the Court of Errors and Appeals, says* (p. 473):

> "This is a direct promise by the defendant to pay the plaintiff in a given event—and is entirely independent of the enforceability of the 'within contract' against the other party thereto. The term 'guarantee' in such a context imports an undertaking to pay in a given event, * * * and not a promise to be answerable for the default of another, which is its technical meaning in an appropriate context."

The above case is the only one cited by Backes *V.-C.*, to support his assertion that Grant was not bound by a primary absolute obligation to pay; it holds otherwise and does not support his finding.

In *Wilkinson-Gaddis Co.* v. *Van Riper,* 63 N. J. L. 394, there was a demurrer to a declaration alleging "the said defendant guaranteed to the plaintiff the payment of all bills then contracted for and thereafter to be contracted with it by said Van Riper to the extent of $3,000." *Justice Lippincott,* on pages 396-397, *says as follows:*

> "It will be seen that the guaranty, or contract upon which the action is based, is one in which the defendant engages to make payment herself of the debts contracted for or to be incurred up to the amount named. If it had been a contract of liability upon the failure of the creditor to collect of the principal debtor, or, in other phrase, a guaranty of collection simply, then an unsuccessful attempt against him to collect, and notice thereof to the defendant, or insolvency, would be not only a requirement of proof but also an averment of that purport and effect because necessary to be contained in the declaration.
>
> But under the contract as stated in the declaration, the defendant became an original promisor. *The mere use of the word "guaranteed" can have very little significance in determining the character of the engagement of the defendant,* for, by whatever name it is called, the contract was one to pay, not upon the default of or miscarriage of the principal debtor, but one which bound the defendant with him at the same time and upon the same consideration to pay the debt at that time incurred, and such as should thereafter be incurred to the amount named and the defendant as a surety was bound to know every default of his principal * * *. The default of the principal debtor was alike the default of the defendant. *The obligation was an original one to pay the debt on the part of the defendant,* and she could be subjected to an action immediately and before suit against the principal debtor * * *. One who guarantees payment becomes absolutely liable upon any

default of payment by his principal. * * * One who guarantees the collection only incurs a conditional liability * * *." (Italics ours.)

A resulting trust arises by operation of law from contemporaneous circumstances which give the legal and equitable titles different directions. See *Krauth* v. *Thiele,* 45 N. J. E. 407; *Read* v. *Huff,* 40 N. J. E. 229; *Phillips* v. *Phillips,* 81 N. J. E. 459; *Yetman* v. *Hedgman,* 82 N. J. E. 221; *Perry on Trusts,* Par. 133. In *Phillips* v. *Phillips,* 81 N. J. E. 459-461, Vice-Chancellor Backes says: "By this, of course, is not meant to exclude an investigation of preceding and subsequent events, which may throw light upon the situation when the title passed."

In view of the above statement of law, let us review the "contemporaneous circumstances" in this case. Grant had an individual option for the purchase of the property. When Steenland Construction Company agreed to purchase the property jointly with him, he obtained a joint option. He was persuaded to permit the title to 78 acres to be taken in the corporation name as a matter of convenience only. The extension of time for closing title was agreed to by him, as well as the seller and the corporation. When title was taken, a supplemental agreement referred to him and the corporation as "purchasers" and he therein undertook, with the corporation, to pay the purchase price for the premises conveyed. At that time, also, he executed the separate agreement on the bond in which he "guaranteed" payment thereunder and unconditionally "guaranteed" performance of all terms of the bond and mortgages, including many other obligations in addition to payment of the money to become payable under the bond, which was the sole consideration for the transfer of title.

Thereafter, for almost a year, he exercised joint control of the premises thus conveyed and was, as Steenland admitted, jointly interested therein. No consideration was given to him by Steenland Construction Company for the right to take title in its name alone, and it is not reasonable to assert that he gave up an interest in property worth from $200,000 to $500,000 or more for nothing. As was said in *Yetman* v. *Hedgman* (*supra*, p. 228): "The entire atmosphere of the cause repels the implication of a gift, absolute, in fee simple." It is also significant that the only consideration for Grant's execution of the supplemental agreement and the bond was his joint interest in the property.

In addition to the above facts, it must be remembered that the original joint option is still valid and effective as to some 27 acres of land not yet conveyed by Nordhoff Land Company and that Grant retains a half interest in the option as to these remaining acres at the present time.

Certainly Grant, by his obligations to the Nordhoff Land Company, became liable to pay the full consideration price for the property. The grantor could obtain a judgment gainst him for the full price, either alone or jointly with Steenland Construction Company. The grantor treated him as a principal. He is equally liable with Steenland Construction Company to pay the full purchase price for the property, just as much so as if he had signed the bond itself with the Steenland Construction Company. *And if this Court affirms this decree, Grant will remain so liable and yet have no interest in the property.* What an anamoly and travesty on justice it would be, if, under all the contemporaneous circumstances of the transaction and under all the

admitted facts of the case, it be held that Grant was not jointly interested in the property and that Steenland Construction Company did not take the property subject to a resulting trust in favor of Grant as *cestui que trust.*

A resulting trust is one arising from implication of law and is an exception to the Statute of Frauds. Such a trust may be proved by parol evidence. See 2 C. S. 2611, *Krauth* v. *Thiele,* 45 N. J. E. 407; *Cutler* v. *Tuttle,* 4 C. E. Gr. 549, 558; *Hutchinson* v. *Tindall,* 3 N. J. E. 357; *Brannin* v. *Brannin,* 18 N. J. E. 212, *Lynch* v. *Lynch* (Mass.), 144 N. E. 375; *Sayre* v. *Fredericks,* 16 N. J. E. 205.

An express parol agreement to the same effect as the implied one will not defeat the resulting trust. Such an agreement will not convert the agreement into an express trust which cannot be proved by parol evidence, but is merely in the nature of an acknowledgment of the trust which the law implied. *Warren* v. *Tynan,* 54 N. J. E. 402 (E. & A.) and 42 A. L. R. 55 and cases there cited.

A trustee may be compelled to convey to the *cestui que trust* his interest in the real estate. *Sayre* v. *Lemburger,* 92 N. J. E. 373.

The defendant here claims in its answer that complainant lost his interest in the property when he failed to pay his share of the payments under the obligations to the Nordhoff Land Company. It thereby admits his interest and his liability. But even though the defendant paid all of the payments thus far due under these obligations, this cannot affect the resulting trust. It would perhaps give defendant a right of reimbursement on an accounting of the trust but nothing more than that. The resulting trust arose

when title passed and the sole consideration therefor was the joint obligation of Grant and the defendant. Matters arising *expost facto* cannot change the trust. *Cutler* v. *Tuttle,* 19 N. J. E. 549, 562; *Midner* v. *Midner,* 26 N. J. E. 299; *Tunnard* v. *Littell,* 23 N. J. E. 264, and other New Jersey decisions.

In conclusion, it is respectfully submitted that all of the prerequisites of a resulting trust are here present. The premises were purchased by Grant and Steenland Construction Company, title was taken by Steenland Construction Company alone; Grant paid one-half of the entire purchase price by becoming jointly liable with the grantee for its payment to the grantor; the contemporaneous circumstances gave the legal title and the equitable title different directions; the Statute of Frauds does not apply in such a case and Grant's joint interest in the premises is manifested throughout the exhibits, the evidence and the answer. A resulting trust should, therefore, be declared in favor of complainant Grant, as *cestui que trust.*

II. CONSTRUCTIVE TRUST.

The Steenland Construction Company holds the property subject to a constructive trust in favor of Grant as cestui que trust to the extent of a half interest therein.

Constructive trusts are such as are raised by equity in respect to property which has been acquired by fraud or where, though acquired originally without fraud, it is against equity that it should be retained by him who holds it. They arise purely by construction of equity, independently of any actual or presumed intention of the parties to create a trust, and are generally

thrust on the trustee for the purpose of working out the remedy. Equity declares the trust in order that it may lay its hand on the thing and wrest it from the possession of the wrongdoer. (26 R. C. L. 1232; 3 Pom. Eq. Jur., p. 1044, *Seq.*) Whenever a person acquires the legal title to lands by voluntary conveyance by means of a fraudulent verbal promise to hold it for a certain specified purpose, and, having thus fraudulently obtained the title, he retains, uses and claims the property as absolutely his own, the whole transaction will be treated, in equity, as a scheme of actual deceit, and the Court will treat the person so acquiring the legal title as a trustee, and decree him to hold it for the benefit of the true beneficiary. It is not the fact that the bargain by which the trustee obtained title is verbal that governs the case but the fact that he procured the title to be made to him in confidence, the breach of which is fraudulent and in bad faith (26 R. C. L. 1238). And fraud is much more readily inferred where the parties occupy a confidential or fiduciary relationship to each other and where a conveyance is made between parties standing in such relation to each other, on a parol agreement of the grantee to hold it in trust and the grantee violates such trust, the law raises a constructive trust (26 R. C. L. 1240). A person is said to stand in a fiduciary relationship to another when he has rights and duties which he is bound to exercise for the benefit of that other person. The relation exists in all cases where there has been a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing the confidence (26 R. C. L. 1248). Where a person obtains the legal title to property by virtue of a confidential relation and influence, under such circumstances

that he ought not, according to the rule of equity and good conscience as administered in Chancery, to hold and enjoy the beneficial interests of the property, courts of equity, in order to administer complete justice between the parties, will raise a trust, by construction, out of such circumstances or relations, and this trust they will fasten upon the conscience of the offending party, and will convert him into a trustee of the legal title, and order him to hold it, or execute the trust in such manner as to protect the rights of the defrauded party, and promote the safety and interests of society (26 R. C. L. 1249). If the legal title to land is obtained by reason of a promise to hold it for another, and the latter, confiding in the purchaser, and relying on his promise, is prevented from taking such action in his own behalf as would have secured the benefit of the property to himself, and the promise is made at or before the legal title passes to the nominal purchaser, it would be against equity and good conscience for the latter, under the circumstances, to refuse to perform his solemn agreement, and to commit so palpable a breach of faith. It is accordingly generally held that a trust for the benefit of such other person is charged upon the property, not by reason merely of the oral promise, but because of the fact that by means of such promise the purchaser has induced the transfer of the property to himself.

In New Jersey there are a large number of cases in which the above principles are set forth. Most of these cases have particular reference to a fiduciary relationship imposed upon principal and agent, attorney and client, executors, family relationship, partnerships, etc. In *Powel* v. *Yearance,* 73 N. J. E. 117, a bill was brought to impress a trust on devised property. The al-

leged trustee had obtained title to the property under the will of a decedent after having promised the decedent that certain division would be made of the land. The trustee failed to carry out the promise to the decedent and other beneficaries filed a bill to impress the trust. *On page 126 Vice-Chancellor Emery says:*

> "Trust, in cases of this character, are impressed on the ground of fraud, actual or constructive, and the basis or ground upon which fraud is imputed is that of holding the estate of testator against conscience. It is not based necessarily on any imputation of fraud, or intention to defraud, at the time of making the promise, but of afterwards holding or attempting to hold the estate, as if the promise, on which the estate was received in its original condition, had not been made. The fraud consists in holding, or attempting to hold, the estate free from the effect or obligation of a promise, subject to which it was intended to be devised and received, and which it is obligatory in conscience to carry out. Where the estate or interest therein is thus received by the person who made the promise, the attempt to hold the estate without performing the promise is an actual fraud, for the reason that the recipient having actually made the promise, knows personally of the obligation, and is guilty of actual fraud in holding, or attempting to hold, the estate without performing the promise, so far as his interest in the estate extends. As to such promisor, it is clearly not a question of modifying or cutting down plain and ambiguous devises in a will, by parol evidence or unattested papers, in violation of the statute of frauds or of wills, for the devise to the promisor is not modified, but he is dealt with as a holder by fraud of property under the will, and a trust *ex maleficio* is raised from these facts. Williams *v.* Vreeland, 32 N. J. E. (5 Stew.) 136 Chancellor Runyon, 1880; In re Will of

O'Hara, 95 N. Y. 403 (1884), and cases cited (at pp. 413, 414).

In the instant case, the evidence clearly shows that Grant and Steenland Construction Company were joint adventurers or partners in the transaction. They agreed to take the property jointly. Grant obtained the joint option in favor of both of them. They dealt with the property constantly from November, 1923, when the agreement was made, until the repudiation in December, 1924, as associates and partners. Each was consulted in every matter relating to the property. Grant became jointly liable with the Steenland Construction Company for the payment of the purchase price and for the full performance of all terms, conditions and covenants of the bond and mortgage (see Exs. C. 14 and C. 15). If Grant was not jointly interested in the property, why should he have so obligated himself? Steenland testified (p. 157): *"If the property had been sold in 1924, Mr. Grant would have gotten his fifty per cent, don't you think he wouldn't."* And on page 128: "He then got me interested in this way: that *we take this property* and for *his service* he wanted fifty per cent. of the profits." And he testified that Grant depended upon them "dealing fair with him" (p. 133).

As joint adventurers, a confidential and fiduciary relationship arose between Steenland Construction Company and Grant which required the exercise of the utmost good faith to each other. (See *Jackson* v. *Hooper,* 76 N. J. E. 185, and other cases cited in this brief.) When Steenland Construction Company took title to the property, it was understood that it was to be for the joint benefit of both of them. Backes, *V.-C.,* so found in his opinion. And this was the understanding until December 29, 1924, when

Steenland Construction Company repudiated its agreement and claimed that Grant had no interest in the property (see answer, par. 10). Clearly this constituted a breach of trust which, in equity, would amount to fraud. Having so violated their confidential relationship and having so determined to fraudulently deprive Grant of his beneficial interest in the lands, a court of equity should declare that the Steenland Construction Company holds the premises under a constructive trust, or a trust *ex maleficio,* for Grant as *cestui que trust.*

The constructive trust doctrine is closely allied to the doctrine of joint adventurers hereinafter considered and will also be considered further in the application of the Statute of Frauds to joint adventures.

In *Harrop* v. *Cole,* N. J. E., page 32 (Affirmed 83 Eq. 250), Vice-Chancellor Stevenson, at page 33, says:

> "A trust which is more correctly classifiable as a constructive trust (1 Pom. Eq., par. 155; 1 Perry Trusts, par. 166) than as a resulting trust, (par. 135), is established by proof of the betrayal of confidence, of the violation of duties arising out of a fiduciary relation. The fiduciary relation may be established in a large number of ways. It is a mere accident that in this particular case, and in large numbers of others, the fiduciary relation grows out of a verbal promise. As the authorities abundantly show, equity will not tolerate the betrayal of confidence and it makes no difference how this confidence has been obtained."

And in *Rogers* v. *Genung,* 75 N. J. E. 306, *Justice Bergen,* speaking for the Court of Errors and Appeals, says at *page 312:*

> "It seems to us that it is a clear case of bad faith and disloyalty to the interest of

one for whom he engaged to act, and it does not matter in such case that the agent is a mere volunteer, or acts gratuitously. 31 Cyc. 1432, 1433. The general rule is that he who undertakes to act for another in any matter of trust or confidence shall not in the same matter act for himself against the interest of one relying upon his integrity."

III. JOINT ADVENTURE.

Roderick D. Grant and Steenland Construction Company were joint adventurers in the acquisition, control and sale of the premises. And therefore Steenland Construction Company holds the premises subject to Grant's half interest therein.

The general statement of law as to joint adventurers may be found in 15 R. C. L. 500, *Seq.;* 33 C. J. 839, *Seq.*

The relationship of joint adventurers is similar to that of a partnership, the difference usually being that the former relates to a single adventure. Most decisions relative to partnerships apply also to joint adventures. The evidence here adequately sustains this relationship between Grant and Steenland Construction Company. The direct testimony of Grant is fully confirmed by the admissions of Steenland on cross examination. The unsigned agreement (Ex. C. 9), approved and acted upon, was also evidence thereof (Lindley on Partnership, 8th ed., p. 103). The relationship is also evidenced and proved by the writings introduced in evidence, particularly the joint option (Ex. C. 2), letter of November 28th (Ex. C. 13), agreement and letter extending closing date (Ex. C. 4), supplemental agreement of February 13th (Ex. C. 10) and bond (Ex. C. 14) and mortgage (Ex. C. 15) of February 13th.

and the answer (Point IV, sub div. B). The entire course of dealings between the parties from November, 1923, to December 29, 1924, confirms this relationship. The uncontradicted evidence is that Grant exercised joint control and authority over the property; that he was consulted in all matters relating thereto and exercised authority as a joint owner thereof. The negotiations between the alleged joint adventurers and third parties conclusively established the joint relation and interest in connection with the property. *Throughout the trial of the entire case no question was raised by either side as to the existence of a joint adventure.* On cross examination, Steenland said (p. 157): "If the property had been sold in 1924, Mr. Grant would have gotten his fifty per cent."

There is the fiduciary relationship existing between the parties to a joint adventure which demands the utmost good faith in all the dealings with each other. This is one of the most important qualities of a joint adventure, *Jackson* v. *Hooper*, 76 N. J. E. 185; *Bond* v. *Taylor* (W. Va.), 69 S. E. 1000; *Merritt* v. *Joyce* (Minn.), 135 N. W. 820; *Botsford* v. *Van Riper* (Nev.), 110 Pac. 705; 15 R. C. L. 501 and cases cited.

In the instant case the relationship between Grant and the Steenland Construction Company necessitated the utmost good faith throughout their dealings. No evidence appears of any bad faith on the part of Grant. If anything, he exhibited too much faith in his co-adventurer. The relationships between the parties were intimate and friendly until December 29, 1924, when Grant presumably surprised Steenland in a conference relative to the property in which he, Grant, had not been consulted. Steenland became excited and repudiated all obligations to Grant. The

Steenland Construction Company, in repudiating its agreement with Grant and its denial to him of his rights in the property, acted contrary to the legal requirements between joint adventurers. See cases *supra,* 15 R. C. L. 502 *Ross* v. *Stevens,* 45 N. J. E. 231, etc.

Real estate belonging to joint adventurers, whether the legal title be in one or more parties, is imposed with a trust for the benefit of the other joint adventurers which follows the property until it passes into hands of a *bona fide* purchaser. This is a natural and logical result from the fiduciary relationship existing between joint adventurers. One or more adventurers would otherwise be able to defraud the other parties to the joint adventure and their interests in the property if such a trust were not established. *In this transaction the premises were purchased by the two adventurers,* although title was taken by Steenland Construction Company alone. This fact is evidenced by the option agreement, the letters, the supplemental agreement of February 13th, the bond and mortgage and the answer. By the supplemental agreement Grant with the Steenland Construction Company agreed to take the property and to pay the purchase price. By the undertaking on the bond he not only agreed that the moneys due thereunder would be paid at the times specified, but he further undertook the performance of all the terms, conditions and covenants of the bond and mortgage. Clearly the Steenland Construction Company holds title in trust for the benefit of its co-adventurer, Grant (see Point I). The conveyance to Steenland Construction Company was solely for the purpose of convenience; Grant received no consideration for his consent to this conveyance; it was not permitted by Grant as a

gift or a relinquishment of his right (see discussion, Point IV, E [h]).

By taking title for the joint benefit of it and Grant, the company did not secure any greater rights in the property than belonged to Grant. To permit the defendant, in view of uncontradicted testimony, to claim a sole beneficial title to this property would not only let it violate its trust, but would in effect enable it to commit a fraud upon its co-adventurer. *The doctrine is thoroughly established by the authorities that property taken by one joint adventurer is held in trust for the other.* See 15 R. C. L., page 504; 15 R. C. L. 503; 23 Cyc. 454, Ann. Cases 1912—202; *Merritt* v. *Joyce* (Minn.), 135 N. W. 820. In *Irvine* v. *Campbell,* 121 Minn. 192; 141 N. W. 108; the Court says:

> "Real estate belonging to a partnership, whether the title be in one or more partners, is imposed with a trust for the benefit of the partnership which follows it until it passes into the hands of a *bona fide* purchaser. The same rule applies where the parties negotiate in a joint adventure, the subject of which is real estate. Each party who engaged in the enterprise has the right to enforce this trust so far as may be necessary to secure to himself the proceeds of the adventure," citing many cases.

In *Botsford* v. *Van Riper* (Nev.), 110 Pac. 705, the Court says:

> "The law is well established that property purchased or acquired in connection with a joint adventure, the profits realized from a joint adventure of the joint property of the parties interested, where one party holds title to the same, is held in law to be the property of the associates and the party is holding their proportionate share as trustee for them," citing many cases.

In *Bonner* v. *Cross County,* Ark. 167 S. W. 80, the Court says:

> "Here the contract provided that the lands were to be disposed of under the joint option of all the parties to the contract. This gave Bonner something more than an interest in the profits if the lands were sold—it gave him an interest in the lands themselves—the object of the trust here is the sale of the property and the parties to the agreement were to agree upon the manner of its disposition. This gave to the parties a joint interest in the property; Johnson held the legal title, but the rights of Bonner are as valid in equity as those of Johnson are at law." Citations.

As well said in the case of *Floyd* v. *Duffy,* 69 S. E. 993 (W. Va. 1911):

> "The remedy at equity is an independent one in cases of partnership, etc., to prevent fraud and unconscionable dealing of the parties for which there is no adequate remedy at law."

And further:

> "The original beneficial interest, an established fact * * * makes a claim of absolute ownership on the part of the grantee contrary to conscience and variant to the principles of justice."

These are only a few of the cases in the notes cited above.

If no date is fixed by the contract of joint adventure for its termination, it remains in force until its purpose is accomplished, and neither party can end it at will. This joint adventure was to obtain title to the property and to develop and sell it upon favorable terms. No time was fixed to terminate the adventure. The purpose remains unaccomplished. Apparently the defendant sought to terminate it on December 29, 1924, and during January, 1925,

but under the settled principles of law, it had no right to so terminate the contract at will and arbitrarily deprive the co-adventurer of his rights under the adventure. The terms of this joint adventure continue to this date and Grant's interest in the property remains undisturbed and in full force. See 15 R. C. L. 506; Ann. Cases 1916 A, page 1214; *Bond* v. *Taylor,* 69 S. E. 1000; L. R. A. N. S. 1918 B, page 678, and cases cited, *supra.*

In a joint adventure the parties are entitled to an equal interest in the property involved and to equal division of any proceeds which may accrue. See Ann. Cases, 1916 A, page 1213, 17 Ann. Cases 1025; *Botsford* v. *Van Riper,* 110 Pac. 705; *Ross* v. *Stevens,* 45 N. J. E. 231. In *Jones* v. *Davis,* 48 N. J. E. 493, Vice-Chancellor Green held that even where the contract specifically applies to an interest in profits, the *cestui que* trust would also have an interest in any unsold portion of the real estate which was the subject of the speculation. Of course, before a division is made, the defendant, Steenland Construction Company, is entitled to its actual, proper and legal disbursements incurred as a result of the joint adventure agreement. See 15 R. C. L. 506 and cases cited.

The fact that the money in this joint adventure was subsequently advanced by Steenland Construction Company does not in any way affect the original joint adventure agreement under which Grant was entitled to an equal one-half interest in the property or the proceeds therefrom. The payments by the defendant were all made after the relationship of joint adventure had been fully established. Most of them were made several months after the title was taken in the name of the defendant (see Exhibits D. 5,

D. 6, D. 7). Steenland admitted (p. 157) that Grant had an interest in the property until the fall of 1924, when, it is claimed, he failed to find a buyer for the property or to furnish the money required by the bond and mortgage. The cases all hold that under these circumstances the joint adventure agreement is not terminated or affected, but that the one advancing the money is entitled to reimbursement before distribution of the profits or division of the premises and has no superior rights as against the other. See 23 Cyc. 457; *Botsford* v. *Van Riper*, 110 Pac. 705; *Saunders* v. *McDonough*, 67 Southern 591, 15 R. C. L. 506.

In fact, it is not claimed that the joint adventure has terminated. The joint option agreement remains in full force as to Parcel B, as diminished by the supplementary agreement of February 13, 1924 (C. 10). The joint option as to these 27 acres is valid until January 1, 1929. Steenland testified (p. 146), that this joint option as to these 27 acres was still in effect.

The Statute of Frauds is not applicable to the joint adventure in this case. This is fully discussed subsequently in this brief (Point IV E).

IV. THE STATUTE OF FRAUDS.

The Statute of Frauds is not applicable to this case either by the authorities or by reason.

The Statute of Frauds does not apply *to resulting or constructive trusts,* which are deemed to be raised by implication or operation of law. See 2 Comp. St. 2611, Section 3, and authorities at end of discussion relative to resulting trusts. The following discussion therefore refers to the

relationship between the parties outside the theory of resulting and constructive trusts, except as the latter theory may be interwoven with the joint adventure doctrine. This discussion, because of its complexity, will be considered under several sub-divisions. We will treat these separately, showing under each sub-division that the Statute of Frauds is not applicable to the case at bar. These sub-divisions are:

A. This defense has been waived.

B. There are sufficient writings to take the case out of the Statute of Frauds.

C. The answer admits an agreement, thereby eliminating the Statute of Frauds.

D. Sufficient part performance has been shown.

E. The agreement in this case for joint adventure is not within the statute.

F. This statute will not be permitted to accomplish fraud.

G. The Statute of Frauds does not apply because these premises must be treated as personally between co-adventurers.

A. The defense of the Statute of Frauds has been waived by the defendant.

The Statute of Frauds was not pleaded as a defense by the defendant. If it was to be relied upon, it should have been pleaded (*Fee* v. *Sharkey*, 59 N. J. E. 284), or there should have been an absolute denial of *any* agreement with complainant. In this case, the answer of Steenland Construction Company, does not deny the existence of *any* agreement; it actually admits that title to the premises was taken by it subject

to an agreement with Grant. (See answer, par. 11, and Point IV C.) In *Ziegener & Lane* v. *Daeche,* 91 N. J. L. 634, 636, Justice Bergen, speaking for the Court of Errors and Appeals, quotes with approval from *Walker* v. *Hills' Executors,* 21 N. J. E. 191, 203, as follows:

> "The settled doctrine of the courts is, that if the answer admits the contract, without stating that it was not in writing, and setting up the statute of frauds, the statute cannot be used as a defence. The admission will be held to be that of a legal contract—that is, a written one, and no proof need be offered of it. But if the pleading or answer denies the existence of *any* agreement, the plaintiff will be obliged to prove one; and he must prove a legal agreement, which, in case within the statute of frauds, is a written one." Affirmed in 22 *Id.* 513; also Wakeman *v.* Dodd, 27 *Id.* 564. "But where the answer admits an agreement, though only a parol one, the defendant must plead the statute in order to obtain its protection."

At the trial, no objection was made to any testimony relative to any oral agreements between the complainant and the defendant. On the contrary, the defendant, by its president, explained, on direct examination, its version of the oral portions of the agreement with the complainant (pp. 125, 130, 133).

The first appearance of the defense of the Statute of Frauds in this case was in the brief submitted by the defendant to Vice-Chancellor Backes.

The defendant waived the statute as a defense. It cannot now set it up.

While Vice-Chancellor Stevenson did not determine this question in *Harrop* v. *Cole,* 85 N. J.

E. 32, he did make the following comment at page 36:

> "After parties have joined issue on their pleadings as to what oral contract they entered into, and each has endeavored in a protracted trial by the production of witnesses, to support his view as to the terms of the contract, I have very grave doubt whether it is permissible to the defendant, acting upon a suggestion from opposing counsel or from the court, to say at the end of his argument, or by a supplemental brief, 'Well, it does not make any difference what this contract was. I have denied the existence of the contract set forth in the bill of complaint, and I now invoke the statute of frauds as a complete defence even if the court is satisfied as the result of the trial that the complainant's account of the verbal contract is true and mine untrue.' "

In *Sartwell* v. *Sowles,* Vt. 48 Atl. 11, at page 13, it is held:

> "Whether the contract was within the statute of frauds, need not be considered; for if it was, the defendants have waived that defense by allowing the contract to be established by parol evidence without objection, and it must be enforced as proved. Montgomery *v.* Edwards, 46 Vt. 151; Battell *v.* Matot, 58 Vt. 271, 5 Atl. 479; Pike *v.* Pike, 69 Vt. 535, 38 Atl. 265."

And in *Holt* v. *Howard,* Vt. 58, Atl. 797, it is held at page 798:

> "One of the defendant's claims is that certain items were, under the statute of frauds, not provable by oral testimony. But the statute of frauds is, so far as concerns means of proof, a rule of evidence which may be waived, and which is waived, unless objection is made to the proof offered. In the hearing before the referee any evidence which may have been obnoxious to the statute of frauds was received without objection, and so the statute was waived.

> Clearly, the parties were actuated by a common desire that the referee should receive and consider whatever might logically aid him in arriving as nearly as might be, at an accurate result.''

There is, therefore, ample authority for the statement that the defendant has waived this defense by failing to plead the Statute of Frauds, by admitting the existence of *an* agreement in the answer, by failing to object to any testimony relative to the oral proof of the agreement with Grant, and by offering testimony to explain its version of said agreement. (See also extensive notes on question in 19 Am. & Eng. Ann. Cas. 316, 49 L. R. A., N. S. (1); see also 27 C. J. 373, 25 R. C. L. 743.

B. There are sufficient writings in evidence to take the case out of the Statute of Frauds.

The writings and documents introduced amply manifest and prove the existence of the joint adventure and a trust. The third section of the statute provides "that all declarations and creations of trust or confidence of or in any lands * * *, shall be manifested and proved by some writing, signed by the party, who is or shall be by law enabled to declare such trust * * *."

It does not require that the trust shall be created by a writing, but only that it must be manifested and proved by such means. The written proof need not be contemporaneous with the creation of the trust. The proof may be found and deduced from one or more writings, if they bear a relation to each other and import a trust. The writing need not be of a formal character, but a trust may be imported and proved by letters, deeds and other writings signed by the party to be charged. *Aller* v.

Crouter, 64 N. J. E. 381, 391, and cases there cited; also *Baldwin* v. *Trowbridge,* 62 N. J. E. 468, 477. It is not necessary that the name of the trustee be subscribed to the document; it is sufficient if it appears in his handwriting at any place in a document relating to the trust. *Smith* v. *Howell,* 11 N. J. E. 349, 355, 357.

In this case there are several signed documents which manifest and prove the joint adventure and trust. The fiduciary relationship between the parties first arose when they agreed to go into the venture together on or about November 9, 1923 (pp. 38-39). On November 28, 1923, Steenland Construction Company wrote a letter to Nordhoff Land Company, stating that *"Mr. Grant has carried on these negotiations for himself and ourselves jointly * * *"* and that *"The option papers should be made out jointly to Mr. Roderick D. Grant and The Steenland Construction Company."* On December 10, 1923, the joint option agreement was executed by Steenland Construction Company, Grant and Nordhoff Land Company and in it the two optionees agreed that *"they shall jointly and severally be bound and do agree to purchase the parcel* with respect to which the option is exercised" "by the optionees executing and delivering to the vendor their joint and several bond" (Ex. C. 2). Subsequently, on December 17, 1923, Grant and Steenland signed a letter to the Nordhoff Land Company in which they exercised their option to take title to a portion of the property (Ex. C. 3). Subsequently an agreement to extend the date for closing title was executed by all parties (Ex. C. 4 and C. 5). On February 13, 1924, at the time when title passed to Steenland Construction Company, a supplemental agreement was signed by all

parties and *therein Steenland Construction Company and Grant are specifically designated as "the purchasers" and therein "the purchasers agree to take * * * and pay for all of said lands" being conveyed that day to Steenland Construction Company alone* (Ex. C. 10). The mortgage which was executed at that time by Steenland Construction Company on February 13, 1924, contains a provision that if second bonds and mortgages are subsequently taken by the Nordhoff Land Company, the bonds "shall, by a sufficient instrument in writing, be jointly and severally guaranteed by Steenland Construction Company, Roderick D. Grant, Peter M. Steenland and Rollo Steenland" (Ex. C. 15, p. 209); this surely indicates an admission in writing by the defendant of Grant's interest in the transaction. The bond, accompanying said mortgage and also dated February 13, 1924, had attached to it, when executed by Steenland Construction Company, a special clause in which Grant not only "guaranteed" payment of principal and interest when due, but also the full performance of all terms, covenants and conditions of the bond and mortgage. This evidences Grant's connection with the transaction and makes him equally responsible with Steenland Construction Company for the full performance of the provisions of the bond and mortgage (see also Point I). Acknowledgments of all parties, though not required, were attached to this bond. Permitting the attachment to the bond of such an agreement by Grant is an admission by Steenland Construction Company of his interest in the property. Another writing offered in evidence, signed by the Steenland Construction Company, which manifests and proves the joint adventure and the trust is a letter written long after title was taken and dated November 20, 1924, from Steenland

Construction Company to Simpson, Thacher and Bartlett, attorneys for Nordhoff Land Company. In this letter the word "we" is constantly used and it undoubtedly refers to Steenland Construction Company and Grant. It also contains this paragraph: "Mr. Grant and myself have had a talk together and Mr. Grant is going over to see you and see what arrangement can be made to get together on the proposition." The letter apparently refers to an approaching payment due Nordhoff Land Company under the bond and mortgage. It is clearly an admission of Grant's interest in the property; otherwise it is inconceivable that such an important mission would have been entrusted to him and that Grant should have been consulted in the manner stated therein. All of these written and signed "manifestations" should be viewed in the light of the other evidence which shows that Grant was constantly in joint control of the property, that Steenland admitted on the stand that Grant and the company were jointly interested in the option and that this joint interest continued throughout the year 1924, until the repudiation by the defendant. *Steenland stated* (p. 157), *"if the property had been sold in* 1924, *Mr. Grant would have gotten his fifty per cent., don't you think he wouldn't."*

Certainly, all of the above writings, signed by Steenland Construction Company, manifest and prove the existence of the joint adventure and a trust on the part of the defendant, Steenland Construction Company, in favor of Grant. They show the venture was entered jointly, that they were both "purchasers" who agreed "to take and pay for all said lands"; that the defendant permitted Grant to execute the bond, or its equivalent, with it; that, nine months after tak-

ing title, it wrote a letter to the mortgagee, treating Grant as a partner and associate, and that the course of conduct until repudiation, when considered with these writings, was that of one partner or associate with another having a joint interest.

In *Ross* v. *Stevens*, 45 N. J. E. 231, the only evidences of joint venture in land were these two sentences from a letter signed by the defendant, "It is hereby distinctly understood and agreed that this purchase is a joint transaction, involving you equally with me," and "It is further agreed between us that we are to share equally in any profit or loss resulting from this transaction." Vice-Chancellor Van Fleet says on page 232, "The plain import of the letter is, that the purchase of the contract was a joint venture, in which the complainant and defendant were to share benefits and burdens equally." He held that the mortgage involved was joint property. The Court of Errors and Appeals affirmed the decision on the opinion of the Vice-Chancellor.

The writings above set forth fully evidence the agreement of joint adventure between the parties. *We have not, therefore, in this case to consider the question of a parol agreement as to joint adventure, but an agreement manifested and proved beyond any question by the written evidence.* This we have pointed out in detail, as we have shown elsewhere. This removes the case entirely from the Statute of Frauds for the reason that the joint adventure having been amply proved, the fiduciary relation and duties thereby resulting became fixed by law. Even in those States adopting the minority rule as to parol joint adventures, which is hereinafter discussed, the facts of this case would

clearly establish the existence of a joint adventure in writing and render the statute inapplicable. This is fully discussed in Section IV, sub-division E. *infra.*

C. The answer admits the agreement, thereby eliminating the Statute of Frauds from the case.

In addition to the above writings, the defendant, by his answer filed in this cause and by the affidavit accompanying this answer, has admitted the joint adventure agreement between it and Grant. The main point at issue in this case is that defendant took title to the premises for the joint benefit of itself and Grant, and that Grant has an equitable one-half interest therein.

The complaint alleges, among other things, that Grant secured a joint option for 105 acres in favor of himself and Steenland Construction Company; that he and the defendant exercised this option to purchase seventy-eight acres thereof first; that defendant persuaded Grant to permit it to take title alone, solely as a matter of convenience in handling the property, but for the joint interest of it and himself; that pursuant to said option agreement and the variation therefrom relative to taking title only in the name of Steenland Construction Company, title was taken by Steenland Construction Company on February 13, 1924, and the deed duly recorded.

The answer, paragraph 3, admits the joint option as alleged, and quotes from it the following: "If the optionees shall exercise any option hereunder they shall jointly and severally be bound and do hereby agree to purchase the parcel with respect to which the option is so exercised." In paragraph 4 it admits that "com-

plainant and this defendant did elect to exercise their said option to purchase the premises 'described' in the complaint." In paragraph 5, it admits that the premises were conveyed to it as alleged in paragraphs 9 and 10 of the complaint and denies the other allegations of paragraphs 7, 8, 9 and 10 of said complaint, but it then alleges that "complainant has always neglected, failed and refused to perform on his part the joint obligation of said complainant and this defendant, under said option, and has neglected, failed and refused to pay any part of the moneys required by said agreement, and by the mortgages and other documents executed as therein provided." The next four paragraphs of the answer allege certain payments, made and to be made, in the future, none of which, however, were payable at the time of taking title on February 13, 1924. Paragraphs 9 and 10 allege the weekly payments for a year to Grant, because it is alleged he had "no other means of support" and that, because of Grant's failure to furnish or procure to be furnished jointly with defendant the moneys paid as aforesaid, Grant "has no longer any interest in said transaction." In paragraph 11, Steenland Construction Company tenders itself ready "to perform all of its obligations to complainant under said agreement" if Grant performs his part of the agreement, meaning apparently the advancement of moneys to meet payments which did not become due until long after defendant acquired title.

Grant in his complaint alleges that Steenland Construction Company took title to the premises on February 13, 1924, subject to a trust in his favor, and pursuant to the terms of the joint option. The details of his agreement with Steenland Construction Company are incidental to the

main proposition that title was taken by the defendant subject to his equitable interest in the property. *The Steenland Construction Company in effect admits this main proposition, namely, that it took title subject to his interest in the property.* Thus in paragraph 11 it offers to perform its obligations to complainant under said agreement, thereby admitting the existence of the agreement. And the only reason stated for the termination of his interest or rights is that he failed to contribute his alleged portion of moneys which came due for taxes, payment on mortgage and development charges, all of which were not payable or paid until long after title was acquired by Steenland Construction Company.

A long affidavit by Peter M. Steenland, president of the defendant corporation, was affixed to the answer and specifically verifies the allegations and admissions therein.

It will be noted that the answer in this case does not plead the Statute of Frauds.

Where an oral agreement is admitted by the answer it is sufficient to take it out of the Statute of Frauds. The main portion of the agreement, that of taking the title to the premises in trust for complainant and defendant jointly, is admitted. Certain details of the agreement are denied, but that is inevitable; otherwise, there could be no dispute or litigation over it.

In *Dean* v. *Dean,* 9 N. J. E. 425, Chancellor Williamson says:

> "The reason why the Court will execute a parol trust admitted by the answer is because it takes the answer as the writing by which the trust, in the language of the statute, is manifested and proved. * * * The true test is this: if the Court can exe-

cute the trust from the admissions made by the answers so that the complainants are not under the necessity of resorting to parol proof of the trust, to entitle them to relief, such admissions will exclude the defendants from the benefit of the statute, if not insisted upon by the answer."

Chancellor Vroom in *Hutchingson* v. *Tindall*, 3 N. J. Eq. 357, says, at pages 362-363:

"A declaration of trust requires no formality, so that it be in writing, and have sufficient certainty to be ascertained, and executed. It may be in a letter or upon a memorandum; and it is not material whether the writing be made as evidence of the trust or not. The recital in a deed has been held to be sufficient disclosure. It has been held in the English courts that an answer to a bill may be a good declaration of trust. I am inclined to believe that if the present complainant had filed a bill claiming this deed to be a deed of trust and praying that it might be so decreed according to the original intention of the parties that the answer of the defendant admitting the trust would have been good evidence of it. It would have amounted to a sufficient declaration of the trust."

Vice-Chancellor Van Fleet, in *McVay* v. *McVay*, 43 N. J. Eq., page 47, says at pages 50-51:

"The proof of the trust in my judgment is complete. The declaration is in writing; it is signed by the trustee; it was made after she became competent to declare a trust and it is verified by her oath and its terms are plainly stated. The principle is settled that an answer to a bill in equity may be sufficient, as a declaratoin of a trust and to justify the court in decreeing its execution * * * The defendant in this case signed the affidavit to her answer not only for the purpose of authenticating the answer, but also for the purpose of verifying its contents. It must therefore be held that

a valid trust in the land in question, in favor of the complainant, has been proved by evidence of the kind required by the statute."

In *Tynan* v. *Warren*, 53 N. J. E., page 313, Vice-Chancellor Green, on pages 315 to 319, discusses the question of an answer as sufficient proof of a trust in considerable detail and cites many cases, and considers an answer which is signed by the solicitor rather than the defendant as being equivalent to one signed and verified by the defendant. He says on page 318:

"If the defendant by answer admits the parol trust but does not set up a statute of frauds, he will be deemed to have waived it * * * The rationale of the rule would seem to be this: the statute affords protection to the defendant against the parol trust or agreement for the sale of land by providing *a rule of evidence which prevents its proof* if he denies the alleged trust or agreement or if, admitting the one or the other, he claims the benefit of the statute; *if, however, he admits the trust or agreement but does not vouch the statute, no rule of evidence is brought into operation, as there is no issue on that point to be tried and benefit of the statute is waived.* In such case the court proceeds to enforce the trust or agreement if it can establish the one or the other from the admissions made by the answer, without resort to parol proof to ascertain its terms and conditions." (Italics ours.)

In the above case the complainant alleged a trust and the defendant claimed by his answer that the trust was no longer valid because complainant relinquished his interest in the property in consideration of defendant's assumption of certain claims. In this instant case, Grant claims that the Steenland Construction Company holds the premises in trust for him, and the defendant, Steenland Construction Company,

claims by its answer that the trust no longer exists because Grant failed to pay certain sums of money, which, however, did not become due and payable until long after the trust was created on February 13, 1924. The answer does not deny the joint adventure agreement or trust; it admits both. This is sufficient to manifest and prove the trust, thereby taking it out of the Statute of Frauds.

See also *Walker* v. *Hill's Executors,* 21 N. J. E. 191; *Gough* v. *Williamson,* 62 N. J. E. 526; *Muller* v. *Brautigan,* 84 N. J. E. 574; *Ziegener* v. *Daesche,* 91 N. J. L. 634.

D. There has been sufficient performance by Grant of his obligations under this agreement with Steenland Construction Company to make the Statute of Frauds inapplicable.

The two joint adventurers agreed to take the premises jointly. Subsequently, Steenland Construction Company persuaded Grant to permit the conveyance to them alone, purely as a matter of convenience, but nevertheless for their joint interest. Grant consented, although under the option he could have insisted on a joint deed. At the time of the conveyance on February 13, 1924, Grant, as part of his undertaking, executed with Steenland Construction Company a supplemental agreement and the bond, thereby making him jointly responsible with the Steenland Construction Company for the entire purchase price. From the very beginning of the joint adventure in November, 1923, until the repudiation in December, 1924, Grant exercised joint control and authority over the property with Steenland Construction Company together, in consulting engineers, municipal authorities, title companies and others relative to the development of the

property. Together they sought buyers. Until December, 1924, the Steenland Construction Company treated Grant in every way as a partner in the venture. When litigation arose with the Englewood Golf Club, Grant and Steenland Construction Company together conferred with their attorney relative to the suit.

In agreeing to relinquish his right to a deed to himself and the Steenland Construction Company jointly, Grant gave up a valuable right, which, except for the trust imposed upon Steenland Construction Company, would have placed him in a position of *irretrievable loss and disadvantage.* A suit at law for damages would not compensate him, because he would have been deprived of the joint control and development of the property and of any joint authority in the determination of the terms of sale of the property. Both Steenlands stated that if Grant took the matter to court they would beat him out of his interest, thereby, of course, admitting that he had an interest (pp. 91-92). They also threatened to make a fake sale to cheat Grant of his interest (p. 101). It admitted by its answer and the testimony of Steenland that Grant had an interest.

There are many cases which hold that an oral contract which has been performed in such manner as to place one of the parties in an unfair and irretrievable position will be enforced, in spite of the Statute of Frauds. Thus, in *Russell* v. *Russell,* 60 N. J. E. 282, Vice-Chancellor Gray says, at page 287:

> "Equity will grant relief where specific performance is sought of parol contracts, though their enforcement is prohibited by the statute of frauds, in cases where the party seeking performance has been induced partly to perform the parol contract.

The right to relief is based upon the fact that to apply the statute would, in view of his changed position, aid rather than prevent a fraud.''

In *Brewer* v. *Wilson,* 17 N. J. E. 180, Chancellor Green, at page 185, says:

''The principal upon which equity interferes to enforce the specific performance of parol agreements, void by the statute, on the ground of part performance is, that otherwise one party would be able to practice a fraud upon the other. 1 Story's Eq. Jur., par. 759.''

In *Cooper* v. *Carlisle,* 17 N. J. E. 525, Chancellor Zabriskie says, at page 529:

''It is now well settled that, notwithstanding the plain words of the statute of frauds, courts of equity will compel the specific performance of parol contracts, where they have been in part performed or executed, in cases where such part performance would work a fraud, if the contract was not fulfilled. 2 Story's Eq. Jur., par. 759, 761. Fry on Spec. Perf., p. 174, par. 383, &c.''

In *Johnson* v. *Hubbell,* 10 N. J. E. 332, Chancellor Williamson says, at the top of page 339:

''If one party to a parol agreement has wholly or partially performed it on his part, so that its nonfulfilment by the other party is a fraud, the court will compel a performance.''

In *Borden* v. *Curtis,* 46 N. J. E. 468, Vice-Chancellor Pitney, at page 470, says:

''The statute of frauds. This objection is fatal at law. But, as the contract of which this is a part has been performed and the defendant Curtis has received the stipulated consideration for the surrender, and the complainant cannot be restored to her former position, the defence of the want of a writing cannot be set up in this court.

In fact, it is one of the reasons why the complainant comes here, and the case made by the bill appears very strongly to the conscience of a court of equity. It would be a fraud on the complainant to permit the defendant to set up the statute in this case."

In *Vreeland* v. *Vreeland,* 53 N. J. E. 387, 389, Chancellor McGill says:

> "That equity will specifically enforce such a parol agreement, at the instance of a complainant who shall have completely performed it upon his part, is now established, in this State, beyond controversy. The remedy is afforded upon the ground that it will work a fraud upon him who, induced by the agreement, has in good faith so performed it as to irretrievably change the situation of the parties to his disadvantage, to permit the other party to refuse fulfillment upon his part. It has had frequent recognition and application in adjudged cases in our courts." Citing many cases.

And the above opinion of Chancellor McGill is quoted with approval by Justice Fort, speaking for the Court of Errors and Appeals in *Cooper* v. *Colson,* 66 N. J. E. 328, 332. And on page 333, he says:

> "The statute declares that agreements to convey land not in writing are void. If equity is to overthrow the statute, on the ground that, owing to the peculiar character of the facts in a given case, it would be a fraud not to hold one of the contracting parties estopped from setting up the statute, such power should be exercised upon the most clear proof, not only of the contract to devise or convey the land in question, but of the fact that the rendition of the services was wholly referable to the contract to convey, and solely predicated upon that agreement, and that proper and adequate compensation for the services cannot otherwise be made, because of the fact that, in reliance

> upon the contract, it appears reasonably probable that the complainant has irretrievably changed the whole course of his life and circumstances in order to fulfill his part of the agreement."

Many other cases, of this and other jurisdictions, might be cited. A decision by Justice Story in *Jenkins* v. *Eldridge,* 3 Story 181, at pages 293-294, holds that, under circumstances similar to this case, part performance will remove the Statute of Frauds from consideration.

In the light of the above decisions, let us again review Grant's cause of action. He first obtained a very valuable option in his own name. Then he persuaded Steenland Construction Company to come into the transaction with him and secure a joint option with better terms than were contained in his original option. He was induced to permit title to a portion of the option property to be taken in the name of the defendant alone, solely on the plea of convenience in handling it. He received no consideration for the relinquishment of his right under the option. He agreed by the supplemental agreement and the bond, both dated February 13, 1924, to pay the full purchase price and, at the time of hearing, there remained unpaid, but not yet payable, more than $100,000. He controlled and handled the property jointly with the defendant until the repudiation of December 29, 1924. He was always treated as an associate in the transaction. The property which was purchased solely by a bond and mortgage for $153,178 was valued on the hearing at a minimum of $500,000 and there was evidence of a value of $1,000,000 or more. Can it be doubted that a gross fraud will be imposed on Grant if he is denied relief by equity? To paraphrase Chan-

cellor McGill, Grant, induced by the agreement with Steenland Construction Company, has in good faith so performed it as to irretrievably change the situation of the parties to Grant's disadvantage. He was entitled under the joint option to take title jointly with Steenland Construction Company and, induced by its agreement with him, he consented to the conveyance to Steenland Construction Company alone, relying on their good faith and honesty. And to paraphrase Justice Fort's opinion, Grant's relinquishment of his sole option and of his right to a conveyance to himself under the joint option which he had secured and the rendition of services and labor and effort by him was wholly referable to his agreement with Steenland Construction Company and solely predicated on that agreement, and proper and adequate compensation cannot be made to him because, relying on the agreement with Steenland Construction Company, it is reasonably probable that Grant irretrievably changed the whole course of his conduct and business and circumstances and did not insist upon a joint conveyance according to the option. The relatively small payments made to Grant from week to week were not by way of compensation but were agreed allowances against the charges for development of the property and were so listed by the defendant (see Ex. D. 5). Can it be reasonably claimed that, for payments of $3,765 he relinquished a right to a half interest in property, having an equity of at least $350,000? He had given up all other efforts to interest others in the proposition and confided it solely to this defendant, relying absolutely on its good faith. It would be most inequitable to permit the defendant to reap the entire profitable equity under the circumstances and would impose a gross fraud on the com-

plainant, Grant. A court of equity in such case can, and should, decree specific performance of an agreement in spite of the Statute of Frauds and should decree that Steenland Construction Company holds the premises in trust for itself and Grant, subject to reimbursement for payments it might have made relative to the property.

It will be noted that if this case is decided against Grant, he will be left in a most inequitable and unjust position. If the defendant failed to carry out the terms of payments under the mortgage, because of insolvency or some such reason, and the property should depreciate to such an extent that the equity in the premises would not meet the remaining payments due under the mortgage on foreclosure, Grant, although having no interest in the property by the decision of this Court, would still be compelled to pay any deficiency or be liable to have a judgment entered against him for it.

Or if the defendant should transfer or encumber the property, take the assets so realized and dissipate them and become insolvent or go out of existence for any reason, Grant would nevertheless remain obligated to pay the balance of the purchase price to the Nordhoff Land Co. and yet have no right or title to the premises. Or if the defendant permitted a foreclosure, it alone would have the right of redemption but Grant would remain liable for a deficiency judgment. And by its control of the situation, the defendant might cause a forfeiture of the joint option in Parcel B in which Grant continues to be jointly interested, and thereby deprive Grant of a very valuable right to acquire Parcel B, a right he could only exercise jointly with the defendant. And if the Court should decide that Grant had

no interest in the premises, he nevertheless remains under a written obligation to execute a promise to see that second mortgages given by the defendant to Nordhoff Land Co. are paid when due.

It would be most inequitable, unfair, unjust and contrary to all conscience that Grant should be left in the position above indicated. A court of equity, regarding that as done which should be done, and seeking to prevent unconscionable fraud amidst confidential and fiduciary relationship, surely will give its aid in protecting Grant.

E. The agreement in this case for joint adventure to acquire and dispose of land is not within the Statute of Frauds.

(a) The Statute of Frauds stated.

The Statute of Frauds in New Jersey is found in Comp. Stat., pages 2611 and 2612.

Section 3 of the statute reads as follows:

"No. 3. Declaration or creations of trust to be in writing, trusts arising, transferred or extinguished by operation of law excepted. That all declarations and creations of trust or confidence of or in any lands, tenements or hereditaments shall be manifested and proved by some writing, signed by the party, who is or shall be by law enabled to declare such trust, or by his or her last will in writing, or else they shall be utterly void and of no effect; provided always, that where any conveyance hath been, or shall be made of any lands, tenements or hereditaments, by which a trust or confidence shall or may arise or result by implication or construction of law, or be transferred or extinguished by act or operation of law, such trust or confidence shall be

of the like force and effect, as the same would have been if this act had not been made."

The material part of Section 5 of the statute relating to lands is as follows:

> "That no action shall be brought * * * upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them * * * unless the agreement, upon which such action shall be brought or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him or her lawfully authorized."

These provisions are taken practically without change from the original English Statute of Frauds, 29 Car. II Cap. 3.

It will be noted that the fifth section of the New Jersey statute contains the same verbal error as was contained in the original statute. Mr. Browne in his work on the Statute of Frauds (5th Ed. 1895), at page 349, says:

> "Contract *or* sale, the expression used in the clause under consideration, clearly means contract *for* sale."

The error in the statute has been corrected in many states. There is no question that the word "for" was intended, as otherwise the statute would not be clear.

(b) The decision of the court below.

The Court below, after deciding that a resulting trust did not exist, based its decision solely upon the ground that the Statute of Frauds applied to the joint adventure agreement between the complainant and the defendant. It did not in any way discuss the existence of a

constructive trust arising from the fiduciary relation of the parties, but based its decision flatly upon the ground that the agreement of joint adventure was invalid as in violation of Section 5 of the Statute of Frauds (132 A 850).

The learned Vice-Chancellor in the court below failed to comment upon the fact that the defendant by its answer did not deny the existence of the agreement for the joint purchase of the real estate, but, in fact, expressly alleges and confirms it, and pleads in avoidance an alleged failure to carry out its terms. He failed to comment on the fact that the answer did not plead the Statute of Frauds and that no mention was made of it upon the trial and no objection whatever taken to the admission of the evidence written or parol. He also failed to comment on the written proof of the joint adventure. Apparently none of these important matters was considered by him.

The Court below rendered its decision without any argument by complainant against the availability and applicability of the statute and solely upon the brief of the defendant which raised this point for the first time. The complainant was therefore at a distinct disadvantage, as his counsel had not contemplated such a defense. The Court was at a disadvantage in not having complainant's controversion of such a contention fully presented to it when the case was tried and presented for decision. It was for this reason, we believe, that the Court below fell into the error of considering the Statute of Frauds at all, not only because it was not properly before it under the pleadings, but because by the evidence in writing, and by the facts as proved without objection and controversion and by the admissions of the defendant, the agreement was dis-

tinctly and clearly proved regardless of the statute.

That the Court fell into error is not difficult to understand in the light of the circumstances. While this case was pending and partly tried, the case of *Partridge* v. *Cummings, et al.*, 131 Atl. 683 (Jan. 21, 1926), was decided by Leaming, *V.-C.* In commenting on that case as applicable to the joint ~~sentence~~ VENTURE the Court said:

> "The point is decisively settled so far as this Court is concerned by Vice-Chancellor Leaming in the recent case of Partridge *v.* Cummings, 131 A 683."

And further, that Vice-Chancellor Leaming "adopted as sound the principle of the doctrine of Justice Story in *Smith* v. *Burnham*, Fed. Case No. 13019, 3 Summ. 435, which was followed in substance by *V.-C.* Pitney in *Schultz* v. *Waldons*, 41 A. 187; 60 N. J. Eq. 71."

Vice-Chancellor Leaming refers to the conflict of authorities in this country as set forth in 18 A. L. R. 484. He refers to *Smith* v. *Burnham*, saying (p. 684) that Justice Story "expresses the view, which seems unanswerable, that the *trust provisions* of the Statute of Frauds are applicable to all such cases, because title is held for one for the benefit of another under agreements not manifest in writing; excepting, of course, resulting and constructive trusts." And he cites *Schultz* v. *Waldons* (*supra*) as supporting that view. Yet, despite this statement, the headnote of the case states that the *fifth* section of the statute providing that "the agreement * * * shall be in writing" is the one applicable as well as the *third* section. There is absolutely no basis or authority cited for such a

conclusion. It is clearly not the view of Justice Story or of Pitney, *V.-C.* It is not apparent on what ground the headnote rests, as the opinion does not sustain it. It will be noted that the Partridge case is apparently like the *Smith* v. *Burnham* and the Schultz cases, in that there was *no writing* to manifest and prove *the existence of the joint adventure,* a circumstance vitally disinguishing it from the case at bar. This and other points of distinction are discussed *infra,*

The learned Vice-Chancellor, in the decision below, considered himself concluded by the Partridge case which he made no effort to distinguish from the case at bar either as to the evidence in writing, the admissions in the answer, the failure to plead or rely upon the statute by objection to evidence, or the effect of the testimony. He accepts the headnote as the law of the case, whereas it is a mis-statement not sustained by the decisions or the authorities. He says "the contract was not in writing" and then quotes the headnote requiring the *contract* to be in writing, although he subsequently stated that Leaming, *V.-C.,* "adopted as sound the principle of the doctrine of Justice Story in *Smith* v. *Burnham,* Fed. Case No. 13019, 3 Summ. 435, which was followed in substance by Vice-Chancellor Pitney in *Schultz* v. *Waldons,* 47 A. 187, 60 N. J. Eq. 71." This doctrine as we have frequently pointed out, involves the third section only, which does not require any contract to be writing.

The learned Court below seemed to consider this case as one of express trust, falling within the statute. From his opinion it may be gathered that it is considered that Grant's consent to the taking of title by the Steenland Company was in effect a conveyance of an interest in the land to the Steenland Construction Company and that

there was an express promise to hold it for him. We have pointed out elsewhere in this brief that no such construction of the facts is possible; that *the consent of Grant was a mere incident to the joint adventure which had come into existence and was in operation prior thereto and that the trust was an implied one, and not an express one.* To put it briefly, the learned Vice-Chancellor entirely overlooked the creation of the joint adventure and the existence of the many writings to prove it. He considered the case as on all fours with the Schultz and Partridge cases where no writing to prove such relation existed. *He entirely lost sight of the fact that the joint adventure being proven, a fiduciary relation was thereby created* and that the joint adventurer, the Steenland Construction Company, held the property for the benefit of the adventure and in trust for Grant. He failed to consider that if there was either a resulting, implied or constructive trust not within the statute, an express *trust to the same effect would be merged therein,* and the trust would be enforced regardless of the fact that in doing so the same result would be reached as if an express trust had been enforced (see end of Point I and Perry on Trusts, Vol. I, p. 183).

(c) The previous decisions in this State.

The effect of the Statute of Frauds on oral partnerships or joint adventures to deal in real estate does not seem to have been determined either by decision or dictum in this learned Court. The doctrine in this State cannot be deemed settled and determined. The decisions of the courts in the first instance insofar as they apply to the case at bar, while entitled to

respect, if sound and equitably founded, are not controlling in this Court. We respectfully contend that these cases, whether or not correctly decided on the facts involved therein, are not, when analyzed, contrary to the doctrines contended for by the complainant in this case. These two cases, which have been referred to in discussing the Vice-Chancellor's decision, are *Schultz* v. *Waldons, supra,* and *Partridge* v. *Cummings, supra.* We will first discuss the former case, which was decided by the learned Vice-Chancellor Pitney in 1900. In that case he said:

> "The result of my consideration of the subject is that where there is no previous partnership or joint enterprise between the two parties A and B, and they agree, by parol, that B shall purchase and take title in his own name to a single piece of real estate, and hold the same for the benefit of both and A contributes no money to the enterprise, and there is no written proof of the contract, the Statute of Frauds prevents A from successfully claiming an interest in the land."

The Court does not specifically state whether the third or the fifth section of the Statute of Frauds applies, but relies on *Smith* v. *Burnham,* 3 Summ 435, as the leading case in this country. That case made the trust provision of the statute (3rd) the controlling provision—holding that an oral agreement of joint adventure or partnership relating to real estate to be acquired in the name of one pursuant to the original agreement created a trust or confidence in the land when the property was acquired and therefore was within the 3rd section of the statute. Mr. Justice Story says:

> "* * * it is the case of the declaration or creation of a trust or confidence in lands not arising or resulting by implication or operation of law. The trust arises *eo instanti* upon each purchase, and is then to

> attach, if at all. If the land is not sold the plaintiff would still be entitled to his moiety of the land, as a trust in equity, just as much as he would be entitled to a moiety of the proceeds upon a subsequent sale."

V.-C. Pitney says that case was "much like the present." Nowhere does the Court intimate that the section of the statute as to "contracts for the sale of lands, etc" (5th) is to be considered in the case so as to require the contract itself to be in writing. He speaks of "written proof of the contract" of joint adventure. Any writing which manifests and proves the existence of the joint adventure would therefore have been sufficient to raise the trust on the acquisition of title by one of the co-adventurers. But as stated in that case—

> "The complainant had not made out the allegation of his bill that there was a contract between the parties for a joint venture; * * * not a particle of written evidence was produced in support of complainant's allegation of the alleged contract."

And the same was true in *Smith* v. *Burnham,* where Judge Story says:

> "* * * there is not a single scrap of paper in the cause between the parties, alluding to, or in any manner whatsoever touching the matter of such copartnership."

The decision of the Court in the case of *Schultz* v. *Waldons,* insofar as it tends to establish any doctrine as to oral joint adventure for dealing in real estate to be acquired in the name of one without any consideration paid by the other must, in any event, even to the extent quoted above, be deemed to be mere dictum of the Court, as it expressly found in that case that there was no joint adventure between the parties. But conceding for argument that the

case is an authority upon the point decided, it is not applicable to the case at bar. There are a number of grounds of distinction, all clearly defined, so that even if the Court should affirm the doctrine of that case, this case is clearly distinguishable. We will state a number of these distinctions.

1. The agreement for joint adventure in the case at bar did not originally provide in any way for the taking of title in the name of one party. It was an agreement for a joint adventure with joint purchase of land by and joint title in the adventurers. In the Schultz case the agreement from the outset provided for the purchase and taking of title by one party as part and parcel of the joint adventure agreement.

2. The agreement for joint venture in the case at bar was manifested by a letter to the seller stating that the parties were jointly interested (see Ex. C. 13). It was further set forth in the joint option for the joint acquisition of title and the joint obligation to be given for the entire purchase price (Ex. C. 2). It was further confirmed by the supplemental joint purchase agreement made simultaneously with the passing of title (Ex. C. 10) and by the bond and mortgage given for the purchase price (Ex. C. 14 and 15) (see Point IV B).

In the Schultz case there was absolutely no writing.

3. In the case at bar, the complainant became obligated to pay the entire purchase price, whereas in the Schultz case he paid nothing and was obligated to pay nothing towards the purchase.

4. In the case at bar, the joint option agreement under which title to the seventy-eight acres

was passed still subsists as to about twenty-seven acres in favor of the complainant and the defendant, who are joint adventurers in relation thereto.

In the Schultz case no such joint interest existed.

5. In the case at bar, the complainant exercised full and joint control over the property as a joint party in interest.

In the Schultz case no such circumstances existed.

6. In the case at bar, an agreement is admitted by the answer and the Statute of Frauds is not pleaded. In the Schultz case, the contract was denied and the statute was pleaded.

7. In the case at bar, the defendant on cross examination and by its answer admitted that Grant was jointly interested in the property until December 29, 1924. In the Schultz case no such evidence existed.

8. In the case at bar, the complainant remained jointly liable with the defendant at the time of the hearing to pay over $100,000.00 of the purchase price to the grantor, and to perform other obligations.

In the Schultz case no obligation subsisted.

All of these points clearly distinguish the case at bar from the Schultz case and render that decision, even if correctly based, entirely inapplicable to the case at bar.

An examination of the Schultz case shows that, if the Court had found that there was a partnership existing pursuant to a parol agreement, and it had purchased real estate with the partnership funds, taking title in the name

of one partner, that partner would have held it for the benefit of the firm. There is no reason to believe he would have held differently in a case where the real estate was not purchased with partnership funds but with the joint partnership obligation. He clearly would have decided differently if the joint adventure had been manifested by writing as in the case at bar.

The case, while casting some discredit upon the reasoning of some of the earlier English cases which are still the law of England, cites *Smith* v. *Burnham,* 3 Summ. 435, as a leading authority, and that case, which we will hereafter point out, has been the basis of so-called minority rule.

An examination of the *Smith* v. *Burnham* case, however, will show that the agreement to take title in the name of one was, as in the Schultz case, a part of the original joint adventure agreement, and the case is, therefore, distinguishable from the case at bar upon that ground as well as upon several other grounds heretofore referred to.

In that case there was absolutely nothing in writing to manifest and prove the joint adventure. The statements by Justice Story relative to parol proof of joint adventurers in land are *obiter dictum.* They are made after he had already found that no joint adventure existed and they were unnecessary for his decision. He gives no reason for the application of a different rule in the confidential relationship of joint adventurers from that established for all other fiduciary relationships, such as principal and agent, executors, trustees, etc. We believe that, if Justice Story had actually found the existence of a partnership or joint adventure, he would

never have uttered this dictum. This belief is based on his subsequent decision in *Jenkins* v. *Eldridge,* 3 Story 181, where, with his usual thoroughness, he considers the question. At page 270, he says it "is utterly irreconcilable with any other supposition than the existence of the confidential relationship of principal and agent between Jenkins and Eldridge throughout the whole transaction, from its conception to its close." That relation having been shown, Justice Story says (p. 289):

> "It disables the party from insisting upon the objection that the trust is void, as being by parol. The very confidential relation of principal and agent has been treated for this purpose as a case *sui generis.*"

In this case (*Jenkins* v. *Eldridge*), Justice Story shows his desire to attain essential justice in spite of the Statute of Frauds which was set up in an effort to commit a fraud.

We have discussed this early case so fully, as it is the basis of the so-called minority rule discussed hereafter.

The only other case in this State giving any support to the so-called minority rule, that oral joint adventurers and partnerships relating to lands are within the Statute of Frauds is that of *Partridge* v. *Cummings,* decided by Vice-Chancellor Leaming in January of this year, and referred to *supra* in discussing the opinion of the court below. In that case, as in the Schultz and Burnham cases, the original oral agreement creating the joint adventure provided for the taking of title in one of the joint adventurers, and the Court found that the plea of the Statute of Frauds was a defense to the complainant's claim. In that case there was nothing in writing to manifest or prove the joint relation of the parties,

and the Court follows the doctrine of *Smith* v. *Burnham, supra,* and the Schultz case to the effect that the trust provision of the statute applied to such a contract.

As previously pointed out, Vice-Chancellor Leaming states in his headnote or syllabus that the contract of joint adventure must be in writing within the fifth section of the Statute of Frauds, although in his opinion he refers merely to the doctrine enunciated by Mr. Justice Story in *Smith* v. *Burnham, supra,* which finds that the third section was applicable to such a case. It is, therefore, apparent that Vice-Chancellor Leaming, whose decision was considered controlling by the Court below, misconceived the effect of the ruling in *Smith* v. *Burnham* and *Schultz* v. *Waldons.*

The same grounds of distinction, which we have pointed out *seriatim* in connection with the Schultz case, apply with equal force to the Partridge case, and that case cannot be deemed an authority insofar as this case is concerned any more than the Schultz case could be so considered.

(d) The fifth provision of the Statute of Frauds is not applicable.

The unsupported statement of the Partridge case, followed by the Court below, that the fifth section of the Statute of Frauds is applicable in the case of joint adventure, is the first enunciation of any such doctrine in this State and stands unsupported either by reason or authority. It is true that some ill-advised decisions, under the minority rule in other States, may have applied such a provision of the statute, misconceiving the purport of the *Smith* v. *Burnham* doctrine, which rested entirely on the trust pro-

vision and specifically found that the contract provision did not apply. By no stretch of the imagination can it be said that such a transaction whereby a joint adventure is created and the title taken in the name of one is a contract for the sale of lands, etc., within the meaning of the fifth section of the statute. This has clearly been pointed out in a number of decisions, and the majority rule hereinafter referred to, stands on this ground, and finds an implied trust existing from the first by reason of the confidential relation of the parties. A leading case to show that the fifth section of the Statute of Frauds is not applicable is *Chester* v. *Dickerson,* 54 N. Y. 1, which well expresses this doctrine and has been frequently quoted.

> "But suppose two persons, by parol agreement, enter into a partnership to speculate in lands, how do they come in conflict with the statute of frauds? No estate or interest in land has been granted, assigned or declared. When the agreement is made no lands are owned by the firm, and neither party attempts to convey or assign any to the other. The contract is a valid one, and in pursuance of this agreement they go on and buy, improve and sell lands. While they are doing this, do they not act as partners and bear a partnership relation to each other? Within the meaning of the statute in such case neither conveys or assigns any land to the other, and hence there is no conflict with the statute. The statute is not so broad as to prevent proof by parol of an interest in lands; it is simply aimed at the creation or conveyance of an estate in lands without a writing."

The same doctrine has recently been well stated in the case of *Garth* v. *Davis,* 120 Ky. 85 S. W. 692.

> "An agreement to become partners in dealing in real estate is neither a contract

to buy nor a contract to sell real estate as between the parties to it. So far as the formation of the partnership is concerned, the title to real estate is nowise affected by the making of the agreement. The terms of the agreement, the mutual undertakings by the partners as between themselves as to what each will contribute and the interests of each in the profits of their undertaking are matters not necessarily affected by the statute. The most numerous and what seems to us the best reasoned authorities hold that such contract need not be in writing * * *."

Numerous other cases illustrating the soundness of this doctrine could be cited, but it is not necessary to refer to them further. We have urged the point because of the error of the Court below in following the headnote or syllabus in the Partridge case, so that there can be no misconception of the law in regard thereto. The meaning of the Statute of Frauds is not to be stretched and enlarged for the purpose of attempting to bring cases within its terms. By no fair interpretation of that provision could it be held that there was any contract for the sale of lands, etc., by the joint adventure agreement in this case or, in fact, in any other similar case, or even where the taking of title in one partner was originally contemplated, and not jointly as in the case at bar. If the entire contract for dealing in lands had to be expressed in writing, there would, indeed, be innumerable cases where one of the partners or joint adventurers would lose his entire interest by mere inadvertence or failure to procure such a contract with his co-partner or co-adventurer. They would in effect be deemed strangers with no obligations towards each other. The entire nature of the relationship opposes this. Such a doctrine enunciated by this Court would be fraught with grave

danger and permit indiscriminate fraud between parties in positions of trust and confidence.

It cannot therefore be held that the original agreement of co-adventure between the complainant and the defendant must be in writing within the purview of the fifth section of the statute. It is clear that if any provision of the statute has any application whatever, it would be the third provision, which can have no bearing on the situation unless the taking of title in one is originally provided for when the joint venture is created, which was not the fact in the case at bar.

It is needless here to discuss further the effect of the writings between the parties and the valid creation of the joint adventure prior to the consent of the complainant that title be taken in the name of the defendant. This consent was a mere incident in the transactions between the parties after their joint relations and interests had been established by agreement. There was no conveyance from Grant to Steenland, but a mere consent by him, as one jointly interested, to permit his co-adventurer to hold the title for the purpose of convenience. (See sub-division, [*h*], *infra.*) The fifth section of the Statute of Frauds, therefore, has no application to the case at bar.

(e) The third section of the Statute of Frauds is not applicable.

The third section of the Statute of Frauds relating to the "declarations" and "creations" of trusts in land has been considered elsewhere in discussing the decisions of the Court below, the other New Jersey decisions and the minority rule. The writings as manifesting and proving

the existence of the joint adventure and a trust have been discussed at length in Point IV, subdivision B. The third section provides merely for a trust in "lands, tenements and hereditaments." It does not refer in any way to "any interest in or concerning them" as is found in the fifth section. The distinction is sometimes important and has apparently been lost sight of by some of the courts following the minority rule. Another distinction has been referred to at length—that this section provides that the trust must be "manifested and proved by some writing, signed by the party," whereas the fifth section provides that "the agreement * * * or some note or memorandum * * * shall be in writing and signed." We will not comment further on these distinctions.

We have pointed out elsewhere that the third section of the statute is inapplicable inasmuch as there was no trust *created or declared* within the meaning of the statute when the joint adventure was established, and none when the consent of Grant was given to the taking of title by the Steenland Company. We have shown that, in any event, the trusts existing in this case were resulting and constructive trusts, both of which are specifically excepted by the terms of the statute. Furthermore, the evidence contains ample writings to manifest and prove the joint adventure and consequent implied trust under the terms of the statute, as pointed out in Point IV, sub-division B.

These matters have been fully covered in the preceding and subsequent points.

(f) The law in other jurisdictions.

Upon the validity of oral contracts for a joint adventure in dealing in lands, there has been some conflict of authority as hereinbefore mentioned. The so-called majority rule is clearly to the effect that such transactions are not within either the third or fifth provisions of the Statute of Frauds. The reasons given differ somewhat, but may be stated briefly to be the inapplicability of the statute as not within its terms, or the exception to the statute by reason of the confidential relationship arising between persons in such a position. The minority rule in effect follows the *Smith* v. *Burnham* doctrine that a trust was contemplated by any provision of the original agreement between the parties that title was to be taken in one alone.

The majority rule is discussed somewhat at length in 18 A. L. R. 484, and the many cases supporting it are enumerated. The note collates the decisions of thirty States as well as in the District of Columbia, England and Canada, supporting the majority rule. We will not burden the Court with a citation of those cases or even a discussion of the reasons for the rule there established (see citations in Point III). Every Eastern State, with the exception of Delaware and New Jersey, has established that rule. In Delaware the point seems undetermined, and also in New Jersey except to the extent of the Schultz and Partridge cases. The note failed to include Indiana and North Carolina in the States adopting the majority rule. See *Robinson* v. *Homer,* 176 Ind. 226, 95 N. E. 561, and *Brogden* v. *Gibson,* 165 N. C. 16, 80 S. E. 332. There are also decisions in two other States since the writing of this note—*De Proy* v. *Progalis,* 259 S. W. 620 (Tex.), and *Eads* v. *Murphy,* 232 Pac.

877 (Arizona). The doctrine is not only established by the older cases, but at least twenty-five different States have so decided within the last twenty years. This majority rule is based on reason and justice, clearly enunciated through hundreds of cases where the courts have insisted on enforcing the equitable doctrine of fair dealing between fiduciaries, and has prevented persons in such situation from setting up the Statute of Frauds as a shield for fraud.

We do not think it advisable or necessary to go into the question of the English authorities which support the majority doctrine following the original decision in *Foster* v. *Hale,* 3 Vesey 696. These cases have gone a long way in establishing the doctrine that partnerships and joint adventures as to real estate do not come within the contemplation of the Statute of Frauds. The cases seem to rely upon the theory of the constructive trust, and, whether logical in their finding in cases where the title in one is contemplated by the original agreement as opposed to the doctrine of Justice Story in *Smith* v. *Burnham,* is not material or important in this case for the reasons which we have heretofore stated.

In addition to the case above mentioned, the English doctrine is established in the following cases:

Lake v. *Craddock,* 3 P. Williams 158; *Dale* v. *Hamilton,* 5 Hare 369; *Essex* v. *Essex,* 20 Beav. 442; *Grey* v. *Smith,* 43 Ch. Div. 208; *Deubuels* v. *Culier,* 2 Chanc. 410.

An examination of the cases cited in the note (18 L. R. A. 484) to support the minority rule shows that there are really only five States whose present rulings could fall within it. In only three of them has the rule been enunciated

by the highest courts of those States. These are Alabama, Michigan and Wisconsin. An examination of the authorities in those States shows many limitations and exceptions to the rule as generally established in those States. In fact, there seem to be inconsistencies in those rulings, based unquestionably upon the injustice which such a docrine would permit.

We venture to state that, with facts and circumstances equally cogent and convincing as those in the case at bar, none of these courts would permit the statute as a defense. The doctrine in those States has arisen in cases similar to the Burnham and Schultz cases, where the agreement to take title in the name of one was a part of the alleged original oral agreement and no consideration or obligation for the purchase was furnished by the person claiming an interest. In those cases, no evidences in writing to establish the original joint venture were proved and the defendant contested the existence of the joint relationship, and properly contested it in its pleadings and upon the trial, by reliance on the statute, and did not admit the existence of the joint adventure in its answer or testimony. As we have stated before, we feel that this minority doctrine would never have arisen if Mr. Justice Story had had a case like that at bar for decision. We think it unfortunate, in fact, that the doctrine should have arisen at all, but if this Court finds that there is any basis for the doctrine in reason or justice, we feel assured that it will not find that doctrine applicable to the case at bar for the many reasons which we have argued in this brief.

(g) Analysis of the agreement of joint adventure.

Grant and Steenland Construction Company entered into an oral joint adventure agreement in November, 1923. The agreement provided for the joint acquisition and development of certain lands for the purchase of which Grant had secured in his own name an option from the owner, the Nordhoff Land Company. The parol agreement contemplated the taking of title in the names of both parties jointly and equal division of the proceeds. Then Grant negotiated with the owner on behalf of the joint adventure, for himself and Steenland Company (Letter of Nov. 28, Ex. C. 13). As a result, on December 10, 1923, he secured a joint option (C. 2) running to himself and Steenland Company. The joint option specifically provided that the title should be taken in the names of both jointly. The joint option then became the asset and property of the joint adventure. It could only be exercised jointly and could only have been disposed of jointly. It gave no right to the property but only the right to secure title on executing a joint obligation. The option was divided into two portions as to different tracts, and the terms and conditions for exercise of the two portions, were carefully distinguished.

The co-adventurers determined to exercise the option as to one portion, Parcel A. They so notified the seller on December 17, 1923 (pp. 49 and Ex. C. 3).

In the meantime, the co-adventurers had discussed the advisability of taking title solely in Steenland Company's name. Steenland Company urged this on various grounds of facility and convenience (p. 51). Grant consented as

shown in the notice of the exercise of option (p. 49).

At this time, the co-adventure was in full operation and the co-adventurers actively engaged in the enterprise. The change as to method of taking title was a mere incident of their joint adventure. There was no pretense that Grant was *selling* his interest to the Steenland Company. There was no pretense that it gave him any consideration for his concession. There was no pretense that Grant was making a *gift* to his co-adventurer. While no express promise was shown, there was the implied one growing out of the circumstances that Steenland Company was to hold the property for the joint benefit of the enterprise for purposes of convenience and facility. The Court so found.

Despite this finding, the Court holds that Grant has lost his interest in the property, that Steenland Company holds it free from any trust or obligation to Grant, that despite its failure to plead or object, its admissions and the undisputed proof as to the circumstances in which it received the title, defendant can rely on the Statute of Frauds to defeat any claim of interest on Grant's part.

We thus have one party, admittedly a co-adventurer, admittedly taking title to property for the co-adventurer's interest, admittedly doing so solely for the convenience of the co-adventure, asserting claim of absolute right to the property as against his co-adventurer.

Applying the principle of the cases cited in this point and the others in this brief, it is inconceivable that this Court will permit this. To do so is to close its eyes to all of the established

doctrines of courts of equity before and since the enactment of the Statute of Frauds.

Even if we admit for the sake of argument, that there was no resulting trust, that the writings did not prove the existence of the joint adventure and that by its pleading, its admissions and the conduct of the trial without objection to the evidence, defendant has not estopped itself to deny it, we still have authority and reason to fully entitle complainant to the relief he seeks. The oral agreement as to joint adventure which contemplated taking title *in both joint adventurers,* was not within the Statute of Frauds, either the 3rd or the 5th sections. We have, we believe, amply shown this. *The joint adventure therefore came into being as a valid and established fact. Once that is shown all of the rights and duties of joint adventurers as fiduciaries are fixed and determined by law.* The trust imposed on them by the law is an implied or constructive one. Whether or not actual fraud is intended, is beside the question. One partner or joint adventurer cannot act in partnership matters contrary to the interests of his copartner (see Point III). When, therefore, Steenland Company as a co-adventurer took title to the property, it did so in trust for Grant and not as owner in its own right. When, therefore, it asserted its sole interest and denied the interest of its co-adventurer and threatened to oust him from any rights in the co-adventure, equity, to enforce the constructive trust and to prevent a fraud, must step in and protect the injured party. This is the highest and most beneficial function of a court of equity and the one most frequently employed. Otherwise, it would permit a fraud which it never countenances. When, therefore, the fiduciary seeks to hide behind the Statute of

Frauds, the Court prohibits it, raising that implied or constructive trust which is expressly excepted by the terms of the statute itself.

Unfortunately for this complainant, the Court below misinterpreted the facts of the case and the authorities. We ask this Court to give full and equitable consideration to complainant's contentions so that justice within the law may be given.

(h) Analysis of Grant's consent to the taking of title in Steenland Company's name—a mere incident of the joint adventure and not within the Statute of Frauds.

Grant's consent that title be taken in the Steenland Company's name was merely a waiver of his right to secure joint title, and was not a contract for "sale of lands—or any interest therein." It was no contract at all. It was merely a unilateral act without any consideration. He was not selling anything to the Steenland Company.

Nor was Grant's consent a declaration or creation of a trust in "lands, tenements and hereditaments" by one entitled to declare it. It was merely a permission to have his co-adventurer hold the title; it was voluntary and revocable at any time. *It was a mere incident of the co-adventure, not included or contemplated by the agreement creating that relation.* It was a mere afterthought, at least on Grant's part, and not the carrying out of any agreement. It was a voluntary act, revocable until actually executed. No change of status was created until the actual delivery of the deed. Then, *eo instanti,* as we have shown, both the resulting and constructive trusts arose in Grant's favor, the

former by reason of the joint obligation for the purchase price, the latter by reason of the confidential relation existing between the joint adventurers. No express trust was created or declared, but if it had been, it was merged in those implied by law and had no separate existence and no legal significance (see end of Point I and end of Point IV E [b]). There being an implied trust of any kind, the trust had the same effect as if the statute "had not been made" (see end of Sec. 3 of statute).

What the Steenland Company intended or promised is of no consequence. Such a trust is not raised because of any intent or consent of the party against whom the law establishes it, but arises from the circumstances of the transaction. Whenever one is in such a position as to render it inequitable to claim an interest as against the other, the court of equity finds an implied trust. It totally disregards the statute, as it is bound to do by the very terms thereof, and, to prevent fraud and injustice, exercises the inherent jurisdiction which it has maintained from time immemorial (see Point II).

Thus, carefully analyzing the nature and effect of Grant's voluntary consent to the taking of title by the Steenland Company in the light of the admitted facts and of the authorities cited, we find no possible basis for applying the Statute of Frauds either by reason or by authority.

F. The Statute of Frauds will not be permitted to accomplish fraud.

There are certain elements in this case which evidence bad faith and unfair dealing by the defendant. Thus, the uncontradicted evidence shows that Grant, at defendant's request, pre-

pared a detailed memorandum of their agreement (Ex. C. 9). It was submitted to Peter Steenland, president of defendant company, and approved by him (p. 66). At his request, Grant prepared typewritten copies and gave them to Steenland to be executed. After waiting over a month, Grant inquired about this agreement (p. 69) and was given a palpably weak reason for the failure to deliver a signed copy to him. If this agreement had been signed and delivered to Grant, no defense to the case could have been interposed. Perhaps the agreement was actually signed and never delivered. It was not produced at the hearing by the defendant, although a notice to produce was served for that purpose. No explanation was given for the non-production when requested at the trial.

The defendant offered no evidence to controvert complainant's testimony as to any of these matters. The approval of this document under the circumstances showed that the joint adventure existed and that Grant had an equal interest and control in the property and that the conveyance was merely for convenience. The failure to sign and deliver this agreement to Grant was a breach of the defendant's duty as a co-adventurer and he should not be permitted to profit by such breach and shield himself by the statute.

Again, after the repudiation, when Grant sought an amicable adjustment of their difficulties, he drafted three different forms of agreement (Ex. C. 19, C. 20, C. 21). The second one was discussed at length and various changes and notations made thereon, and Grant understood that the third draft, incorporating all these changes, would be executed. He prepared it and delivered copies to Steenland, who then refused

to sign it until he had consulted his attorney. Subsequently he reported to Grant that his attorney had advised him not to sign the agreement, which set forth in detail their mutual agreement of a few days earlier. Subsequently, Steenland offered to give Grant a letter, without telling his attorney, to the effect that when the land was sold, Grant would receive one-third of the net proceeds but withholding from him any control or authority relative to the property (p. 100). Grant refused such a letter and insisted on the agreement, containing the terms of their revised understanding. If the typewritten agreement was ever signed it was never delivered to Grant, nor was it produced at the trial by the defendant.

At the very beginning of the joint adventure, an incident occurred, which, in the light of subsequent events, becomes suspicious. In the letter of November 28, 1923, to the Nordhoff Land Company, the original wording of the postscript provided that "the papers should be made out jointly * * *." Peter Steenland, before mailing the letter, inserted in his handwriting the word "option" just before the word "papers" (Ex. C. 13). Whether he then had in mind the ultimate persuasion of Grant to put the title in the defendant's name alone is a matter of conjecture but the supposition is not unreasonable. If he did so conspire with the view of ultimately taking advantage of the confidence reposed in him, he was clearly guilty of a breach of faith toward his co-adventurer. And if, as Vice-Chancellor Backes found, the defendant took the title with the understanding to hold it "for their joint benefit," then the subsequent breach of such understanding by a repudiation, on December 29, 1924, of the entire transaction, became a gross

violation of good faith. And as to the final repudiation by the defendant, Vice-Chancellor Backes, in his opinion, says: "It is open to suspicion that the reason for the Steenlands' conduct was that they saw large profits ahead and felt that Grant's share was disproportioned."

Evidence given by Grant of conversations with Rollo Steenland, give some evidence that Peter, the president of the defendant corporation, was not entirely trusted by his own brother.

It is quite apparent that Grant, a co-adventurer, placed too much faith in Peter Steenland and that, now, Peter Steenland, having taken advantage of Grant's faith and confidence in him, seeks to deprive Grant of the interest in the land which rightfully belonged to him. And how does he do this? He tries to hide behind the Statute of Frauds, although it was not pleaded, although he admits an agreement by his answer and although he failed to object to any evidence on that ground. The Statute of Frauds, by its very title, was designed to prevent fraud, and not to aid it.

Whether or not fraud was originally intended is immaterial. The ultimate breach of duty and good faith to Grant was the same. As said by Justice Story in *Jenkins* v. *Eldridge,* 3 Story 181, 292,

> "In my judgment the result is the same, although the original design of Eldridge was perfectly fair and honorable, if he has since deviated from his duty and attempted to absolve himself from the obligations of the trust, such as he knew the plaintiff believed it to be, and constantly acted upon, because in point of law it would be a breach of trust, and a constructive fraud, such as a court of equity ought to relieve."

Justice Story, in the same case, at page 290 says:

> "For the rule of equity always has been, that the statute is not to be allowed as a protection of fraud, or as the means of seducing the unwary with false confidence, whereby their intentions are thwarted or their interests are betrayed."

And in *Ryan* v. *Dox*, 34 N. Y. 307, the Court says at page 312:

> "The universal rule is correctly stated by Brown on Frauds when he says: 'The correct view appears that equity will at all times lend its aid to defeat a fraud notwithstanding the Statute of Frauds.' And further the Court says: 'He interposes the Statute of Frauds as a shield, * * * thus using a statute designed to prevent frauds, an instrument whereby one can be perpetrated with impunity. This a court of equity cannot tolerate."

And in *Davenport* v. *Buchanan* (6 S. D. 376, 61 N. W. 47), the Court says:

> "The sustaining of the statute would require the court to construe a statute designed to prevent frauds into a double and keen-edged instrument of fraud."

And Pomeroy, in his book on Equity Jurs., 4th edition, says at section 921:

> "It is a most important principle, thoroughly established in equity, and applying in every transaction where the statute is invoked, that the statute of frauds, having been enacted for the purpose of preventing frauds, shall not be made the instrument of shielding, protecting, or aiding the party who relies upon it in the perpetration of a fraud, or in the consummation of a fraudulent scheme."

And at section 858 he says:

> "Even the statute of frauds cannot, by shutting out parol evidence, be converted into an instrument of fraud or wrong."

And ~~in the 3rd edition~~ he says, at section 1293:

> "As the primary object of the statute is to prevent frauds, mistakes and perjuries, by substituting written for oral evidence in the most important classes of contracts, courts of equity have established the principle, which they apply under various circumstances, that it shall not be used as an instrument for the accomplishment of fraudulent purposes; designed to prevent fraud, it shall not be permitted to work fraud."

The attempt of the defendant to set up the statute in bar is a plain attempt to use the statute as a fraud, something that equity has fought against from the time the statute was first enacted. While we may admit the worthy purpose and valuable service the statute has rendered in "preventing frauds and perjuries," as it was designed to do, the courts have consistently, wherever possible, when convinced of the merits of a complainant's rights, tried to do essential justice, despite the statute. Otherwise the statute aids fraud instead of preventing it.

The facts as to the existence of the joint adventure could not be doubted by any one. There is no possibility of the Court being deceived. The Court below, in fact, found the facts all in favor of the plaintiff. Nor did it fail to cast a suspicion on the motives of the defendant. It is apparent to anyone that the defendant sought to avoid its responsibilities to Grant when it saw the immense increase in value of the property, which is still increasing in leaps and bounds. It wanted all of the profit, apparently. At least Grant was getting too much. It lost sight of the fact that Grant had conceived the enterprise, secured his own option, exchanged it for a joint option which he negotiated on

almost unbelievably favorable terms, obligated himself equally with defendant in all matters, and gave more than a year of continuous service to this proposition exclusively.

The defendant did not plead the statute, deny the joint adventure, nor object to oral proof but nevertheless now attempts to use the Statute of Frauds as a shield to perpetrate a fraud on its co-adventurer. This the Court will surely not permit.

G. The Statute of Frauds does not apply because the premises must be treated as personalty as between the co-adventurers.

Even if Grant's consent to taking of title by the defendant could be considered as an express trust not in writing and not within the exceptions of the statute, it would not come within the Statute of Frauds, because under the instant case the land, being stock in trade of the venture, would be treated as personalty.

Under the Statute of Frauds, it is not necessary to have anything in writing to prove an oral trust as to personal property. The provision relates only to land under an express trust when no implied one exists.

Real estate which is the stock in trade of a partnership is considered by equity as having been converted into personalty. *Maddock* v. *Astbury,* 32 N. J. E. 181; *Patrick* v. *Patrick,* 71 N. J. E. 347; *Harney* v. *1st National Bank,* 52 N. J. E. 697.

In the Patrick case, Pitney, *V.-C.,* finds that where the only business of the partnership is dealing in real estate, and the original contract contemplated and required its sale during and

at the end of the partnership business, the real estate would be regarded as personalty as between the partners. At page 349 he says:

> "However, Lord Lindley lays down the law to be that if a partnership entered into by parol to deal in real estate be actually entered upon and the business conducted in accordance with such parol contract, the effect upon the land in the way of conversion from realty into personalty is precisely the same as if the contract be in writing. And this was held in Essex *v.* Essex, 20 Beav. 449, and land which had been used by partners for partnership purposes under a parol contract was held to be personalty."

And thereafter he quotes with approval the opinion in *Darby* v. *Darby,* 3 Drewry, 495, wherein it is said:

> "In this case they bought the land as stock in trade, by the sale of which, in retail I may call it, they were to make the profit of their partnership. There the land was not the plant on which the trade was to be carried on, but was the only commodity that was the subject of their trade. Does that make any difference? If it makes any difference, it is all in favor of its being personal property, because beyond all doubt, this real estate is put into the same position as sugar would be when purchased by persons carrying on the sugar business in partnership together * * * The very contract of partnership, the very nature of the partnership which these two gentlemen, Abraham and Alfred Darby, entered into was, 'We will buy this land in order to sell it again.' There is, although not in writing, because it was a verbal contract, an express contract that they shall sell this real estate again, and without selling this real estate again they would have had no profit, nor any business to carry on at all."

See also the extensive note in 37 L. R. A. (N. S.) 889, wherein this subject is very fully reviewed; also *Essex* v. *Essex*, 20 Beav. 442.

The rules of law which apply to partnership generally apply also to joint adventure. *Jackson* v. *Hooper*, 76 N. J. E. 185, 198.

Thus, the real estate purchased by Grant and Steenland Construction Company must be treated, as between these co-adventurers, as personal property. And in that case, the Statute of Frauds relating to trusts cannot be applied because it specifically refers only to an express trust relating to lands which must be manifested and proved by some writing unless implied by law. A trust in the property held by the Steenland Construction Company which must be treated as personalty as between the two co-adventurers, may be proved by parol testimony and cannot be affected by the statute.

We have presented the above point, although we believe that the Statute of Frauds has been removed from the case by the foregoing points. If it could be claimed that there was an express trust involved which was not merged in the implied trusts, the Statute of Frauds is rendered inapplicable within the principles of this point.

V.

DEFENDANT'S CONTENTIONS ANSWERED.

The Court below did not find any equities in favor of the defendant. It dismissed the bill solely upon the ground that the Statute of Frauds applied. If it had determined the statute to be inapplicable, complainant would have been granted the relief prayed for. The Court found that the joint adventure existed, and, such being

the case, Grant's right to a joint interest in the property follows (see Point III).

The defendant on the trial conceded that the joint adventure existed, but complained that Grant had not carried out his obligations thereunder. The Court below did not so find, and it was inconceivable that it could have.

Defendant's answer as a defense was limited to the contention that Grant had not put up half of the necessary expenses, and had thereby lost his interest. The defendant's president on the stand attempted to show that Grant also failed to perform an agreement to dispose of the premises, a new matter which had not been pleaded. As to both of these contentions, the evidence submitted by the defendant upon the trial was woefully weak. In the main it supports complainant's contentions. It contained, however, many inconsistencies due to an apparent effort to avoid the truth. We will not burden the Court with a discussion of these.

The testimony and the pleadings show that defendant knew Grant had no funds to finance the venture. The evidence shows that, although claimed in the answer, no demands were made upon the complainant to contribute to the expenses. All the unsigned memoranda (Ex. C. 9, C. 19, C. 20 and C. 21) show that Grant was not to be responsible for financing the enterprise. The repayment to Grant of his expenditures (p. 104) and the payment of regular weekly advances as a drawing account negative any contention that Grant was expected or had agreed to share expenses. As the answer and the evidence show, those expenses were constantly accruing and yet no demand was made upon Grant, who, in the meantime, was receiving payments which were charged to the expense of the enterprise.

There was absolutely nothing to support the contention made upon the trial that Grant was bound to sell the land. On the other hand, the evidence shows that the venture had been planned for development purposes and not as a plan for a single sale of the property or of substantial portions thereof. The agreement made with the seller, as evidenced by the joint option agreement, the supplemental agreement and the mortgage, clearly evidenced the intention for development. The provision for the building of six houses within the first half year, as evidence of good faith, clearly establishes this (pp. 118-119).

Grant testified that a proposition to sell the property as a whole came up for the first time after the title had been taken (p. 119). It appears by the testimony that both parties later contemplated abandoning the development plan if a suitable sale could be effected. The evidence shows numerous efforts by Grant and the defendant to sell the property (pp. 106-107).

But this activity on Grant's part does not indicate any agreement or obligation to make a sale or any condition that Grant's interest was dependent on it. The evidence shows further that several sale propositions secured by Grant were not agreed to by the Steenland Company for reasons not entirely clear in the evidence (pp. 82, 118, 119).

It may well have been that Grant and Steenland had hoped and expected that sufficient development would occur before any payments became due on the mortgage, so that those payments would not prove a burden. Steenland testified that the payments were to come from the profits of the sale of the property (pp. 133-134). It may have been that, when the develop-

ment plan was abandoned or delayed, it was hoped and expected that some sort of a sale would take place for all or a portion of the premises prior to the time for the first payment on the mortgage. But there is absolutely nothing in the case to warrant the supposition that Grant promised to secure the money or was obligated to arrange for it.

The only fair construction of the evidence is that the Steenland Company was to proceed with the development with Grant's joint control and co-operation, and the only fair implication from the evidence also is that the Steenland Company was to put up the necessary funds without contribution from Grant. See Grant's testimony throughout, and particularly the conference with Rollo Steenland (p. 91).

There is nothing to show that Grant failed to co-operate in any manner required or expected. The evidence, on the other hand, indicates that it was the Steenland Company which failed, either for want of funds to push the development or because of a change of mind as to the plan to be followed and a decision to secure relief from financial obligation by a sale if favorable opportunity was found.

There was no justification for contending that Grant was in any manner to blame or failed in the performance of any duty toward the enterprise. The defendant's whole defense as pleaded or as testified to was entirely unsustained. Much, if not all, of the testimony to support it was irrelevant or immaterial. The advances gave it no superior rights (see Point III). No Court could be justified in finding for the defendant upon the ground of any dereliction of duty on complainant's part. To hold that a partner or

joint adventurer lost his interest in an enterprise upon any such evidence as this would be most inequitable.

It is therefore apparent that if the Court below erred in holding the Statute of Frauds applicable as a defense in this action, complainant must have the relief he seeks.

CONCLUSION.

The decree of the Court below should be reversed and a decree granted in favor of the complainant for the relief sought.

We believe that we have shown conclusively that the learned Court below erred in both of the points upon which he dismissed the bill of complaint. We have shown that a resulting trust existed by reason of the absolute obligation of the complainant to the seller. We have also shown that a constructive trust existed by reason of the joint adventure, fully and clearly established by the evidence, and the duties and obligations arising thereon and subsequently repudiated by the defendant. Upon both grounds the Statute of Frauds is not applicable. We have shown both by reason and authority that even if the defendant was not estopped in this case in relying upon the Statute of Frauds by its pleadings, the admissions in evidence and the conduct of the trial, a court of equity would prevent it from using the statute as a means to commit a fraud.

In view of the above discussion, it is respectfully submitted that the decree of the Chancellor in this case be reversed and the prayers of the complainant-appellant granted and his half interest in the property involved in the suit

established, pursuant to said prayers. This is justified on the following grounds:

I. Resulting trust has been definitely established.

II. A constructive trust has been definitely established.

III. Under the theory of joint adventure, the complainant's interest and rights have been fully proven and a decree is therefore justified in his favor.

IV. The Statute of Frauds has been shown to have no application to this case, for the many reasons fully set forth.

V. The defenses set up by the defendant have been fully refuted.

This case is one expressly excepted from the Statute of Frauds under operation and implication of law, and is of the kind "which courts of equity are accustomed to grasp from the Statute of Frauds."

It must be clear to this Honorable Court that it would be a grave injustice and a gross fraud to deprive the complainant of the rights and equities which he seeks to maintain by this action.

Respectfully submitted,

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NEW JERSEY COURT OF ERRORS AND APPEALS

RODERICK D. GRANT, Complainant-Appellant, vs. STEENLAND CONSTRUCTION COMPANY, *et al.*, Defendant-Respondent.	On appeal from Court of Chancery.

DEFENDANT-RESPONDENT'S BRIEF.

Statement.

This is an appeal from a decree dismissing a bill by which complainant-appellant sought to establish and enforce an unwritten agreement or declaration of trust which he contended entitled him to an undivided one-half interest in a tract of approximately 100 acres of land adjacent to the Englewood Golf Club in Bergen County.

There is no dispute as to the facts prior to the making of the unwritten agreement. They are as follows: Grant had an option (Exhibit C 1, case pp. 163-164) dated November 5, 1923, to purchase this land for $200,000. cash on or before December 15, 1923, which he never exercised. A few days before this option expired, the vendor gave to Grant and Steenland Construction Company a new option (Exhibit C 2, case pp. 164-180) dated December 10, 1923, to purchase the land at substantially the same price, no cash to be paid down but the entire purchase price to be secured by purchase money mortgages maturing in 1934, with an elaborate arrangement for payments (in the meantime) of interest, taxes, and parts of the principal, and with provision for releases of parts of the

property, erection of buildings, etc. Peter M. Steenland and Rollo Steenland, who are the owners of substantially all of the stock of Steenland Construction Company, were required, by the terms of the joint option, to guarantee the payments of the purchase money mortgages (Exhibit C 2, at p. 170, L. 33-36). The optionees were given the option to take part of the property (Parcel A) on or before March 3, 1924 and (conditioned on full performance as to Parcel A) to take the rest of the property (Parcel B) on or before January 1, 1929. This option was signed by the vendor and also by Grant and Steenland Construction Company and expressly provided that, if they exercised the option, both Grant and Steenland Construction Company should be jointly and severally liable for performance and payment (Exhibit C 2, at p. 174, L. 20-27). They did elect to exercise this option as to parcel A (it has not yet been exercised as to parcel B) and a date was set for delivery of the deed and purchase money mortgage. By consent of all parties a small part of parcel B was added to parcel A for the purpose of the then pending conveyance and mortgage (See Exhibits C 3, Case p. 181, and C 10, case p. 193).

The following is a list, in chronological order, of the documents offered as evidence of the transactions above mentioned.

Date	Exhibit	Case Page	Description
11/ 5/23—	C 23	230	Letter, Thatcher to Grant re assessed valuation.
11/ 5/23—	C 1	163	Sole option—Nordhoff Land Co. to Grant.
11/13/23—	C 11	196	Letter, Peter M. Steenland to Thatcher, discussing terms of purchase, etc.
11/28/23—	C 13	199	Letter, Peter M. Steenland to Thatcher directing option to be made to Grant and Steenland Construction Co.
12/10/23—	C 2	164	Joint option—Nordhoff Land Co. to Grant and Steenland Construction Co.

12/18/23—C 3	181	Letter, Thatcher to Steenland Construction Co. and Grant, acknowledging letter of Dec. 17, 1923 electing to exercise option as to Parcel A and fixing January 2, 1924 as the date for the closing.
12/29/23—C 24	231	Letter, Peter M. Steenland to Grant re gas mains.
12/31/23—C 4	182	Letter, Steenland Construction Co. and Grant to Thatcher, asking that closing be deferred to last week in January.
C 5	183	Stipulation fixing closing date as January 30, 1924
1/ 2/24—C 6	184	Envelope enclosing C 5—addressed to Grant and Peter M. Steenland by Simpson, Thatcher and Bartlett.
1/ 8/24—D 6	237	First weekly payment to Grant.
1/23/24—C 7	184	Envelope (letter enclosed not offered) addressed to Grant and Peter M. Steenland by Simpson, Thatcher and Bartlett.
2/13/24—C 10	193	Supplemental agreement—adding part of Parcel B to Parcel A—between Nordhoff Land Co. and Steenland Construction Co. and Grant.

The germ of the present litigation was injected into the transaction at this point.

Before the execution and delivery of the deed and purchase money mortgage, Grant and Peter and Rollo Steenland (no formal corporate action was taken by Steenland Construction Company) made an arrangement, which was not then put in writing, as a result of which, the vendor consenting, a deed naming Steenland Construction Company only as grantee was executed and delivered; the purchase money bond and mortgage was executed only by Steenland Construction Company, and an agreement guaranteeing payment was annexed to

the bond which was signed, as required by the option, by Peter Steenland and Rollo Steenland, and although not required by the option, was also signed by Grant.

The only important fact which is in dispute in this case is: What were the terms of this unwritten agreement? Grant contends that Steenland Construction Company agreed that he should have a half interest in the property. The Steenlands and their company deny making that agreement, but say that Grant was to have half the profits when realized by the sale of the property, in consideration of certain things which Grant promised he would do to bring about a sale at a profit; that no profits have as yet been realized; that Grant has not done the things he agreed to do and is, therefore, entitled to nothing.

The testimony as to this question of fact is discussed at length under Point I below. The following is a list, in chronological order, of the documents offered as evidence of the transactions directly connected with the making of the deed to Steenland Construction Company and of the unwritten agreement.

Date	Exhibit	Case Page	Description
2/13/24—	C 8	185	Deed—Nordhoff Land Co. to Steenland Construction Co.
2/13/24—	C 14	200	Bond—Steenland Construction Co. to Nordhoff Land Co.
2/13/24—	C 15	206	Mortgage—Steenland Construction Co. to Nordhoff Land Co.
2/14/24—	C 9	192	Grant's draft of agreement—not signed—(for date of this exhibit see Case p. 65, L. 18-40; p. 66, L. 1-40).

There is no dispute as to the facts after the making of the unwritten agreement. It is not disputed

that all of the moneys paid on account of the purchase money mortgage, and for taxes, improvements, etc., has been paid by Steenland Construction Company. At the time of the trial, Steenland Construction Company had paid to the vendor, in accordance with the requirements of the purchase money mortgage, and for incidental expenses, $92,551.00 (Itemized statement, D 5, case pp. 235-236). As part of the incidental expenses, it paid to Grant $3765. in weekly payments (Itemized Statement, D 6, Case pp. 237-238). It has also paid the cost of erecting six houses, as required by the purchase money mortgage, amounting to $59,729.93 of which $45,000. was obtained by first and second mortgages on these houses (Itemized statement, D 7, Case p. 239). Its receipts from the property at the time of the trial were less than $10,000. (Testimony, Peter Steenland, Case p. 145, L. 18-19).

The following is a list, in chronological order, of the documents offered as evidence of the transactions after the delivery of the deed.

Date	Exhibit	Case Page	Description
11/10/24—	D 3	232	Letter, Thatcher to Peter M. Steenland—notice that payment of $27,000. must be made on account of mortgage, due 1/1/25.
11/20/24—	C 16	216	Steenland Construction Co. letter to Thatcher re payment to be made 1/1/25.
11/26/24—	D 4	234	Grant's letter from Cleveland (letter is dated only "Wednesday" but refers to Thanksgiving which, in 1924, was on November 27, 1924).
12/29/24—	C 18	217	Letter, Grant to Steenland Construction Co. requesting "that you notify me at once that you either intend to proceed as originally agreed or return entire control to me in order that I may make the proper payments within the required time."

1/ 1/25—D 5	236	$27,000. paid on account of mortgage (First Item.)
1/ 3/25—C 19	218	Date on Grant's draft of proposed new agreement.
1/10/25—C 20	220	Date on Mr. Tausig's (Grant's attorney) draft of proposed new agreement.
1/10/25—C 21	225	Grant's re-draft of above agreement.
1/24/25—D 6	238	Grant's last weekly payment made. (Last Item.)
2/14/25		Bill of complaint filed.
2/17/25		*Lis Pendens* filed.

OTHER EXHIBITS (NOT DATED)

C 12	Same as C 4.
C 17	Recommendations of Grant.
C 22	Pay roll envelopes for Grant's weekly payments.
D 1	Photo of sign at entrance to property.
D 2	Photo of sign on property.
D 7	Statement of cost of erecting six houses.

I.

What was the unwritten arrangement between these parties?

Grant's contention is that Steenlands, by the unwritten agreement, promised him title, either equitable or legal, to one-half of this land. The Steenland Construction Company denies this, and contends that he is entitled, at most, to one-half of the profits when realized, and it is demonstrated that no profits have, as yet, been realized. It contends also that he was to make the profits available by bringing about a sale; that he has not done so and is, therefore, entitled to nothing.

Grant once had a right to elect to acquire the entire property under the sole option, C 1. If he had done so, he himself would have had to pay the entire price in cash. He did not do so. He once

had a right to acquire a half interest in the property under the joint option, C 2, and its acceptance as to Parcel A. As a duty or obligation incident to this right, he was obligated, jointly and severally with Steenland Construction Company, to pay the purchase price.

It is necessary to distinguish carefully between statements made as to those rights at the time he had them, and statements made after he had chosen not to avail himself of them and had relinquished them for other rights arising out of the unwritten agreement upon which he now relies.

He testifies to a conversation with Steenland on November 9, 1923 (the day before the joint option, C2, was executed) as follows:

> "Q. What conversation did you have with Mr. Steenland on the 9th? A. I talked to him about the same proposition and he checked me again on the terms, and he said, 'Now, Mr. Grant, let me see what your arrangement is again,' and he repeated, he said, 'We are to go into this and you expect me to put up all this money and expenses and pay you a hundred dollars a week and we are to split fifty-fifty on the property,' and I agreed."
>
> (Case p. 38, L. 35-40; p. 39, L. 1-5)

This, of course, referred to the agreement expressed in the joint option, for the unwritten agreement, on which Grant now relies, was not made until February 13, 1924, about three months later.

He testified to another conversation with Steenland on December 28, 1923, after they had elected on December 17, 1923, to exercise the joint option (See Exhibit C3, case p. 181), and while he and they were considering the purchase of other property, as follows:

> "And Mr. Peter M. Steenland told me at that time we discussed the matter, and he told me at that time that if we got that, that would be on the same basis, and repeated our terms again, on the basis of my original agreement with him, that they were to carry the property and they were to pay me a hundred dollars a week and a fifty-fifty split on the profit, that, he thought, we ought to consider that as part of the same property if we could get it."
>
> (Case p. 55, L. 22-32)

This, of course, referred to the agreement expressed in the joint option, for the unwritten agreement on which Grant now relies, was not made until February 13, 1924, about two months later.

On February 14, 1924 the day after the deed (C8) had been delivered, Grant himself made a draft of a proposed document expressing the unwritten agreement which had resulted in a conveyance to Steenland Construction Company only, instead of to Grant and Steenland Construction Company as provided by the joint option. Although this was never signed the most significant and convincing evidence of the terms of the unwritten agreement are found in this draft (Exhibit C9, Case p. 192).

It recites their prior dealings and agreements, the joint option the decision to put the title in Steenland Construction Company, the delivery of the deed and mortgage, and following these recitals comes this:

> "Now, therefore, it is hereby agreed that the above agreement between the S. Con. Co. and R. D. G. is confirmed in all respects and that the S. Con Co. shall carry out the terms of the said Deed, Bond and Mortgage and shall, after deducting the costs of said development, divide

the profits with R. D. G. when and if they accrue. If the Golf Club property should be taken over in connection with this development, it is to come under the same terms as above set forth."

(Exhibit C9, Case p. 192, L. 36-40; p. 193, L. 1-10)

Here in Grant's own handwriting (See case p. 66) set down the day after the unwritten agreement was made, is a clear declaration that Steenland Construction Company should take the title and pay for the property, and that Grant should have, not an interest in the land so to be paid for by them, but half the profits "when and if they accrue".

Can it be made clearer that Grant and Steenland Construction Company, each having had a right to a one-half interest in the property, each having had an obligation to pay one-half of its cost, and each having had, as joint owners, an equal obligation or interest to develop the property and sell it at a profit, agreed to change their position so that thereafter Steenland Construction Company alone should make all the payments for the property and take title to it, that they should continue jointly with the development and sale, and that Grant should have one-half of the profits "when and if they accrue?" In this paper in Grant's handwriting, made the day after the unwritten agreement was made, we find, too, confirmation of Steenland's contention, for it recites (Case p. 192, L. 15) that "R. D. G. should devote himself to this work at a salary of $100. per week" and it is Steenland's contention that at the time of the breach between these parties, he did not devote himself to the work, in fact he did nothing to help develop or sell the property, and Steenlands therefore, considering this

a breach of the agreement on his part, terminated the relationship.

If there could be any doubt left after reading C9, it must be dispelled by reading C19, C20, C21 (Case pp. 218, 220, 225).

C19 is Grant's draft of an agreement (dated January 3, 1925) proposed by him to be made as a compromise or settlement after Steenland had announced to him that as he had done nothing to develop or sell the property, as he had agreed to do, he had no further interest in the matter. It was, by its terms "a temporary agreement" to be replaced by a "complete agreement". It says:

> "The Steenland Construction Co. is to have 2/3 of the profits and Roderick D. Grant 1/3 of the profits of the development or sale of the property known as the Nordhoff Land Co. property in Englewood, Leonia and Fort Lee which was taken over on February 13, 1924 by the above mentioned parties."
>
> (Case p. 218, L. 34-40)

C20 is the first draft, by Grant's attorney, Mr. Taussig, of the proposed compromise agreement (Dated January 10, 1925). It recites (erroneously) that Grant had exercised his sole option and caused the title to be placed in Steenland Construstion Company (Case p. 220, L. 15-25). It expressly provides:

> "1. The party of the second part (Steenland Construction Co.) shall proceed with the development or sale of said property in such manner as shall secure for the parties hereto the largest profit that may be reasonably secured from such development or sale.
>
> 2. The party of the second part agrees to use its utmost endeavor to promote as soon

as possible the development and sale of said property for the mutual profit of the parties hereto as hereinafter set forth.

3. The party of the second part shall receive out of the net profits secured from the development of said property as hereinafter in more detail set forth two-thirds (2/3) thereof and the party of the first part shall receive the other one-third (1/3) thereof."

(Case p. 221, L. 1-19)

There is not a word in this draft to even suggest, much less express, Grant's present contention that Steenlands promised him legal or equitable title to one-half of the property. And it is significant that by paragraph 1 above quoted, the work of development and sale were put entirely on Steenland Construction Company, while Grant by paragraph three, offered to accept one-third instead of one-half of the profits; in other words, he proposed to be relieved of his share of the work of developing and selling, and by reason thereof, offered to accept a smaller share of the profits.

C 21 is a re-draft of C 20, made by Grant himself, (Case p. 97, L. 30-37), bearing the same date, containing the same error as to the exercise of the sole option (Case p. 225, L. 20-37) and repeats without substantial change the three paragraphs above quoted from C 20, (Case p. 226, L. 16-31). Here again there is no word to suggest, much less to express, Grant's present contention that Steenland promised him a legal or equitable title to one-half of the property. Grant's roseate assurances that he could show Steenlands how to make a fortune out of this property, were demonstrated to be empty of fulfillment. Instead of a joint venture in which, as provided by the joint option, these two parties were jointly to pay for, hold and sell the property

and divide the profits, Steenlands had been induced or obliged, first to pay all that had to be paid, and later they found that they had not only to do that, but also had to do themselves whatever must be done to develop and sell the property. Grant had been unable or unwilling to pay his share of the money, and had been unable or unwilling to do his share of the work. Is it surprising that Steenlands declined to sign the proposed settlement agreement and obligate themselves to give Grant one-third of the profit on property which they had bought, paid for, and now were compelled to market?

Grant acquiesced in the solemn declaration of record that Steenland Construction Company was the sole owner; he acquiesced in the making and recording of the deed (C 8) which gave notice to the world that Steenland Construction Company was the sole owner. He testified that he himself designed and assisted in the construction and erection of the signs (D 1 and D 2, See Photos, Case p. 250) which were erected on the property (Testimony of Grant, Direct, Case p. 108, L. 34-40; p. 109, L. 1-18; Cross, p. 115, L. 12-303). The sign shown in the photo, D 1, was erected at the entrance to this property. It extended entirely across the entrance driveway and was supported by two columns about ten feet high. It read "Entrance to the Property of Steenland Const. Co." The sign shown in the photo, D 2, was erected on an eminence overlooking the golf links; it was about one hundred feet long and twenty or thirty feet high and read "Steenland Built Homes" in enormous letters, and below that, in smaller letters, "Titles Guaranteed". Grant not only acquiesced, but assisted in thus giving public notice that Steenland Construction Company was the sole owner of the property, and inviting the public to deal with that

Company as sole owner of a title which would be guaranteed.

At the time the unwritten agreement was made, February 14, 1924, Grant wrote in C 9, that he was to have one-half of the profits, and said nothing to indicate that he was to have title to one-half of the property. Grant deliberately permitted Steenland Construction Company to give record notice, by recording the deed, that it alone owned the property; Grant himself designed and assisted in the erection of these two enormous signs, conspicuously placed, publicly stating that the property belonged to the Steenland Construction Company, and even after the break between the parties, Grant and his attorney, Mr. Taussig, write in C 19, C 20, and C 21 the same agreement, modified only so as to relive Grant from any duty as to development and sale, and to give him a smaller share of the profits, and in no way indicating at that time a claim that Grant was to have any title in the property itself.

These documents and these acts of Grant so far outweigh, in evidential value, his testimony as to his recollections or his self-serving diary entries of scraps of conversation by Steenland Construction Company's representatives, none of which are corroborated by calling the other persons present at the time of such conversations, that we shall not try the patience of the Court by discussing Grant's testimony as printed in the state of case or as quoted in appellant's brief.

Is it believeable that a hard headed business man would put up all the money and give away half of what it bought? Is it not far more probable that such a man would be willing to buy and pay for something and give half of the profits to one who would help to make these profits available? But we do not depend on probabilities, nor even on the

testimony of other witnesses, for by Grant's acts and by the documents drawn by Grant himself, and by his personal attorney, and offered in evidence by him, we are driven irresistibly to the conclusion that Steenland's version of the arrangement is the correct one.

IT IS RESPECTFULLY SUBMITTED THAT THE AGREEMENT OF WHICH COMPLAINANT-APPELLANT RELIES HAS NOT BEEN PROVEN AS A FACT.

II.

Grant's sole option gives no support to his present claim.

The fact that Grant had the option (C 1) to purchase the property for $200,000. cash, gives no support to his present claim to an undivided half of the property. This option was never exercised. He does not say that he had or could obtain the large sum of money necessary to exercise it, or that he made any attempt to do so. The existence of this sole option could not have been any inducement to the vendor, Nordhoff Land Company, which acted by Thomas D. Thatcher, Judge of the United States District Court for the Southern District of New York, a thoroughly competent and businesslike representative, to grant the joint option (C 2) for a far longer period of time, for the same price, and on much easier terms.

Even though the fact that Grant had the sole option, C 1, did, in some way, form a consideration for the granting of the joint option, C 2, whatever right or title Grant then obtained in exchange for his sole option was merged in and became a part of his rights under the joint option. His sole

option cannot therefor be in itself any support for his present claim.

IT IS RESPECTFULLY SUBMITTED THAT THE REMEDY SOUGHT IN THIS SUIT IS NOT SUPPORTED BY HIS SOLE OPTION.

III.

The joint option of Grant and Steenland Construction Company gives no support to his present claim.

By the election to exercise the second option (C 2) as to parcel A, there resulted a valid and enforceable contract binding the vendor to convey and binding both Grant and Steenland Construction Company to joint and several liability for the payment of the purchase money in accordance with the terms of the purchase money mortgage. On familiar principles the vendor held the land as trustee for the vendees, and the vendees held the purchase money as trustee for the vendor. Grant then had an equitable half interest in this property, and an equitable obligation to pay half of the purchase money in addition to which there was the express obligation undertaken by both Grant and Steenland Construction Company, as set forth in the option, binding them jointly and severally for the performance and payment. Neither the equitable obligation, nor the express obligation has ever been performed by Grant; both have been fully performed by Steenland Construction Company; it has fully performed not only its own obligation but also that of Grant. If he were now seeking to get back the right which he once had under the second option and its acceptance, no matter on what ground he

might elect to ask that that right be restored to him, he must, in equity, offer to perform his obligation under that option; he must tender himself ready and able to reimburse the Steenland Construction Company for half the money so far expended by it, and to be ready and able to provide half the money required to be paid from time to time hereafter. This he does not do, either in his pleading, his testimony, or his brief, and we must conclude, therefore, that he bases his present suit, not on the right which he once had under the second option but upon some other agreement or declaration of trust by Steenland Construction Company for his benefit. That this is his position is apparent from the frame of his bill of complaint and the form of the prayers for belief. (See bill of complaint, prayers, case pp. 13, 14, 15).

IT IS RESPECTFULLY SUBMITTED THAT THE REMEDY SOUGHT BY GRANT CANNOT BE DECREED ON THE BASIS OF THE RIGHTS HE ONCE HAD UNDER THE JOINT OPTION.

IV.

The unwritten arrangement in the form alleged by Grant is unenforceable under the Statute of Frauds.

Even though the agreement alleged by Grant had been proven by the evidence, which it has not, (see Point I), it would appear to be either an agreement by which Steenland Construction Company agreed to convey to Grant a half interest in this real estate, or a declaration that it held a half interest in the property as his trustee. As neither the agreement nor the declaration of trust was in writing, Grant is barred by the Statute of Frauds from the relief he seeks.

As to contracts our Statute says:-

"No action shall be brought * * * upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them, unless the argeement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him or her lawfully authorized."

STATUTE OF FRAUDS, Sect. 5, 2 C. S. p. 2612

As to express trusts, our Statute says:-

"That all declarations of trust or confidence of or in any lands, tenements or hereditaments, shall be manifested and proved by some writing, signed by the party who is or shall be by law enabled to declare such trust * * * or else they shall be utterly void and of no effect * * *" (followed by other provisions as to trusts which "arise or result by implication or construction of law")

STATUTE OF FRAUDS, Sect. 3, 2 C. S. p. 2611.

The defense of the Statute of Frauds is available to the defendant-respondent in this case, the contract alleged by complainant being denied by the answer. Paragraph 7 of the bill (case p. 3, 1. 7-22) sets forth the variation from the terms of joint option agreement by putting the title in Steenland Construction Company only, and alleges "that this should be done solely for the purpose of convenience in the handling of matters in connection with the financing and developing of the said properties when secured under the option." Paragraph 5 of the answer (case p. 16, L. 36-40, p. 17, L. 1-15) admits the conveyance to the Steenland Construc-

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tion Company only, and denies the other allegations of paragraph 7 (which is a denial of the allegation above quoted) and further answering says in effect, that Grant has failed to pay any of the money required for the transaction and that consequently Steenland Construction Company has had to pay it all.

An answer, which does not expressly set up the Statute of Frauds, but denies that defendant made the contract alleged in the bill, is a sufficient pleading to give the defendant the benefit of the statute as a defense, since the denial puts the complainant to the proof of a legal contract, or of a contract by legal instruments of evidence. This principle was approved by this court in *Harrop* v. *Cole,* 85 N. J. Eq. 32; and in *Van Horn* v. *Demarest,* 76 N. J. Eq. 386 affirmed 77 N. J. Eq. 264. And has been applied in later cases such as *Douma* v. *Powers,* 92 N. J. Eq. 25, *Maagget* v. *Brawer* 95 N. J. L. 72.

The contract alleged in the bill is denied by the answer, and Steenland denied in his testimony that the contract was made in that form. Even though Steenland admits and testifies that a different agreement was made, this cannot relieve Grant from proving "by legal instruments of evidence", the contract on which he relies. If Steenland had admitted, by pleading or testimony, the contract Grant alleges, then even though that contract were not in writing, the Statute of Frauds would not apply. The cases cited in appellant's brief on this point are readily distinguishable for this reason.

Nor is there any part performance to take this case out of the Statute. It is admitted that Grant has never paid one cent of the purchase money or other moneys required by the purchase money mortgage to be paid for taxes, improvements, etc., all of which has been paid by Steenland Construction

Company, amounting in all to approximately $100,-000. at the time of the trial (Exhibit D 5, case p. 235, at p. 236 last line). While Grant testified that he performed certain personal services in connection with the property, he has already been paid $3765. by the Steenland Construction Company (Exhibit D 6, case pp. 237-238), which would seem from his own description of those services and his flat failure to sell the property, to be an adequate, if not liberal, compensation for all that he has done.

This court held in *Cooper* v. *Colson,* 66 N. J. Eq. 328 that

> "Payment of a part, or even of the whole, of the purchase money, under an oral agreement for the sale of land, is not an act of part performance to take the contract out of the statute of frauds.
>
> Special acts, personal service or the like, ordinarily compensated for upon a *quantum meruit,* although performed under an oral agreement to devise or convey land therefor, are not such performances as, standing alone, will take the case out of the statute of frauds.
>
> An oral agreement for the sale of land in consideration of services to be rendered, where no other act is done in execution of the agreement except the performance of services for which compensation may be had upon the *quantum meruit,* stands upon the same legal basis as a like oral agreement of sale for a cash consideration that has been paid but no other act done under the contract in execution thereof."

Mr. Justice Fort, delivering the opinion of this Court, cites the earlier cases and authorities (at p. 330) and says:

> "In every case, in order to take the case out of the statute on the ground of part performance, irrespective of other questions, two things are requisite. The terms of the contract must be established by the proofs to be clear, definite and unequivocal, and the acts relied on as part performance must be exclusively referable to the contract." (Citing precedents.)

Neither of these two requisite things is found in the present case. The contract on which Grant claims a half interest in the property, is negatived by his own writings offered in evidence in his behalf, and by his own acts in labelling the property as Steenlands by the deed and the signs designed and erected by Grant (See Point I). His acts of personal service are not exclusively referable to that contract. True, he might have done these acts in part performance of the contract he alleges was made, and equally true, he might have done them in part performance of the different contract which it is proven was in fact made (See Point I). In this situation, it cannot be said that these acts "must be exclusively referred to the contract" on which he relies.

Vice Chancellor Leaming applied this principle in a recent case, although he does not cite *Cooper* v. *Colson* or any other precedent. This case is in many ways similar to the present case.

> "The primary inquiry herein is whether our statute of frauds is a bar to the relief sought by the bill.
>
> The foundation of this suit is a parol agreement made between complainant and William H. Cummings and George S. Cummings, partners, trading as Cummings Brothers, to the effect that if the Cummings Brothers succeeded in procuring from the Avalon Company a con-

> tract in which that company would agree to convey to Cummings Brothers certain real estate consisting of building lots the Cummings Brothers would associate complainant with them in equal interests of one-third for each of the three, in a proposed enterprise of acquiring title to the lots and selling them at a profit."

(*Partridge* v. *Cummings,* 4 N. J. A. R. 142 at p. 145, Adv. Sh. No. 5, Jan. 30, 1926, at page 143)

Vice Chancellor Leaming held that the Statute of Frauds barred the complainant and dismissed the bill. We do not, of course, offer this case as a precedent binding on this court, but we did cite it in the brief submitted at the trial and it was relied upon and followed by Vice Chancellor Backes (Opinion, Case p. 243, L. 39-40). We respectfully submit that the reasoning of Vice Chancellor Leaming in the cited case, and that of Vice Chancellor Backes in this case, is sound and consonant with the precedent established by this court in *Cooper* v. *Colson* (*supra*) and should now be approved and affirmed by this court.

The Statute of Frauds bars the appellant because (as held by Vice Chancellor Backes, Opinion, Case p. 243, L. 16-34) the deed by the Nordhoff Land Company to Steenland Construction Company conveyed the legal estate in this land to the use of that company and no trust can arise from its alleged unwritten promise to hold the title to an undivided one-half interest to the use of Grant, by reason of the Statute of Frauds, for this court has held in *Fretz* v. *Roth,* 70 N. J. Eq. 764, that:-

> "Where a use is declared by a deed operating under the Statute of uses, no other use or trust (not manifested in writing) can be shown to result."

Nor is Grant's agreement (case p. 203, L. 9-25) guaranteeing payment of the bond and performance of the terms of the mortgage a part performance. This guarantee of the bond and mortgage was a separate and independent contract between Grant, Peter M. Steenland, and Rollo Steenland, on the one part, and Nordhoff Land Company on the other, collateral to but not part of the original contract (bond and mortgage) between Steenland Construction Company and the Nordhoff Land Company. This court held in *Perkins Goodwin Co. v. Hart,* 83 N. J. L. 471, that:

> "to 'guarantee the payment' of a sum of money, in an appropriate context, imports a direct undertaking to pay the sum in a given event * * *"

Even payment of the purchase money, in whole or in part, is not a sufficient act of part performance to take the contract out of the Staute. 36 Cyc. Spec. Perf. and N. J. cases cited in Note 33. If payment is not sufficient, surely a mere guarantee of payment on which no liability has as yet accured, is not sufficient to take the case out of the statute.

IT IS RESPECTFULLY SUBMITTED THAT THE DEFENSE OF THE STATUTE OF FRAUDS IS AVAILABLE TO THE DEFENDANT RESPONDENT AND THAT THE COMPLAINT APPELLANT IS BARRED BY THAT STATUTE FROM THE RELIEF HE SEEKS.

V.

There are no facts in this case from which a trust results.

No resulting trust in favor of complainant can arise out of the facts in this case. For complainant to show a resulting trust for his benefit, the conveyance having been to defendant, he must show that the half interest which he claims in this land was bought with complainant's own money. He has never paid a dollar, and for such service as he claims to have performed he has accepted payment from the defendant. From his own description of these services during the period of about a year, it is apparent that the amount he was paid, $3765., is liberal compensation.

> "When a person purchases land with his own money and takes title in his own name a trust cannot be raised in favor of another by reason of the existence of parol agreement upon the part of the purchaser that he would make the purchase for the benefit of another and permit the other thereafter to make payment. One who sets up a resulting trust in himself, the conveyance being to another, must show that the land was bought with his money and not merely that the purchase was made for his benefit or on his account. A subsequent payment of the money will not by relation, attach a resulting trust to the original purchase, for a resulting trust arises from the fact that that the money of the real and not the nominal owner formed the consideration of the purchase at the time and became converted into land."

Vice Chancellor Leaming in *Ostheimer* v. *Single,* 73 N. J. Eq. 539, at p. 542.

Cited and followed by Vice Chancellor Backes in *Yetman* v. *Hedgeman,* 82 N. J. Eq. 221 at p. 255. Other decisions supoprting this principle, cited by Vice Chancellor Backes in his opinion, (Case p. 242 l. 26-28) are:

Krauth v. *Thiele,* 45 N. J. Eq. 407, Chancellor McGill

Down v. *Down,* 80 N. J. Eq. 68, Vice Chancellor Leaming

Phillips v. *Phillips,* 81 N. J. Eq. 459, Vice Chancellor Backes

and the last cited case was affirmed, on the Vice Chancellor's opinion, by the unanimous opinion of this court, 83 N. J. Eq. 345.

IT IS RESPECTFULLY SUBMITTED THAT THE COMPLAINANT-APPELLANT'S CASE CANNOT BE SUSTAINED UPON THE THEORY OF A RESULTING TRUST.

VI.

No constructive trust in favor of complainant-appellant arises out of the facts in this case.

There is no evidence of fraud, duress, or abuse of a confidential relationship. Grant and the Steenlands dealt openly and at arms length. He was constantly in attendance throughout his dealings with them. He was fully informed as to everything that was done. He is in the prime of life, in excellent health, mentally alert. He is a university graduate (case p. 83, L. 23), he has had considerable experience as a contractor (case p. 83, L. 19-27), has the commendation of his superiors for his

service in the war (case p. 83 L. 30-45, p. 84, L 1-12), has a wide circle of friends among successful and influential people (case, p. 33, L. 25-36). This is his own description of himself. He was in no way dependent upon the Steenlands, nor were they bound to him by any confidential or fiduciary relationship. He had no blind trust in Steenland Construction Company or its representatives; he kept a diary (case p. 36, L. 37-40; p. 37, L. 1-10), in which he set down daily every move that was made; he had photostats (case p. 40 L. 19-21; p. 44, L. 17-22) and copies of letters made for his own use; he was far more distrustful than they were, far more careful than the average business man in his daily business affairs.

Complainant-appellant is not entitled to relief in equity merely because he appeals in his brief to the sympathy of the court because he is disappointed in not realizing upon hopes of a large financial reward. Chancellor Walker, with his usual clarity of thought and expression, has made this clear in a recent case in which he held that:

> "Equity, as a noun, means an equitable claim or right, such a one as a party possessing it has a right to enforce, and the adversary party no right to thwart by anything less than a counter-vailing right, such an equity is not a Chancellor's sense of moral right or any vague or indefinite opinion as to altruism, but a right cognizable in the court of chancery, governed by established rules and fixed principles of equity jurisprudence.
>
> The legal pursuit of one's right, no matter what may be the motive of the prosecutor, cannot be deemed illegal or inequitable.
>
> The abstract precepts of the moral code, disconnected from property and the rights of per-

sons, are neither enforced nor noticed by courts of equity."

W. D. Cashin Co. v. *Alamac Hotel Co.,* 98 N. J. Eq. 432.

IT IS RESPECTFULLY SUBMITTED THAT THE COURT OF CHANCERY PROPERLY REFUSED TO MAKE A DECREE AWARDING GRANT A LEGAL OR EQUITABLE TITLE TO ONE-HALF OF THESE LANDS, BASED UPON AN ALLEGED CONTRACT OR DECLARATION OF TRUST WHICH WAS NOT IN WRITING AND WHICH HAS NOT BEEN PROVED; OR UPON A RESULTING TRUST, A CONSTRUCTIVE TRUST, OR ANY GROUND COGNIZABLE IN EQUITY.

VII.

Complainant-appellant is not now entitled to an accounting nor a receiver.

There are no profits yet. Very little of the property has been sold; less than $10,000, has been received to reimburse the Steenland Construction Company for its outlay of approximately $100,000. Grant did not sell the property while still working with Steenland Construction Company and immediately upon the breach of their relationship Grant rendered a sale impossible by filing the *lis pendens* in this suit. Whether or not he may be entitled to a share of the profits, if profits are ultimately realized, is of no consequence in this suit, because a suit for profits, or for an account, is premature if filed before defendant has been reimbursed for his outlay. In *Simmons* v. *Lima Oil Co.*

71 N. J. Eq. 174, Vice Chancellor Garrison, sustaining a demurrer to a bill for an accounting and payment of profits of a joint venture, held that it must be shown that:

> "the joint adventure had reached determination and profit had been made, or that the venture had reached a point where the defendant had been reimbursed its outlay, so that a profit was being currently made, or that defendant was misconducting itself with respect to the business and could be held to have legally perpetrated a fraud on complainant."

We do not, of course, cite this case as a precedent binding on this court, but the reasoning of Vice Chancellor Garrison is clear and convincing, and we respectfully submit that this court, for that reason, should approve and apply the principle.

In the present case no profit has been made nor has Steenland Construction Company been reimbursed for its outlay. It is not misconducting itself with respect to the property so that it could be held to have legally perpetrated a fraud on Grant. It has paid thousands of dollars in compliance with the terms of the purchase money mortgage. No default on its part is suggested. No fraudulent sale or conveyance has been made. The property is still owned by Steenland Construction Company. It has invested a large sum of money. Grant concedes that it is entitled to half of the profits. Is it conceivable that it will sell at too low a price and thus injure not only him but also itself?

Grant claims one-half of the profits in any event; Steenland says he was to have half the profits only if he brought about a sale and as he has not done this he is not entitled to any of the profit. This

raises an issue which is not yet ripe for adjudication, for there are as yet no profits. When profits are realized, Grant has a complete remedy at law to recover such part of them as he may then demonstrate that he is entitled to receive. It is suggested in the bill that this remedy is inadequate becaus Steenland Construction Company is insolvent. Paragraph 15 of the bill (Case, p. 12, L. 37-40; p. 13, L. 1-2) is an allegation, on information and belief, that Steenland Construction Company is insolvent. Annexed to the bill is a verification by Grant (Case p. 15, L. 25-40). Yet no proof of this allegation was offered at the trial, from which we may fairly infer that Grant then conceded that Steenland Construction Company was not insolvent. No truthful man would make and verify on his oath, such a damaging allegation without some proof to support it. Grant had been closely associated with the Steenland Construction Company for about a year, a daily occupant of its office, had access to defendant's safe and office "just as though I was a part owner of the office." (Testimony of Grant, Case p. 84, L. 30-36); he was a frequent guest at Peter Steenland's table. "I saw him," Peter Steenland, "in all at least—that I have noted—a hundred and ninety-eight times, and a hundred and twenty-six of those times I was at lunch at his house." (Testimony of Grant, Case p. 110, L. 25-32). He knew that Steenland Construction Company had paid the large sums of money required by the mortgage given in this transaction. He knew that Steenland Construction Company and the two Steenlands were actively engaged in other large and important business transactions. He must have known that their company was not insolvent. We must, therefore, infer that this allegation of defendant's insolvency was made and sworn to by complainant either as a down-

right falsehood or with a reckless disregard for truth. Surely no receiver should be appointed without proof. In the absence of this proof or any attempt to adduce it, can he seriously contend, in this court, that he has not an adequate remedy at law by a suit for such part of the profits "when and if they accrue" (as he wrote in his own hand in Exhibit C 9) as he may demonstrate his right to receive, or on a *quantum meruit* now for the value of his services or anything else he may have rendered to the Steenlands and for damages for their breach of his contract, if he can prove they have unlawfully breached it?

IT IS RESPECTFULLY SUBMITTED THAT COMPLAINANT-APPELLANT IS NOT NOW ENTITLED TO AN ACCOUNTING NOR A RECEIVER AND THAT IF THERE IS NOW OR SHALL HEREAFTER BE ANYTHING DUE HIM BY THE STEENLAND CONSTRUCTION COMPANY, HE HAS AN ADEQUATE REMEDY AT LAW.

VIII.

The decree of the Court of Chancery should be affirmed.

The decree should be affirmed because:

a. The complainant-appellant has not proven the agreement upon which he relies;

b. The agreement upon which he relies is void under the Statute of Frauds, either as a contract or an express trust;

c. There is no resulting trust, complainant-appellant having contributed nothing to the consideration paid for the property;

d. There is no constructive trust, no fraud or breach of confidence being shown;

e. Complainant-appellant is not entitled to an accounting of profits, defendant-respondent not having been reimbursed for its outlay;

f. Complainant-appellant is not entitled to a receiver nor to restraint, the allegation of Steenland Construction Company's insolvency being unsupported by proofs;

g. Complainant-appellant has a complete remedy at law, if Steenland Construction Company is answerable to him for the value of his services, or of whatever else they received from him, or for damages.

IT IS RESPECTFULLY SUBMITTED THAT THE DECREE SHOULD BE AFFIRMED WITH COSTS.

Respectfully submitted.

Morrison Lloyd and Morrison
By William J. Morrison Jr.
Solicitors of and counsel with defendant-respondent, Steenland Construction Company.