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 IN COURT OF CHANCERY

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New Jersey Court of Errors and Appeals

NOTICE OF APPEAL.

10

IN CHANCERY OF NEW JERSEY

Between

LOUIS L. FISCHER,

Complainant,

and

JOHN V. MARTIN,

Defendant.

On Bill, etc.

20

The defendant, John V. Martin, hereby appeals from the decree made in the above entitled cause on the first day of June, 1928, and from the order dismissing the exceptions and confirming the Master's report, made on the eleventh day of December, 1928, and from the whole and every 30 part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated, January 7, 1929.

STEIN, McGLYNN & HANNOCH,
Solicitors of John V. Martin.

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

E. R. McGLYNN, 40
Of Counsel with Defendant,
John V. Martin.

AMENDED NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY

10	Between LOUIS L. FISCHER, <p style="text-align: right;">Complainant,</p> and JOHN V. MARTIN, <p style="text-align: right;">Defendant.</p>	} On Bill, etc.
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20 The defendant, John V. Martin, hereby appeals from the decree made in the above entitled cause on the first day of June, 1928, by the Chancellor on the advice of Vice-Chancellor Alonzo Church, Esq., and from the order dismissing the exceptions and confirming the Master's Report made on the eleventh day of December, 1928, by the Chancellor, on the advice of Vice-Chancellor Alonzo Church, Esq., and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

30 Dated: January 17, 1929.

STEIN, McGLYNN & HANNOCH,
Solicitors of Defendant.

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

E. R. McGLYNN,
Of Counsel with Defendant.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND
APPEALS

LOUIS L. FISCHER,

Complainant-Respondent,

vs.

JOHN V. MARTIN,

Defendant-Appellant.

On Appeal
from the
Court of
Chancery.

10

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

20

The petition of John V. Martin, the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds himself aggrieved by a decree for an account made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, upon the advice of Hon. Alonzo Church, one of the Vice-Chancellors of said Court; bearing date the first day of June, 1928, in a certain cause in said Court of Chancery, wherein Louis L. Fischer was complainant and the said John V. Martin was defendant, in this respect, to wit: (a) that the said decree determined that the complainant and the defendant had entered into an agreement of joint adventure in the month of July, 1926; and (b) that said decree ordered the defendant-appellant, John V. Martin, to account under oath before one of the Masters of this Court.

30

40

Petition of Appeal

And petitioner appeals from the decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous in that there were not sufficient facts before the Court to justify such a finding of joint adventure.

- 10 2. Petitioner further finds himself aggrieved by an order dismissing exceptions and confirming the Master's report made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, upon the advice of Hon. Alonzo Church, one of the Vice-Chancellors of said court, bearing date the eleventh day of December, 1928, in the aforesaid cause in this respect, to wit: that the said decree
20 dismissed the exceptions theretofore filed by the defendant-appellant and confirmed the Master's report in all respects.

And petitioner appeals from the said decree of the Chancellor, on the grounds that the aforesaid Master's report was erroneous in that:

- (a) Said Special Master's report should have allowed a credit to the defendant for a payment in the sum of \$4,720.00, made to one Gabriel Lav-
30 inson;

(b) Said Special Master's report should have allowed a credit for a payment in the sum of \$2,000.00 made to one Alfred S. Nugent;

(c) Said Special Master's report should have allowed credit for a disbursement paid by the defendant to a Mr. Donnelly in the sum of \$15.00;

- (d) Said Special Master's report should have
40 allowed a credit to the defendant for expenditures

Petition of Appeal

in the sum of \$750.00 made by the defendant, by reason of certain visits made by him to Trenton in connection with the transaction which is the subject-matter of the complaint;

(e) Said Special Master's report should have allowed a credit to the defendant for a payment of \$100.00 as rent for the use of certain William St. property and for a payment of \$300.00 for office hire; 10

(f) Said Special Master's report should have allowed a credit to the defendant for a payment of \$100.00 made by the defendant for stenographic hire;

(g) Said Special Master's report should have allowed a credit to the defendant for the payment of \$114.35 for telephone calls; 20

(h) Said Special Master's report should have allowed the claim of the defendant for the reasonable value of his services.

Petitioner therefore prays that the said decrees of the said Chancellor may be 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. 30

STEIN, McGLYNN & HANNOCH,
Solicitors for and of Counsel with Appellant.

ANSWER TO PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND
APPEALS

10	LOUIS L. FISCHER, Complainant-Respondent, vs. JOHN V. MARTIN, Defendant-Appellant.	}	On Appeal from the Court of Chancery.
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The answer of Louis L. Fischer, the above-named respondent, to the petition of appeal of
 20 John V. Martin, the above-named appellant.

This respondent, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that on June 1, 1928, a decree, and on December 11, 1928, an order, were made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes mentioned and as therein set forth; but as to the substance and form of said decree and order the respondent begs leave to refer thereto when the
 30 same shall be produced.

This respondent is advised and believes that the said decree and order are agreeable to equity, and he prays that the same be confirmed with costs to be taxed in favor of this respondent.

CHAS. S. SMITH,
 40 Sol'r for and of Counsel with Respondent.

SUMMONS.

(Returned Jan. 17, 1928.)

NEW JERSEY, TO WIT, THE STATE OF NEW
 JERSEY, to JOHN V. MARTIN, GREET-
 ING: Whereas a bill of complaint
 (L. S.) has lately been exhibited against you 10
 in our Court of Chancery by LOUIS
 L. FISCHER to be relieved touching
 the matters therein contained.

Therefore, we command you, if you intend to
 make a defense, that you file an answer to said
 bill in the office of the Clerk of our said court
 at Trenton, on or before the expiration of twenty
 days from and after the seventeenth day of Janu- 20
 ary, 1928, and in default thereof such order or
 decree will be made against you as the Court
 shall think equitable and just.

Witness, his Honor, EDWIN ROBERT WALKER,
 Chancellor of our said State, at Trenton, the
 fourth day of January, in the year of our Lord
 one thousand nine hundred and twenty-eight.

THOMAS BARBER,

Clerk. 30

CHARLES S. SMITH,
 Sol'r.

COMPLAINT.

(Filed Jan. 7, 1928.)

IN CHANCERY OF NEW JERSEY

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

The Complainant, Louis L. Fischer, of the City of Newark, in the County of Essex and State of New Jersey, respectfully shows that:

1. He is a duly licensed real estate broker of the State of New Jersey, and that at all times hereinafter mentioned he was engaged in the buying and selling of real estate.
- 20 2. In July, 1926, complainant, at the request of the defendant, also a licensed real estate broker of the State of New Jersey, agreed to associate himself with and to assist the defendant in negotiating a lease of certain premises in the City of Trenton, owned by Simon H. Lavinson and Aaron M. Rosenblatt to the Childs' Company, of New York, which lease was executed as hereinafter stated.
- 30 3. It was agreed orally between complainant and defendant at the time above mentioned, that they would divide equally between them the amount of such commission as might be received by the said defendant for negotiating said lease.
4. At all times after the making of said agreement, the complainant devoted a reasonable part of his time and efforts as an experienced real estate dealer to bring the said joint adventure of
40 defendant and himself to a successful conclusion,

Complaint

and that by reason of his general acquaintance in and about Trenton, and his knowledge of the real estate market in that State, he met and became known to the said Simon H. Lavinson, one of the principals to said lease, and was able to introduce the defendant to the said Lavinson. 10

5. As a result of complainant's efforts as aforesaid, the defendant, on October 20, 1927, entered into a broker's agreement with the said Simon H. Lavinson and Aaron M. Rosenblatt, a copy of which is annexed hereto, whereby the said Simon H. Lavinson and Aaron M. Rosenblatt agreed to pay to the defendant a commission of 3% on the total rental of \$472,000, for leasing said premises to said Childs' Company as aforesaid. 20

6. On October 20, 1927, the defendant, without the knowledge of the complainant, and unknown to said Aaron M. Rosenblatt, made a separate agreement with one Gabriel Lavinson of the said City of Trenton, the father of the said Simon H. Lavinson, whereby the defendant agreed to pay to the said Gabriel Lavinson one-third of the commission received by the defendant for negotiating the aforesaid lease, a copy of which agreement is hereto annexed. 30

7. On November 15, 1927, a lease was executed by the said Simon H. Lavinson and Aaron M. Rosenblatt, owners of premises #12-14 East State Street, Trenton, N. J., as aforesaid, and the Childs' Company, for the term of 29½ years at the aggregate rental of \$472,000, and on that date, in the City of New York, the defendant re- 40

Complaint

ceived his commission of 3% on said rental, amounting to \$14,160.

10 8. Defendant has, from time to time, admitted the said contract of joint adventure between himself and the complainant with respect to the negotiating of said lease and the commission to be received therefor, and although the complainant has repeatedly requested a detailed statement and information regarding their joint account and interest in said commission, the defendant has refused to furnish complainant with the desired information.

20 9. Complainant has frequently demanded payment of such portion of said commission as may be due him, but the defendant has denied that the complainant is entitled to be paid any part thereof, and has refused to pay him any of the proceeds of said commission.

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

30 1. That John V. Martin, who is the defendant in this suit, may answer this bill of complaint and each statement therein made.

2. That this Court may, by its decree, declare that the complainant and defendant were joint adventurers in the negotiating and effecting of said lease.

40 3. That the defendant may be decreed to account for all the transactions involving said contract of joint adventure and account to the complainant for his one-half of said commission.

Complaint—Agreement

4. That the defendant may be ordered to pay over and distribute to the complainant such amount as the Court may find is due the complainant.

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

CHAS. S. SMITH,
Solicitor and Counsel with Complainant.

Agreement.

20

MEMORANDUM OF AGREEMENT made this 20th day of October, 1927, between Simon H. Lavinson and Aaron M. Rosenblatt, of the City of Trenton, County of Mercer and State of New Jersey, parties of the first part, and John V. Martin, Realtor, of the City of Newark, County of Essex and State of New Jersey, party of the second part.

Whereas the said parties of the first part are 30 the owners of properties commonly known as #12-14 East State Street, in the said City of Trenton, and have authorized, and do hereby authorize, the said party of the second part to negotiate a lease of said premises between the said parties of the first part and Childs' Company, a corporation of the State of New York; and

Whereas the said party of the second part, who is a duly authorized broker of the State of 40

Complaint—Agreement

New Jersey, has undertaken, and hereby undertakes, to effect the lease aforesaid upon the following terms, to wit: Said lease to run for a term of twenty-nine and one-half (29½) years, at the yearly net rental of Sixteen Thousand Dol-
10 lars (\$16,000.00), the aggregate net rental for the entire term of said leasehold to be Four Hundred and Seventy-two Thousand Dollars (\$472,000.00) net.

Now This Agreement Witnesseth: That for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, each to the other paid by the parties hereto, receipt whereof is hereby mutually acknowledged, the
20 parties of the first part agree that they will pay, or cause to be paid, to the party of the second part for his services as broker in negotiating and effecting the execution of a lease as aforesaid, a commission of three per cent on the aggregate rental of the aforesaid lease amounting to Four Hundred and Seventy-two Thousand Dollars (\$472,000.00), which commission shall be payable
30 only if said lease is executed and delivered by both owners and said Childs' Company, and if said lease is so executed and delivered said commission shall be payable on execution and delivery in cash.

It is further understood and agreed that this agreement supersedes any and all agreements for brokerage commission effecting the said lease herein mentioned, which may have been entered into by the parties hereto, and that such other
40 agreement, or agreements, as the case may be, are hereby rendered null and void.

Complaint—Agreement

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above mentioned.

SIMON H. LAVINSON	L. S.
AARON M. ROSENBLATT	L. S. 10
JOHN V. MARTIN	L. S.

Signed, sealed and delivered
in the presence of
Sol. Philip Perlman
Ida Cohn

State of New Jersey,
County of Mercer. ss: 20

Be It Remembered, That on this day of
October, in the year of our Lord One Thousand
Nine Hundred and Twenty-seven, before me, the
subscriber, a Notary Public of New Jersey, per-
sonally appeared Simon H. Lavinson, Aaron M.
Rosenblatt and John V. Martin, who, I am satis-
fied, are the persons mentioned in the within
Agreement, to whom I first made known the con-
tents thereof, and thereupon they acknowledged
that they signed, sealed and delivered the same 30
as their voluntary act and deed, for the uses and
purposes therein expressed.

GABRIEL LAVINSON,
Notary Public of New Jersey.
(Seal)

Replication

4. Defendant prays to be henceforth dismissed with his charges in this behalf most wrongfully sustained.

WOLBER & GILHOOLY,
Solicitors for Defendant.

10

REPLICATION.

(Filed March 8, 1928.)

IN CHANCERY OF NEW JERSEY

Between

LOUIS L. FISCHER,

Complainant,

and

JOHN V. MARTIN,

Defendant.

On Bill, etc.

20

The complainant joins issue on the Answer of the defendant.

30

CHAS. S. SMITH,
Sol'r for and of Counsel with Complainant.

40

ORDER OF REFERENCE.

(Filed March 13, 1928.)

IN CHANCERY OF NEW JERSEY

10	Between LOUIS L. FISCHER, Complainant, and JOHN V. MARTIN, Defendant.	}	On Bill, etc.
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20 This matter being opened to the Court by
 Charles S. Smith, solicitor for and of counsel
 with complainant, and Edward J. Gilhooly, of
 Wolber & Gilhooly, solicitors for and of counsel
 with defendant, and upon reading the consent
 hereto,

30 It is thereupon, on this 13th day of March, 1928,
 Ordered that the above stated cause be referred
 to Hon. Alonzo Church, one of the Vice-Chancel-
 lers of this Court, to hear the same for the Chan-
 cellor, and to report thereon to him and advise
 what order or decree should be made therein.

E. R. WALKER,
 C.

We consent to the above Order of Reference.

CHAS. S. SMITH,
 Sol'r for and of Counsel
 with Complainant.

40 style="text-align: right;">WOLBER & GILHOOLY,
 Sol'rs for and of counsel
 with Defendant.

A true copy.
 Chas. S. Smith.

TESTIMONY.

IN CHANCERY OF NEW JERSEY

Between

LOUIS L. FISCHER,

Complainant,

and

JOHN V. MARTIN,

Defendant.

10

May 17, 1928.

Transcript of shorthand notes of testimony 20
 taken in the above entitled cause before his
 Honor, Alonzo Church, Vice Chancellor, at the
 Chancery Chambers, Newark, New Jersey, in the
 presence of Wolber & Gilhooly (by Mr. Yauch),
 for defendant; Charles Smith for the complain-
 ant.

RUTH FISCHER, sworn for complainant, tes-
 tified as follows:

30

Direct-examination by Mr. Smith:

Q. Miss Fischer, do you know the defendant,
 Mr. Martin? A. Yes.

Q. How long have you known him? A. Oh,
 about fifteen or sixteen years.

Q. And did you, at any time, have a conversa-
 tion with Mr. Martin, concerning a transaction
 for a lease of property in Trenton? A. One Sat-
 urday evening Mr. Martin asked me if Lou had 40
 spoken to me.

Ruth Fischer—Direct

Q. When was that? A. Oh, that was 1926, about October.

Q. And by "Lou" whom do you mean? A. My brother, Lou.

10 Q. Go on. A. And he asked me if I knew—or if my brother had spoken to me about a deal that he and Lou were working on.

Q. Yes. A. With Childs Restaurant, and I said, yes, I did—and I mean that Lou did tell me about it.

Q. Did you tell Mr. Martin what your brother had told you? A. No, I didn't. That was just a general statement.

20 Q. Did Martin tell you at that time what his relation with your brother was with respect to this transaction? A. He just said they were both working on this deal together.

Q. Did he say what the deal was? A. Yes, it was Childs Restaurant in Trenton.

Q. And how—and many times during the fall of 1926 and thereafter, did you have any telephone calls from Mr. Martin about this? A. Yes, a number of them. They were very numerous.

30 Q. How did you know it was Mr. Martin on the 'phone? A. Well, because I recognized his voice, and then we would have more or less of a conversation, business conversation.

Q. On any of these statements, what would he say was the object of his telephone call? A. Well, it would be that he would want my brother to meet him in Newark about this deal, or else that my brother was to go to Trenton and meet him in Trenton about this deal.

40 Mr. Yauch: I object to this testimony.

Ruth Fischer—Direct

Q. Can you fix any time when these telephone conversations occurred after October, 1926? A. Do you want it exactly, for instance?

Q. Approximately. A. The month or day or date?

Q. As near as you can recall. A. Well, I know 10
it was in the fall, we will say, from—in fact, I know, October and November; maybe the latter part of September.

Q. What year was that, 1926? A. That was 1926.

Q. Where did you live at that time, Miss Fischer? A. 102 Inlet Terrace, Belmar, New Jersey.

Q. Did you stay in those premises all the winter 20
of 1926-1927? A. No; we went south in about the middle of December.

Q. When, after that, did you return? A. In May.

Q. And did you see Mr. Martin at any time after that? A. Yes.

Q. On what occasions? A. Several times during the summer he would be down over the weekend.

Q. And during that summer of 1927, did you 30
discuss this matter with him at all? A. I can't say at any length, no.

Q. When was the last time you did discuss it with him, in 1927? A. That was in October and November—November I am positive of.

Q. Tell us what happened then. A. Well, I know for—a telephone conversation came that he wanted me to tell my brother to be sure and meet him in Trenton, because he wanted my brother to talk to Levinson. 40

Ruth Fischer—Cross

Q. In November, 1927, did you talk to Mr. Martin personally? A. Yes, sir.

Q. Where was that? A. Well, that was in Belmar.

Q. At your home? A. Yes.

10 Q. Was anybody present besides Mr. Martin and yourself? A. Yes.

Q. Who? A. My mother, a Mrs. Rainbow. In fact, the conversation was quite general.

Q. And what did he say to you about this transaction, at that time? A. Well, only that he was waiting for his—or would be very glad to get his commission and what he thought he would do with his, and referred to my brother about his com-
20 mission, and they spoke about—something about going down to Florida with it for a trip.

Q. Did he state that the commission was derived out of this transaction? A. Yes.

Mr. Smith: That is all.

CROSS-EXAMINATION by Mr. Yauch:

Q. Miss Fischer, the 'phone conversations that you had, October and November, 1926, that you
30 have referred to, with Mr. Martin— A. Yes.

Q. —how frequent were they? A. Well, at least they must have been two and three times a week, because we used to call him "telephone Martin."

Q. Did he say what the subject was that he wished to discuss with your brother? A. No; I can't say exactly.

Q. As far as you know, it may have been purely social 'phone conversation? A. Oh, no; it was
40 business.

Ruth Fischer—Cross

Q. How do you know that? A. Because why would he say—I mean, for instance, he said that he wanted him to speak to Levinson. I knew Levinson—(interrupted).

Q. How many times did that take place? A. Well, really, I couldn't count them, because they 10 were very, very numerous.

Q. A great many times? A. It was not once or twice, it was many times.

Q. Mr. Martin wanted your brother to go to Trenton to meet Levinson? A. Yes, to talk with him.

Q. Would you say it was more than five times? A. Yes, as far as I know.

Q. Would you say it was more than ten times? 20
A. No; I think that is going a little too high, but that I don't know.

Q. Approximately how many would you say? A. Well, that I just don't want to say, because I am not sure.

Q. Well, was it over five times? A. Yes, I will say it was between five and ten times.

Q. All right. And was there anything else that they discussed, outside of that Mr. Martin wanted your brother to meet him to go to talk to Levinson? Was there anything else discussed regard- 30
ing this matter, during those 'phone conversations? A. Well, now; what do you mean?

Q. Well, you say you know these 'phone conversations that you have referred to, that took place in October and November, 1926, dealt with business? A. Yes.

Q. The Trenton lease matter? A. Yes.

Ruth Fischer—Cross

Q. And you say you know that because of the fact that he told you that he wanted your brother to meet Levinson in Trenton? A. Yes.

Q. And that took place five or six times, between five and ten times? A. Yes.

10 Q. Now, was there anything else?

Mr. Yauch: I withdraw that.

Q. How many times did you say that Mr. Martin called during October and November, 1926?

A. I—

Q. I don't ask you to give me the exact number. A. I was just going to say, I don't think I would be exaggerating—for instance, it was two
20 or three times a week, if you want that, but it must have been at least thirty.

Q. You have accounted for the 'phone conversations on five or ten occasions. Now, do you know what conversation took place on the other 'phone conversations? A. You mean, on the other end of the wire?

Q. No. A. Or you mean at those other times?

Q. You say there were conversations two or three times a week. Can you account for what
30 took place during five or ten conversations? A. Yes.

Q. What took place during the other conversations? A. Well, I was not listening to them. I mean to say, my brother was not there many of the times he called, you understand.

Q. How do you know about the Levinson matter, that Mr. Martin wanted your brother to meet Levinson? A. Because Mr. Martin told me to
40 convey that message to my brother.

Ruth Fischer—Cross

Q. Did he ask you to convey any other messages, during those frequent 'phone calls? A. You mean with Levinson?

Q. Anything dealing with the Trenton matter. A. It was either to meet my brother in Newark or to meet him in Trenton. Nothing else was said, no, I couldn't say exactly. 10

Q. Now, how many times did Mr. Martin ask you to tell your brother that he wanted to meet him in Trenton? A. Oh, I don't remember. Possibly about four or five times.

Q. Was that in addition to the Levinson appointment that you referred to before in your testimony? A. That was in addition—

Q. These four or five times that Mr. Martin— 20 (interrupted). A. No, not in addition. They would—within that—I don't really recall, to tell you the truth about that. I have told you that.

Q. Well, do you know whether these 'phone conversations had anything to do with business or not, Miss Fischer? A. Well, they were business.

Q. Well, how do you know? That is what I am trying to find out. A. Because Mr. Martin was telling me to convey these messages, which were nothing but business messages. 30

Q. That is just what I want to know. What were the messages he asked you to convey? A. About meeting—

Q. About meeting together? A. Either in Newark or Trenton.

Q. Well, now—(interrupted.) A. About meeting Mr. Levinson and talking with him and—

The Court: Talking with him about what? 40

Robert H. Bratsch—Direct

The Witness: About putting this deal through.

The Court: What deal?

The Witness: The Childs Restaurant deal.

10 The Court: Did he mention the Childs Restaurant over the telephone?

The Witness: No; I can't say positively he did.

The Court: Well, that is all you want.

Mr. Yauch: All right.

The Court: That is all?

Mr. Smith: Mr. Bratsch.

20

ROBERT H. BRATSCH, sworn for complainant, testified as follows:

Direct-examination by Mr. Smith:

Q. Mr. Bratsch, what is your business? A. I am in the advertising business.

Q. Are you also in the real estate business? A. Not now, but I have been.

30 Q. And where is your business? A. New York City.

Q. Do you know the defendant, Mr. Martin? A. Yes.

Q. Where did you meet him? A. I met him last November outside the Palmer Stadium, after the Princeton-Ohio State game.

Q. Did you meet him by appointment? A. Yes.

40 Q. Who made the appointment? A. Mr. Fischer made the appointment for me.

Robert H. Bratsch—Direct

Q. Had you known Mr. Martin before that?

A. No, only—

The Court: Never knew him intimately or directly?

The Witness: Never knew him, as a matter of fact, only to hear his name mentioned. 10

Q. Did you know he was a friend of Mr. Fischer's? A. Yes.

Q. Who told you that? A. I heard his name mentioned so many times down at the home of Mrs. Fischer and by the sister and by Lou himself.

Q. What happened on the occasion of that meeting outside the Palmer Stadium? A. Why, I waited—I think I waited at the wrong gate—and I was about to leave, and, of course, I didn't know Martin—Fischer described he had a rain coat on and a cap, and we finally met and we came up in Martin's roadster; the arrangement was made that I was to go to Fischer's over the week-end and Martin was going to meet me. 20

Q. What conversation did you have with him on the trip from Princeton to Belmar? A. The first part of the trip we talked about the game and then we got off on real estate, I presume on account of subdivisions and signs, or something, and my experience in Miami and about Lou having lost a great deal of money down there and I having lost a great deal. 30

Q. Did he tell you he was in the real estate business? A. Yes.

Q. What did you tell him? A. I told him I had been in the real estate business, also. 40

Robert H. Bratsch—Direct

Q. Was Mr. Fischer's name mentioned in the conversation? A. Yes. Martin more or less eulogized, extolled Fischer; they were in a big deal and this was going to be a good one.

10 Q. What prompted him to make that reference, if you know? A. Well, I think the fact that the deal was in Newark, some sort of lease was being made in Newark and Fischer's knowledge of real estate values over there.

Q. This deal was in Newark, you say? A. I mean Trenton.

Q. And just what did Mr. Martin say about it? A. Why, that Fischer was helping considerable on it and that—really, that if I had not known
20 Fischer, I would have thought he was an awfully good fellow because of the manner in which Martin extolled him, he was such a hell of a good fellow socially.

Q. Did he say anything about his ability as a real estate man? A. Yes.

Q. Did he say anything about his capacity for handling this deal that you have mentioned in Trenton? A. Yes, he did.

30 Q. What did he say? A. His knowledge of real estate values in Trenton and knowing how to talk to people. I rather got the impression that Fischer could—(interrupted).

The Court: No. Do not give impressions.

Q. Did he tell you that he had asked Fischer to help him in this deal? A. Yes, he did. He told me Fischer was helping him.

40 Q. Was that statement made without inquiry

Robert H. Bratsch—Direct

on your part, or did you ask him that? A. I didn't feel that I knew him well enough to ask him that.

Q. And he made the statement gratuitously, did he? A. That they were both working on this deal; this was going to be a good deal. 10

Q. The subject seemed to be of interest to him? A. Yes, very much.

Q. What else was talked about during that trip, if anything, or was the conversation confined mainly to that topic? A. It was confined mostly to that topic, after we had finished about different parts of the game.

Q. After you reached Belmar, did you stay at Mr. Fischer's home that night? A. Yes. 20

Q. Mr. Martin? A. Yes.

Q. Was there any further conversation by Mr. Martin with you about this deal? A. No. He and Lou got together then and got talking.

Q. Did you hear what he said? A. Merely about Levinson. I heard the name Levinson mentioned and about calling some one, and then I think—I am not sure whether Martin made the telephone call on Saturday night or Sunday, but he made a 'phone call. 30

Q. Just what did you hear of that conversation beside the mention of the name Levinson?

Mr. Yauch: Is this the 'phone conversation?

Mr. Smith: No, in the home of Mr. Fischer on that Saturday evening. (To witness) Just how much of that conversation did you hear, between Mr. Fischer and—(interrupted). 40

Robert H. Bratsch—Direct

A. I heard the Childs lease mentioned and I heard the name Levinson mentioned.

Q. Did you hear any other conversation besides the mention of that name? A. No, I did not.

Q. When did you leave Mr. Fischer's home?

10 A. Why, Mr. Martin, Mr. Fischer and myself drove up on Monday morning.

Q. And was there any conversation on that occasion about this deal? A. Yes.

Q. What was it? A. Martin rather remarking officiously that he was going to make a big trip when he got this commission and Fischer thought—I don't know whether he said he might go to Europe or he might go South, or something.

20 It seemed to be a conversation about commission.

Q. Did Mr. Martin speak of Mr. Fischer's participation in the deal, on that occasion? A. Participation in the deal?

Q. Yes. Did Mr. Martin say whether or not Mr. Fischer was going to get any of that commission? A. Yes. He remarked two or three times about "Lou and I, Lou and the deal, we are on the deal." I had in my mind they were both working on it.

30

Mr. Yauch: I move to strike that out.

The Court: No. It was a—(interrupted).

Q. That conversation was in the presence of Mr. Fischer and Mr. Martin and yourself? A. And myself; yes, sir.

Q. And you recall that as substantially the words said by Mr. Martin? A. Absolutely.

40

Robert H. Bratsch—Cross

CROSS-EXAMINATION by Mr. Yauch:

Q. What words? A. "We are in on the deal—our deal."

Q. "Lou and I are in on the deal"? A. Yes. "We are on the deal."

Q. Didn't say on what percentage they were in, did he? A. No; he didn't say what percentage. I didn't feel that was any of my business, to ask him. 10

Q. No, of course not. A. He probably didn't think it worth while to tell me.

Q. Did Mr. Fischer say he was going to Europe and pay the cost of the trip out of the money he was going to make on this deal? A. No. He said he might go to Europe, he might go South, "I may do something with my commission, I might do something with this commission," the same as Martin said, "I am going to take a trip on my commission." 20

Q. They were both going to take a trip to Europe? A. I wouldn't say they were both going to take a trip to Europe, no.

Q. They both said they thought they would? A. No. I don't think Martin even mentioned Europe. 30

Q. Martin did not? A. No.

Q. You made an affidavit in this matter, didn't you, Mr. Bratsch? A. Yes, I did; but I didn't make an affidavit that Martin was going to Europe.

Q. Did Mr. Martin say anything about that he was going to travel after he got his commission?

A. Said he was going to make a trip.

Q. Did you say that in your affidavit? A. Yes, 40
sir.

Charles M. McDermott—Direct

Q. You say you were down to Florida with Mr. Fischer? A. Yes, sir.

Q. When was that? A. I met him in 1924, January or February, 1924.

10 Q. Were you down in Florida with Mr. Fischer in 1926? A. No.

Q. Oh, you were not down there then? A. No.

The Court: Is that all?

Mr. Yauch: I guess that is all.

The Court: That is all, sir. Now, what else have you got?

Mr. Smith: I have one from Trenton we can dispose of very quickly.

20

CHARLES M. McDERMOTT, sworn for complainant, testified as follows:

Direct-examination by Mr. Smith:

Q. What is your business, Mr. McDermott? A. Real estate.

Q. Where is it located? A. Trenton.

30 Q. How long have you been in that business? A. Fifteen years.

Q. Do you know the complainant, Mr. Fischer? A. I do.

Q. Did you ever meet the defendant, Mr. Martin? A. I have.

Q. Where? A. Trenton.

Q. What time was that, and when? A. Oh, in the early fall, I believe, of 1926, in my office.

Q. Who was with him? A. Mr. Fischer.

40 Q. And what took place at that time? A. Gen-

Charles M. McDermott—Direct

eral conversation about the leasing of the Childs Restaurant, the location there now.

Q. What was said by Mr. Fischer relating to that transaction? A. He was interested, with all his knowledge about the value of the building and the assessment on the building. 10

Q. Which building? A. This Levinson building that the Childs Restaurant has leased.

Q. Do you know who suggested that building? A. I believe, Mr. Fischer. We had a general conversation about the location there, looking for a location.

Q. Where was the location? A. On East State Street, very advantageous location.

Q. Do you know who owned the premises? A. 20
Mr. Levinson.

Q. Do you know Mr. Levinson personally? A. Yes, sir; I know Mr. Levinson.

Q. Did you send Mr. Fischer over to see him? A. I think so, in a general way, just about different other properties, too.

Q. What was said about Mr. Fischer, in Mr. Martin's presence, about his interest in the deal, or anything? A. A 50-50 proposition, if the deal went through. 30

Q. Which one said that? A. Both of them, if my recollection (interrupted).

Q. Do you recall which one? A. It was discussed in general—I think Mr. Fischer—Mr. Fischer told me that, too, because I was supposed to get a share of some of the commission.

Q. You were to get paid? A. Not fully paid, but compensated for what work I had done around there. 40

Charles M. McDermott—Direct

Q. Was there any discussion about that in the presence of Mr. Martin and Mr. Fischer? A. I don't know whether there was at that time or not, but it was discussed and talked about.

10 Q. There is no doubt in your mind that this subject of a joint interest in that transaction was discussed among the three of you? A. Never in my mind there wasn't any doubt about it.

Q. What did Mr. Martin say about it, if anything? A. I don't just recall what Mr. Martin said about it, only he was very anxious to secure this site and close up the deal.

20 Q. Did you communicate with Mr. Fischer after that? A. Yes. We discussed the point from time to time, and when things looked kind of bad and we didn't think Childs Restaurant was going to take that location, why, he worked around with other locations that he thought probably would be—(interrupted).

Q. While these gentlemen were in your office, did Mr. Fischer telephone from the City Hall Tax Office about information on these properties? A. Yes.

30 Q. Do you know whether he got it? A. Yes, I believe he did. I got it, too.

Q. You have no interest in this transaction? A. None whatever.

Q. Except that you expect to be paid? A. None whatever.

Mr. Smith: You may examine.

Charles M. McDermott—Cross

CROSS-EXAMINATION by Mr. Yauch:

Q. Do you know whether Mr. Martin knew about the Levinson property, before he came to your office? A. I don't know whether he did or not.

Q. Do you know whether he had already been to the Levinson property? A. I do not. I couldn't say. There were other people trying to lease the property. 10

Q. I am talking about Mr. Martin: had he been to look at the Levinson property, before he met you? A. I don't know. He had probably been in Trenton many times to see it. He didn't tell me he did.

Q. Did it appear it was the first time he had ever heard of the property, when he mentioned it? 20

The Court: Don't say that. We don't want appearance or inferences; we want just what they said.

Q. Did Mr. Martin say he had seen the Levinson property? A. I think Mr. Martin said he and Mr. Fischer had discussed the probable site for a location of the Childs Restaurant to locate in Trenton, and that was one of the sites. 30

Q. Then it was not through your suggestion that they knew of this property, was it? A. Well, we talked about it in a general way after that time.

Q. But they knew of it before they ever brought you, and Mr. Martin knew of it before they ever brought you? A. Might have. They did not appear to.

Q. You said they mentioned the Levinson site? 40

Charles M. McDermott—Cross

A. Along with other sites they were talking about. Mr. Fischer brought them over, as I understand it, to look the sites over.

Q. This conversation was in the fall of 1926, wasn't it? A. I believe so. I think it was in
10 September or the latter part of August.

Q. Now, when did they mention this 50-50 split that you have referred to in your testimony? A. I think at one of our early meetings we were just discussing the proposition, and it came out in a general way. It was not brought out by me, it was brought out by them—by Mr. Fischer and Mr. Martin.

Q. Well, how many times did you meet with
20 Mr. Fischer and Mr. Martin? A. Probably half a dozen times.

Q. And when? A. Oh, I don't know. From September until probably—in the course of eight months, probably eight or ten months.

Q. Well, when were they? When did you see—
(interrupted). A. I didn't keep any memoranda, what dates they came in the office. I am just telling you, between September, 1926, and ten months after that.

30 Q. And for ten months after that? A. And not only—not to limit it to ten months, but until the lease was signed, we had talked it over, Mr. Fischer and I, and how—the progress he was making, what progress he was making.

Q. Are you sure that you met half a dozen times? A. Probably more than that.

Q. Probably more than that? A. Probably. I
40 didn't write it down, every time he came in the office.

Charles M. McDermott—Cross

Q. Did you see Mr. Fischer, at any time around the latter part of 1926 or the early part of 1927?

A. The latter part of 1926? I believe I did see him.

Q. Approximately what time? Around the holidays? A. Oh, I just don't recall just the time, but in a general way, I have seen Mr. Fischer for the last fifteen years, twenty years, weekly. 10

Q. I know, but we are just interested in this particular occasion. A. I know, but I cannot give you an accurate answer. I don't write down every time I run into a friend.

Q. But this was a business deal. A. Not always confined to business, my meetings with Mr. Fischer. 20

Q. When Martin was there, it was always business? A. Mostly always business, because I only knew Mr. Martin in a business way.

Q. Do you know whether Mr. Fischer took this matter up with you in the latter part of 1926? A. Yes, it was taken up in 1926.

Q. And did he do anything about it in the early part of 1927? A. You mean, did he do anything about consummating the lease?

Q. Yes. A. I believe he did. 30

Q. Did he see you about it any time? A. Spoke to me about it.

Q. About what time? Was that in 1927, the early part? A. 1927? I just don't recall, there is so many things that I get in my business, although I do not just remember that special interest; but I know it was talked about and discussed, and there was some work done on it.

Q. Was it in the first few months of 1927? A. 40

Charles M. McDermott—Cross

Do you mean January, February, March, those three months? I could not say. It might have been, it might not. I do not recall, because there has a lot of things passed between that time.

10 Q. Well, do you know whether Mr. Fischer took this matter up with you at any time from, say, about November, 1926, to June, 1927? A. Yes, he has.

Q. He did? A. Yes.

Q. How many times do you think, between that period, did he take it up with you? A. Probably a dozen times or more.

Q. Probably a dozen times? A. Probably that—or more.

20 Q. And you are certain of that, are you? A. Pretty sure.

Q. You are just as sure of that as you are of the rest of the testimony you have given here? A. Pretty sure.

30 Q. Now, what other locations did Mr. Fischer work on, outside of this one? A. Why, he worked on the Scammell building, Colonel Scammell, Scott Scammell Building; we took photographs of that building and presented them to Mr. Martin. I believe they were conveyed to the Childs Company. Mr. Scammell has those pictures in his office yet, I believe; and two or three places around, a place called the Passadena, around the corner, and the Fischer Building, up on State Street. There were several locations discussed.

40 Q. Mr. Fischer was in the real estate business in Trenton, was he? A. I don't believe he was ever actively engaged. He has got real estate holdings there which makes him interested.

Charles M. McDermott—Cross

Q. He is interested in an estate that owns a piece of property in Trenton? A. I don't know that. I understood so, but you would have to find out from him.

Q. But he never acted as broker in Trenton—has he? A. Yes, I believe he sold, because he negotiated some leases there. 10

Q. Is he very familiar with the matter of values in Trenton? A. I think so. I understood his family owned property in the center of town which is quite valuable. They would not sell the property.

Q. Do you know why they consulted you, if he knew so much about Trenton real estate? A. Well, I don't know why he did, outside of probably he wanted to shove a little business in my office. 20

Q. Did you say you sent Mr. Fischer to see Mr. Levinson? A. Did I say that?

Q. In your testimony. A. Did I say it?

Q. Did you? A. I don't recall. I might have suggested to go right down and see him.

Q. Well, did you? Do you recall whether you did or not? A. I believe I did tell him from that time, to go down and get the deal through with; "If you are going to close, close it." 30

Q. I mean the first time, before they mentioned Mr. Levinson, did you suggest that they go down and see him? A. Why, did I say that in my testimony, that I did send them down?

Q. Well, I ask you now, did you? A. I might have said to them, "Go down." I would not swear to it. I don't know whether I did or not.

Q. Did you know Mr. Levinson? A. Yes.

Q. Did you have anything to do with the meet- 40

Charles M. McDermott—Re-direct

ing between Martin and Levinson? A. (Witness nods negatively.)

Q. Your answer is "No"? A. No.

RE-DIRECT-EXAMINATION by Mr. Smith:

10 Q. When Mr. Fischer—when Mr. Martin was in your office with Mr. Fischer, did he tell you whether he knew anything about Trenton real estate or not? A. Mr. Martin?

Q. Yes. A. That was my impression, that he did not know.

Mr. Yauch: I object.

The Court: No, did he say whether he knew or not?

20

The Witness: I believe he said that he was not familiar with real estate locations.

Q. Do you know whether Mr. Fischer went to Florida in the fall or last part of 1926, or about the early part of 1927? A. No; I don't know whether he went down to Florida or not at that time.

Q. You testified on cross-examination that he saw you between the fall of 1926 and June, 1927; 30 do you mean that the conversations you had with him after the first meeting were about June, 1927?

A. Might have been possible, yes.

Q. No. I would like it a little more definite. A. Yes, it was around—(interrupted).

Q. Was it in June or— A. Yes.

Q. Or would you say that those conversations were before June? A. Well, they were before June and before—in the latter part of 1926.

40 Q. Can you fix the dates definitely? How much

Charles M. McDermott—Re-cross

before June were they? Or were they about that time, the spring of the year? A. Well, it might have been May and June, somewheres in there; I don't remember.

Q. Not before that? A. In the fall, I remember, of 1926. 10

Q. In the fall of 1926 and about May or June, 1927; that is what your testimony would be? A. Yes.

Mr. Smith: You may examine further.

RE-CROSS-EXAMINATION by Mr. Yauch:

Q. Did I understand you to say that you saw them about a dozen times between November, 1926, and June, 1927? A. November, 1926, and June, 20 1927?

The Court: From September, you mean, 1926, to June, 1927.

Q. Yes. A. Probably more than a dozen times.

Q. More than a dozen times; how many times, approximately, would you say? A. Oh, I couldn't tell you approximately.

Q. How many times a week? A. I couldn't tell you approximately. Probably see them more—I 30 saw them more in September, on account of him being down at the shore. We go down to the shore quite a bit. I saw them quite frequently down there.

Q. When did you say? A. I saw him up to the time we left Sea Girt; that was around October 15th or 20th, somewheres in there; I saw him quite frequently up to that period and I wouldn't see him again; he would be at Newark or I would be at Belmar, and I would see him when he came 40 to Trenton.

Charles M. McDermott—Re-cross

Q. You saw him in October? A. I can't say.

Q. Do you know whether you saw him in January, February, or March? A. I can't say definitely. I might have seen him.

Q. You say you saw him over a dozen times?

10 A. I did. I might see him a dozen times in a week. That is not much to see a friend you live close to. From September to October 15 I might have seen him two dozen times.

Q. I am referring to the visits he had with you regarding this Trenton matter. Now, how many times did he take that up with you after September, 1926? A. After September, 1926?

20 Q. Yes, the occasion of the meeting between Martin and—(interrupted). A. Oh, I see. I would say, between telegrams I got from Fischer and letters and things to do for him in regard to the closing up of this deal, probably twenty times or more.

Q. Now, have you got those telegrams and letters? A. No; I haven't got them.

Q. You haven't? A. None of them.

Q. What did he ask you to do for him? A. Well, find out the assessed valuation.

30 Q. You got that the first time, didn't you? A. Well, other times we worked around different parties in case the present deal did not go through.

Q. "We looked around," you say? A. No. To look around to submit to other people, in case they—(interrupted).

Q. What locations did you look at? A. I looked at Levinson's property—

40 Q. Didn't you tell Mr. Fischer about the Scammell property—or Mr. Martin—about the Scam-

Charles M. McDermott—Re-cross

mell property, the first time you met? A. I don't remember.

Q. In September? A. I don't—I know we discussed it in a general way. We went down to see the Scammells about—down in the Scammell Battery Company, Mr. Fischer and I. 10

Q. That was the first time? A. No, that was not the first time; it might have been the second time.

Q. What other properties were there? A. The East State Street property, and we also thought of the First National Bank Building when they were going to move out to their new proposed home, in case Childs were in a hurry to get there, it might have been an available site. 20

Q. What did you do about that? A. We got the data—when the bank was going to move.

Q. Have you got any of that data with you? A. No.

Q. What was done with it? A. Well, I didn't file it away or didn't preserve it. I didn't think there was going to be any suit of two friends.

Q. You did not consider it very important, did you? A. No, I did not, not at that time. I have got a lot of stuff I don't file away. 30

Q. Now, did Mr. Fischer take up anything in relation to this Trenton lease, the latter part of 1926 or the early part of 1927? A. Did he what?

Q. Did he take up anything with you regarding this Trenton lease? A. Only that they were working on it. He was to meet Mr. Martin and they were going down calling on Mr. Levinson, trying to arrange terms between Childs and Levinson. I wasn't in that part of it, though. 40

Charles M. McDermott—Re-cross

Q. I direct your attention to that particular period between November, 1926, and the latter part of May, 1927: during that period—(interrupted).

10 Mr. Smith: I object.

The Court: He has already testified to all of this.

Mr. Smith: He stated he saw him in May and June and the fall of 1926.

Q. During that period, did Mr. Fischer take up the matter of the Trenton lease with you personally? A. I believe he did. I wouldn't—I believe he did.

20 Q. Now, how many times do you think he did? A. Between what dates?

Q. November, 1926, and May, 1927. A. Personally or through the mail?

Q. Personally. A. Oh, I just don't recall, but I had some information on it from him, to do something, or report on the progress, how the deal was going.

Q. Do you remember whether you took it up personally with him during that period, at all?

30 A. From what dates? November?

Q. Yes, November, 1926, to May, 1927. A. No, I don't recall.

Q. You are certain of all the other periods there, aren't you? A. Fairly so.

Q. How is it you are not certain about this particular period? A. Well, I don't just recall.

Q. From November to May? A. I didn't devote all my time between November and May on
40 this here one deal. I have a million other things

Charles M. McDermott—Re-cross

on my mind besides trying to make mental reservations every time Lou spoke to me or Mr. Martin came into my office.

Q. Do you know approximately how many times he took the matter up with you? A. I told you he asked about a dozen times or two dozen times I was in consultation with Mr. Fischer, and a lesser number of times with Mr. Martin, about this deal. Now, how many more times do you want me to tell you? 10

Q. I am directing your attention to a particular period, from November, 1926. A. I told you I don't recall.

The Court: He said he don't recall. 20

Q. (Continuing) —to May, 1927? A. Three times.

Q. You don't recall whether he took it up? A. I do not recall.

Q. Would you say that he did not? A. Or that he did.

The Court: He does not recall.

Q. Did you say he did not take it up with you? A. I don't recall, I told you. 30

Q. And who dictated this affidavit that you signed, Mr. McDermott, in this matter? A. I don't recall that.

Q. Were you present when it was dictated? A. I believe so, although I am not sure.

Q. Or was it presented to you all written up? A. No, it was not. I don't recall the affidavit—it dictated here, or where it was dictated. It is an affidavit, and I signed it.

Q. Yes. Did you— A. (Continuing) —and subscribed to all the facts in that affidavit. 40

Louis L. Fischer—Direct

Q. Were you present at the time the affidavit was dictated? A. I don't recall.

Q. Well, the language used in this affidavit, was it yours or is it the substance of what you told them? A. No. The substance of what I told
10 them.

Witness excused.

LOUIS L. FISCHER, sworn for complainant, testified as follows:

Direct-examination by Mr. Smith:

20 Q. Mr. Fischer, you are the complainant in this case? A. Yes.

Q. What is your business? A. Real estate.

Q. Where do you operate? A. Newark, New Jersey.

Q. How long have you known the defendant? A. Sixteen years or so.

Q. In July, 1926, did Mr. Martin ask you to negotiate with him a lease on a property in Trenton? A. He did.

30 Q. What did you do about that? A. I immediately wrote a letter to Mr. McDermott, in Trenton, stating that we were looking for a location.

Mr. Yauch: I object, if your Honor please, to what this witness did with relation to some other individual as not binding on us.

The Court: No.

40 Mr. Smith: I withdraw the question.

Louis L. Fischer—Direct

Q. Did you consent to work with Mr. Martin on this transaction? A. I did.

Q. Did you go to Trenton with Mr. Martin in the month of July, 1926? A. It was the latter part of July or the very early part of September. 10

Q. Where did you go? A. To Mr. McDermott's office.

Q. Did Mr. Martin go to Mr. McDermott's office with you? A. He did.

Q. And did you discuss this transaction of the lease in Mr. McDermott's office? A. I did; and he did, too.

Q. And what did you tell Mr. McDermott, in the presence of Mr. Martin, about this lease? A. 20 I told him that prior to this I had written a letter to Mr. McDermott. I said this was the man I had spoken about in the letter that I was working with, in regards the deal on a 50-50 basis.

Q. What did you mean by a "50-50 basis"? A. To split the commission, was our understanding.

Q. You mean, split it equally? A. Yes.

Q. Do you know whether Mr. Martin heard you, Mr. McDermott? A. He did.

Q. Did he make any comment on it? A. He 30 did not.

Q. Did he dissent from it in any way? A. He did not.

Q. Did you discuss the properties to be leased to the Childs Company? A. We did.

Q. On that occasion. What properties were discussed? A. We first brought up the question of the property which was eventually leased.

Q. Which was that? A. 12 and 14 East State 40 Street.

Louis L. Fischer—Direct

Q. Owned by— A. —Mr. Lavinson and Mr. Rosensohn.

Q. Any others? A. We just discussed here and there other locations we thought might be good, such as Broad Street or further out State Street,
 10 but mainly this one, due to the fact that one of my relatives owned this or leased it at one time, and I knew it would be available.

Q. While you were in Mr. McDermott's office, did you make any attempt to get information about the Lavinson property? A. We did, immediately.

Q. Did you call up the tax office? A. Mr. McDermott called the tax office up and then I talked
 20 to them.

Q. Did you make an investigation of this property at that time, and obtain the details concerning the value—the assessed value—and other information pertaining to that property? A. I went to the tax office myself and got lists—

Q. At that time? A. Yes, sir.

Q. I show you what purports to be a statement of valuation, have you seen that? A. I have.

Mr. Smith: I offer this.

30 Mr. Yauch: I would like to cross-examine on it. Do you want me to do it now, or later?

The Court: Later.

Q. Did you obtain the information that is contained in this report? A. I did.

Q. Who prepared this report after you obtained the information? A. Mr. Martin obtained
 40 —prepared that report—after I got the information and forwarded it to him.

Louis L. Fischer—Direct

Q. Where did you obtain possession of it afterwards? A. Mr. Martin turned it over to me.

Mr. Smith: I offer this in evidence now.

(Paper marked in evidence as Exhibit C-1.) 10

Mr. Yauch: That is subject to what I may develop on cross-examination?

The Court: Oh, surely.

Q. At the time of the first visit to Mr. McDermott's office, did you go to the premises 12 and 14 East State Street with Mr. Martin? A. I did.

Q. Whom did you see? A. I saw the proprietor who then held the lease on that. 20

Q. Who was that? A. To be accurate, I can't just tell his name now. I think Mr. Furman was his name.

Q. Well, did you, at that time or later, see Mr. Levinson, the owner of the premises? A. That same afternoon I went to see Mr. Levinson.

Q. Was Mr. Martin with you? A. He was.

Q. And did you know Mr. Levinson? A. I did not.

Q. Did you make yourself known to him? A. 30 Well, I made myself known to him, yes.

Q. Did you introduce Mr. Martin? A. I did, sir.

Q. Did you tell Mr. Levinson the object of your visit? A. I did.

Q. Well, now, relate the conversation that took place then. A. I went to Mr. Levinson's place of business, on the corner of Broad and Front Streets, and introduced myself as a property 40 owner in Trenton, also, and stated the purpose

Louis L. Fischer—Direct

of my coming there. I said we were looking for a lease and we understood his property at 412-18 East State Street would soon be available, if it was not right now. He assured me it was. Before this, I introduced Mr. Martin, who was
10 standing in back of me—I introduced him to Mr. Levinson at that time.

Q. After that visit to Mr. Levinson, when next did you see Mr. Levinson with respect to this transaction? A. At our first meeting him, I told—we did not tell Mr. Levinson who was looking for the building, so we returned in about, I would say—about four or five days or possibly the following week—and said that we had opened ne-
20 gotiations with the other party. Mr. Levinson wanted to know who it was, at that time. We did not tell him, I don't believe.

Q. Why was that? A. Because we didn't want the—the orders were from the Childs people not to let any one know that they were coming into Trenton.

Q. Then, after that occasion, when next did you see Mr. Levinson about this deal? A. Perhaps in about another seven days.

30 Q. What happened then? A. We then discussed the proposition. Mr. Martin *ad interim* had seen Mr. Ellsworth Childs, so he told me, and came back with data to that effect, and there were several propositions submitted to Mr. Levinson. We then went to—Mr. Levinson called his father in and we had a long discussion at Mr. Levinson's wholesale factory or wholesale shoe offices, which were further down Front Street, in
40 regard to this matter.

Louis L. Fischer—Direct

Q. Did you know the name of the Mr. Childs that owned—Mr. Martin was negotiating to have the Childs property? A. Beg pardon?

Q. Do you know Mr. Childs' first name? A. Ellsworth.

Q. And in your conversation with Mr. Martin¹⁰ about Mr. Childs, was he ever referred to as "Elsworth"? A. Yes.

Q. I show you a memorandum attached to a letter; addressed to you and signed "J. V. M"; from whom did you receive that? A. Jack Martin.

Mr. Smith: I offer that.

(Memorandum received in evidence and marked Exhibit C-2).²⁰

Q. How long did you remain in New Jersey in the year 1926? A. Till Thanksgiving of that year.

Q. The latter part of November, of course? A. Yes.

Q. And where did you go after that? A. I went South.

Q. In your contacts with Mr. McDermott about this deal, when did you last see him? A. I saw³⁰ him just prior to my leaving.

Q. Well, when did you return from Florida? A. In April of that year.

Q. And in the interval did you keep in touch with Mr. Martin? A. I did.

Q. How? A. By correspondence and by telegraph.

Q. I see. And was the deal active or inactive, during that stage of the early months of 1927? A. It then became inactive.⁴⁰

Louis L. Fischer—Direct

Q. Do you know why? A. Mr. Martin said it was a question, we couldn't get them together in price, and I said, "The best thing to do in cases like this is to let these things soak a while, until both parties realize somebody has got to make a
10 move." I said, "It will be a long-drawn-out process and we better just sit back and take it easy."

Q. And did Mr. Martin ever communicate with you about the deal? A. He did.

Q. How? A. By letter and by telegrams. I kept copies of all telegrams.

Q. In the latter part of December, 1927, did you receive a letter from Mr. Martin, which I show you here? A. I did.

20 Q. How was that letter signed? A. Jacob.

Q. And how do you identify Mr. Martin with that signature? A. By the signature and the name.

Q. You mean the address to you? A. Yes.

Mr. Yauch: Do you want to save time? If you show it to me, I might admit it.

Mr. Smith: I offer it.

(Letter marked in evidence Exhibit C-3).

30 Q. That was in December, 1928. What was the subject-matter of that letter? How was that related to this transaction, the question of placing a broker's name in Mr. Martin's window? Can you explain that? A. It resolves itself into a question of when you leave the State and do not maintain an office, you must turn in your real estate license. I told Mr. Martin to be very care-
40 ful and see that his—I mean, rather, the Real Estate Board's statute was complied with; that

Louis L. Fischer—Direct

is, the name in the window and the license on the wall.

Q. Has your status as a real estate broker been questioned in any way, at the time you were in Florida? A. Apparently it was.

Q. And that was the reason for this correspondence with Mr. Martin? A. It was. 10

Mr. Smith: This telegram has reference to the same subject-matter, addressed to Fischer in Miami, Florida.

I offer it.

(Telegram marked Exhibit C-4 in evidence.)

Q. During the months of January, February 20 and March, you kept in constant communication with Martin? A. I—

Q. —as to the transaction? A. I did.

Q. —both by letter and telegram? A. Yes, sir.

Mr. Smith: I offer these.

(Correspondence and telegrams marked Exhibits Nos. C-5, C-6 and C-7, respectively, in evidence.)

Q. On February 21, 1927, this deal, you say, 30 was still inactive? A. I didn't get your question.

Q. In the month of February, 1927, this deal was still inactive? A. Yes.

Q. I think you testified to that? A. Yes.

Q. But you had not ceased your active communication with Mr. Martin? A. No, sir.

Mr. Smith: I offer this letter.

(Letter marked Exhibit C-8 in evidence.)

Louis L. Fischer—Direct

Q. In April, when you returned from Florida, what did you do about this transaction? A. Got in touch—

10 Q. (Interrupting) Whom did you see about it, first? A. —I got in touch with Mr. Martin immediately, as he had been urging me to come back.

Q. Had any question been raised by Mr. Martin up to this time, as to your right to go into this transaction with him? A. No, sir.

Q. Was there ever any conduct on his part that raised a doubt in your mind? A. No, sir.

Q. As to his understanding of your position? A. No, sir; nothing.

20 Q. Nothing was ever spoken? A. Was ever spoken, except our original agreement—never.

Q. This letter dated March 21, 1927, have you seen that before? A. I have.

Q. From whom did you receive that? A. Mr. Martin.

Q. Do you know who made the notations on that letter? A. Mr. Martin.

(Letter of March 21, 1927, read.)

30 Mr. Smith: I offer it.

(Letter marked Exhibit C-9 in evidence.)

Q. After you saw Mr. Levinson, on your return in April, did Mr. Martin consult with you? A. He did.

Q. On how many occasions, from April on? A. He was pretty nearly a constant week-end visitor at my home.

40 Q. On other occasions, was this a subject of discussion between you? A. It always was. He

Louis L. Fischer—Direct

stayed one week with me—close to a week, maybe four or five days—

Q. And when did you learn that the lease was to be executed, the lease between the owners of the Trenton property and the Childs Company?

A. November—no, it was consummated—around 10
about October or about the time I came into your office with Mr. Martin.

Q. And why did Mr.—were you to be included in that broker's agreement? A. No, I was not.

Q. Rather, was there a broker's agreement entered into with Mr. Levinson? A. There was.

Q. Between whom was the broker's agreement made? A. Mr. Martin, one party, Mr. Levinson, and Mr. Rosenblatt, on the other. 20

Q. And why were you not included in it, in the broker's agreement? A. On my return from the South, Mr. Martin informed me it was best to leave me go, as he had things in mind, and I was only to act in an advisory capacity. I naturally—(interrupted).

The Court: No, no. You have answered the question.

Q. Was it at Mr. Martin's suggestion that your 30
name was omitted from that agreement? A. It was.

Q. Did you ever see that agreement? A. I did.

Q. Do you know what it contained? A. Yes, sir.

Q. Do you know what rate of commission was provided for? A. There was a discussion and finally it was three per cent. 40

Louis L. Fischer—Direct

Q. To be paid by whom? A. By Mr. Levinson.

Q. To Mr. Martin? A. To Mr. Martin.

Q. Do you know when the lease was actually executed? A. Some time in November.

10 Q. When, 1927? A. 1927. The fall of 1927. It may have been the latter part of October.

Q. And when you learned it had been executed, did you make a demand on Mr. Martin for a part of the proceeds, of the commission? A. I did.

Q. And what happened? A. Why, he seemed to be—some discussion then arose as to what he was to pay me.

Q. What was the result of the discussion? A.

20 The result was, he said he had conferred with several people and he didn't think I was entitled to 50-50 any more, that he had consulted his father and other men.

Q. And what did he say? A. (Interrupting) May I go on?

Q. Did he say what he thought you were entitled to? A. He said he thought maybe I might be entitled to \$750.

30 Q. Did he offer you any money at any time in settlement of your claim? A. \$250.

Mr. Smith: I offer a check in evidence, bearing the name "John V. Martin, Special," with the signature torn from it. (Check marked Exhibit C-10 in evidence.)

The Court: Did you receive that check?

The Witness: I did, sir.

The Court: What did you do with it?

Louis L. Fischer—Cross

The Witness: I said, "Inasmuch as there seems to be some dispute about this claim, will you put down here that this is just a part payment?" He said, "Give me the check." I gave him the check and he tore off the signature and he said, There is your check." 10

The Court: All right.

CROSS-EXAMINATION by Mr. Yauch:

Q. Mr. Fischer, do you know who made those pencil notations on that letter? A. I received them from Mr. Martin that way.

Q. The letter was that way when you received it? A. Yes, sir. 20

Q. Now, this letter is dated March, 1927; you say that deal was inactive, at that time? A. Yes, sir.

Q. Well, doesn't the letter say itself, Mr. Fischer, that "In regards to the Ellsworth deal, everything points to a closing before long"? A. That was my idea. As to whether it was active or inactive—

Q. That was only your idea? 30

The Court: No, you are asking what the letter says.

Mr. Yauch: Pardon me. I withdraw that voluntary statement. What was the answer?

(Answer read, as follows: "That was my idea. As to whether it was active or inactive.")

Louis L. Fischer—Cross

Q. But the information as contained in the correspondence received by you from Mr. Martin would indicate that the deal was very active?

10 The Court: No, I won't allow that. That calls for a conclusion.

Mr. Yauch: All right.

Q. Now, the \$250-check that was given to you in November, 1927, some time, did you ask Mr. Martin for— A. I beg pardon. That was not given to me in December. Around December. I remember it was around Christmas time.

20 Q. I thought you said given you December. It was around the time the deal was closed, in December? A. I don't think I said that.

Q. Was it in December? A. The date of the check is on there, sir.

Q. Oh, yes. The date of this—on December 7, 1927, the date of this check, Exhibit C-10. A. Yes.

Q. Did you ask Mr. Martin for any money? A. I said, "We ought to have some sort of settlement and accounting."

30 Q. Did you ask him for some money on account? A. I did not, sir. I wanted all my money, naturally, if he got it.

Q. Did you correspond with Mr. Martin, during all the time you were down in Florida? A. I did, sir.

Q. Keep any record of the letters you sent him? A. Yes, sir.

Q. Have you got them? A. Mr. Smith has them, sir.

Louis L. Fischer—Cross

Mr. Smith: I have copies.

Mr. Yauch: I ask you to produce them.

The Witness: I also have copies.

The Court: Now, don't volunteer. You gentlemen both have good lawyers and the thing for you to do is to keep your mouths shut and let them talk. 10

Q. Now, the question of your real estate license, the figures didn't have anything to do with this deal, the Childs lease at Trenton? A. I don't understand your question.

(Question read, as follows: "Now, the question of your real estate license, the figures didn't have anything to do with this deal, the Childs lease at Trenton?") 20

A. The question was, I had to hand my license back, because I was leaving the State.

Q. Well, you wouldn't say, when you wrote to Mr. Martin and asked him to take care of the matter of your real estate license, that that had anything to do with the transaction that resulted in the lease finally being consummated, would you?

A. If the Court will allow, sir, I didn't ask Mr. Martin to take care of my license. I asked Mr. Martin to take care of his license, to make sure he fulfilled all the requisites of the State Real Estate Law. 30

Q. Did you have a license—have a New Jersey real estate broker's license—just before you went down to Florida? A. I did, sir.

Q. Up until what time? A. Up until the day before Thanksgiving, when I sailed for Florida. 40

Louis L. Fischer—Cross

Q. What happened to it, at that time? A. I dated it later, sir, by about ten days. The records will bear me out—ten days.

Q. Did you renew your license when you came back? A. I did, sir.

10 Q. Now, what were you doing at Florida, at that time, Mr. Fischer? A. Straightening out after the hurricane came there; I straightened out my holdings down there.

Q. Did you act as a real estate broker down there, during that time? A. I did, licensed.

Q. You were engaged in that business down there? A. Yes, sir.

Q. And then, after you got back from Florida, 20 in April, 1927, did you go to work for any one around here? A. I did not, sir.

Q. Were you working for any one at the time the lease was executed? A. I was.

Q. In November, 1927? A. No, sir.

Q. You were not? A. No, sir; I was not.

Q. When did you work for the Fiedler Corporation? A. Started in around about the middle of November.

Q. The middle of November, 1927? A. Yes, 30 sir.

Q. Did you do any work from April, 1927, to the time you went to work for the Fiedler Corporation? A. The only work I did was on the Childs lease.

Q. Now, you—the copies of the letters and telegrams that you sent, that I present here, are all the correspondence that you directed towards Mr. Martin? A. Not all of it; no, sir.

40 Q. It is all that is available? A. No, sir.

Louis L. Fischer—Cross

Q. At the present time. Have you more?

Mr. Smith: I have it in the files.

A. As far as I see, I haven't seen it yet.

Q. Well, I will show it to you. Is that all the correspondence you directed to Mr. Levinson— 10
Mr. Martin, while you were in Florida? A. It is all that I have unless Mr. Smith has any more.

Mr. Smith: I have one other letter, Mr. Yauch, merely corroborative of the general situation.

The Court: Well, introduce it. Do you want that in?

Mr. Yauch: I don't care about it. I was just looking for letters from Mr. Fischer. 20
(Letter read.)

The Court: Put that in evidence.

(Letter marked Exhibit C-11 in evidence.)

Q. You say you introduced Mr. Levinson to Mr. Martin? A. I did, sir.

Q. You never met Mr. Levinson before that occasion, did you? A. No, sir.

Q. How did you know of the availability of 30
Levinson's property for the purpose of the Child lease? A. I think I told you before, one of my relatives owned that—the restaurant—one time. I went in there, after I knew they were out, and I knew the worry they had in there, which was running the restaurant, which was only more or less—either a month to month tenant or very shortly his lease would expire, so I went to the proprietor of the restaurant first. 40

Louis L. Fischer—Cross

Q. Did you make any promise to Mr. McDermott to pay him any compensation for what efforts he might—(interrupted). A. It was generally agreed, yes, that Mr. McDermott should get something. We were using his office, his tele-
10 phone.

Q. Now, were there any other individuals or partnerships or corporations that acted as broker or assisted in acting as broker in this matter? A. Not to my knowledge, sir.

Q. You are quite certain of that? A. Mr. Martin wrote me a letter and assured me no one else was in.

20 The Court: Is that letter in evidence?

Mr. Yauch: Yes.

The Witness: Yes.

Q. Now, with respect to that letter, Mr. Fischer, Exhibit C-9, I believe it is— A. There is an Exhibit C-9—

Q. —didn't that statement, as contained in the first paragraph, refer to the matters dealing with one Bradley? A. No. It says, "In regard to the Ellsworth deal"—which I certainly knew was
30 the Ellsworth Childs deal—"everything points to a closing before long. No one had anything to do with the deal outside of yourself."

Q. Didn't you write to Mr. Martin about one Bradley, down in Trenton, a real estate broker? A. I wrote to Mr. Martin in regard to having his license transferred, if—Mr. Bradley's name was mentioned because he is head of the Real Estate Board.

40 The Court: Let me see that letter.

Louis L. Fischer—Cross

Q. Wasn't this letter, Exhibit C-9, in answer to a letter that you wrote to Mr. Martin, that was in answer to this letter of Martin's, Exhibit C-8?

A. I don't just get that.

Q. I say, wasn't that letter, Exhibit C-9— A. Yes. 10

Q. —an answer by Martin to a letter that he had received from you, after you received Exhibit C-8, Martin's letter? A. The only way I can back it up is by the date, February 21, 1927, and C-9 is March 21, 1927.

Q. You answered the question. A. That is the way I received that, the way it is dated.

Q. I didn't ask you that question.

Mr. Smith: I did not quite get the question. 20

Q. Referring to Bradley—mentioned in Exhibit C-8—(interrupted). A. Well, I mentioned nothing of Bradley in my letters, I don't think.

Q. That is, Martin's letter? A. Yes.

Q. When you learned of Bradley being in on this deal, didn't you caution Mr. Martin against getting any one in on the deal and wasn't this an answer to that letter? A. I don't recognize Mr. Bradley on the deal at all. I don't know that he was. I don't think he was. I know he was not, because the caution was not to allow any one in on it. 30

Q. But didn't that caution come from you after receiving this letter referring to Bradley, the letter Exhibit C-8? A. My cautions are all in there in regard to this real estate license, only. If Mr. Bradley's name is involved in it, it is because he 40

Louis L. Fischer—Cross

is President of the Real Estate Board of the State of New Jersey.

The Court: Let me see Exhibit C-8. Let me read that.

10 Q. Didn't you write back to Mr. Martin and tell him not to have anything to do with Mr. Bradley?

The Court: I don't see anything about Bradley in this.

Mr. Yauch: Bradley?

The Court: No. Where does it say—

(Mr. Yauch indicates to the Court on Exhibit C-8.)

20 The Court: Oh, yes. That doesn't show that Bradley has anything to do with this brokerage.

Mr. Yauch: I am trying to explain the statement made in Exhibit C-9: "There is no one in on the deal."

Q. Didn't you caution Mr. Martin not to have anything to do with Bradley? A. I cautioned him not to have anything to do with any one.

30 Q. And then you received that letter from Mr. Martin, C-9, later? A. I got that on March 21st; yes, sir.

Q. You have been quite intimate with Mr. Martin for a number of years, haven't you? A. I have, sir.

Q. And he has confided other business to you before, hasn't he? A. No, not any business deals, outside of what he is doing, like one man would talk to another.

40

Louis L. Fischer—Cross

Q. For instance, if you were—

The Court: No. Have you had any—
(interrupted).

Mr. Yauch: I withdraw that.

The Court: All right.

Mr. Yauch: Was the Court going to ask 10
a question?

The Court: No, I was not.

Q. Well, you discussed back and forth whatever
business matters that you had current, didn't
you? A. Mr. Martin may have asked my advice
on things, but what they were I don't recall.

Q. I didn't ask you that. But I mean, you did
that, you both of you did that, prior to this time? 20

A. No, sir; not prior to this time; no, sir.

Q. You did not? A. I had known Mr. Martin
off and on and then Mr. Martin came to me and
our friendship ripened a little bit closer, due to
the fact we did start in on this deal. Prior to
this time, Mr. Martin never lived at my house,
nor do I think he ever stayed at my house all
night prior to the opening of negotiations for this
lease; then he became a week-end visitor for the
purpose of talking business. 30

Q. You have known him about sixteen years?
A. Yes, sir.

Q. Did Mr. Martin actually mention the agree-
ment of 50-50? A. Yes, sir.

Q. You are certain of that? A. Yes.

Q. You are certain he didn't say that he would
see that you were properly compensated for what-
ever you did in the matter? A. No, sir.

Q. Who prepared the report that is in evidence? 40
A. Mr. Martin himself, or his stenographer. I

Louis L. Fischer—Cross

gave the data for the report, I assembled the data, as it states on there. I didn't do it.

Q. Where did you get the data? A. These were turned over to me by Mr. Martin.

10 Q. Where did you get the data? A. The data from the tax office in Trenton and also my knowledge of front foot value in Trenton.

Q. Are you familiar with valucs in Trenton? A. I think so. I own property within 300 feet of it.

Q. Do you know what this property was worth a front foot at the time? A. I think so.

Q. And what is your—(interrupted). A. Ten thousand—

20 The Court: Well, I don't think it is necessary.

Mr. Yauch: My only object in that is, the complainant claims, by virtue of his knowledge of the conditions at Trenton—his knowledge of the real estate market down there—that he was a valuable man to Martin.

The Court: All right. Go on.

30 Mr. Yauch: That is all.

The Court: Go on.

Q. What was your estimate? A. Ten thousand a front foot.

Q. That is, of the property in question, which was leased? A. No, sir. That is my property. You asked me how I valued my property.

Q. Referring to the property that was leased, what would you say that it worth a front foot?

40 A. A front foot, I would say it ran around—right now or when did you want it?

Louis L. Fischer—Cross

Q. At the time of the closing of the lease. A. The adjoining property was purchased, I think, for \$7,500 a front foot.

Q. Do you know what property is worth on North Broad Street? A. North Broad?

Q. Directly around the corner from East State Street. A. I would say, offhand—at what time? 10

Q. As of the time of this transaction. A. As of the time of this transaction, you are speaking? I would average it around about six—between—let's see; I should say she run about \$4,000 a front foot, between four and five, varying there.

Q. You say the property you are interested in, which is near the corner of North Broad and East State Streets, is worth about \$10,000? A. I 20 wouldn't take \$10,000 for it, of course.

Q. Well, is that your opinion as to what it is worth? A. No. My opinion of what it is worth is above that.

Q. As a real estate expert, is that your opinion? A. At that time? Yes, when we negotiating that lease, over a year ago, I would say around \$10,000.

Q. Now, what is your idea as to per front foot value of land on North Warren Street, around the corner from East State Street? A. I personally 30 wouldn't give you any more than—there has been by the rentals in there—there are plenty of stores that haven't been rented for years. I wouldn't give you \$3,000 a front foot for it.

Q. What is your opinion as to what it is worth, as a real estate broker? A. Well, we will say, an appraisal, as an appraiser, would appraise it, 40 \$3,000.

Louis L. Fischer—Cross

Q. When did you first talk of the Levinson property to Mr. Martin? A. When we came into Mr. McDermott's office.

Q. You had already seen it? A. Many times.

10 Q. At that time? A. Sir, I had been in it.

Q. With Martin, I mean. A. Oh.

Q. You and Martin had already been to it earlier, hadn't you, before you went to McDermott's office? A. Whether we went just prior, before going up in Levinson's elevator, or before—it is not clear; but it was that day, the day we made the trip over there.

20 Q. Isn't it a fact that you and Martin went to the property, before you went to McDermott's office? A. I wouldn't say on my memory that we did or did not. I told you as near as I can get to that, either before we went up in the elevator or came down. The difference would not be a half an hour, but it was at my suggestion that we went to the property.

Q. Wasn't there a big sign on the property that made it evident it was available for renting purposes? A. Not that I recall; no, sir. Except one-half—I will modify that statement.

30 Q. All right. A. One-half of it was not occupied and there may have been—the Western Union used to be in there and I think there was a—had a big store in there and it was a from month to month tenancy; that I couldn't tell, because it was landlord and tenant.

Q. There was no sign? A. No, there was no sign in the restaurant part where we went in.

40 Q. How many times did you actually see Mr. Levinson in connection with this deal? A. I

Louis L. Fischer—Cross

guess I saw Mr. Levinson about a dozen times, prior to my leaving for the South.

Q. A dozen times? A. No, I beg your pardon. I take it back. Around about seven or eight. That is a correction purely by my memory I am checking. 10

Q. All right. Now, that was before you went South? A. Yes, sir.

Q. Now, after you came back, in April, 1927, how many times did you see Mr. Levinson up to the time the deal was closed? A. I saw Mr. Levinson once. It was at Mr. Martin's suggestion that I not see Mr. Levinson.

Q. Will you tell me what you did to further the matter of closing this lease, after you came back from down South? A. Mr. Martin was continually—as per our original agreement, sir, which was that I was to act in an advisory capacity, inasmuch as I had real estate experience, he came to my house, and every move that was made toward the consummation of this lease, I was informed of immediately either by telephone or personal call, verified by the fact that Mr. Martin came to my house practically every week-end and stayed. One time, near the end, when things looked as though they were going to close, he stayed to my house close to a week. 20 30

Q. What is your experience as a real estate broker? A. What do you mean?

Q. How many years does it cover? A. I have been in the real estate business, I guess, about six or seven years. Prior to that, I bought and sold.

Q. Do you know how long Mr. Martin has been in the business? A. I couldn't say. To the best 40

Louis L. Fischer—Cross

of my knowledge, I think Mr. Martin—no, I don't know. I don't know how long.

Q. He has been in it longer than that, hasn't he? A. I don't think so.

10 Q. You don't think he has been in it more than six or seven years? A. I think he was in the dry goods business. To be accurate with you, I couldn't tell you just exactly what his experience has been that way, the matter of time.

Q. Well, did you do anything in an active manner, outside of consulting with Martin, towards closing this deal with Childs of the lease? A. I went down and took a look at the property, figuring out just about what they would figure on it,
20 inasmuch as I had had experience in leases and I had leased my own property, and I knew just about what there was demanded as to street lines and the like of that, and prior to that, in an advisory capacity, upon Mr. Martin's suggestion, solely. He said, "Lou, I can handle this deal better alone; the people have become accustomed to me, and" he said, "I can get along fine now. All I want you to do is to stand back and figure this thing for me."

30 Q. How old are you? A. Thirty-two years old, sir.

Q. And what experience have you had as to leases? A. Leases? I just consummated—

Q. I mean, up to the time of this transaction? A. Eh?

Q. I mean, up to the time of this transaction, nothing since. A. Well, I had leased my own properties; I had consummated a lease just prior
40 to that; I had sold, I guess, close to about—

Louis L. Fischer—Cross

Q. Will you be particular and tell us what leases they were? A. The lease was one on East State Street. I will give you the right number. I think it is 9080 State.

Q. Whose property is that? A. That is the Estate of Adam Fischer. 10

Q. That is your property? A. Not my property; no, sir.

Q. Where is your property? A. 103 and 105 East State Street.

Q. Any other properties that you leased, outside of those two? A. Sold a property at 121 Broad Street.

Q. I am talking about leases, Mr. Fischer? A. Leases? I was active in leasing, inasmuch as I had something to do with the Estate's affairs—I was active in the leasing of 103-105 East State Street; my father being dead, I naturally represented—only women in the family, I was their representative. 20

Q. That is your property you refer to? A. That is in that lease, yes.

Q. And you have told us about the Adam Fischer Estate property and your property. Now, are there any others? A. In Trenton? You want to stick to Trenton? 30

Q. In Trenton or Newark or anywhere. A. All right. I just closed a deal here, corner of Broad and Market Streets.

Q. You know as well as I do that I did not ask for that. A. All right, sir.

Q. I want your experience up until the time of this deal. Anything else? A. Any question of the leasing, I believe you have referred to there? 40

Louis L. Fischer—Cross

Q. To leases. A. Yes—no.

Q. You never took the leases—left them in third parties, as a matter of business in which you were not interested personally— A. I had a personal interest in every one, sir.

10 Q. And you did not put any leases through, other than those you had a personal interest in? A. In Trenton, N. J., I put through close to about—

Q. I am talking about the time prior to the— A. Yes, I am sticking to that subject. Our leases, in Miami run ninety-nine years. I leased right next to 123 East Flagler Street, Miami—

20 Q. I am talking about New Jersey. A. All right, sir. No, sir. Then that is all.

Q. And all that Mr. Martin asked you to do in this deal was to act in an advisory capacity to him, because of your experience in the leasing of that? A. He asked me to go to work on the deal, which I did do.

30 Q. What actual work did you do? A. First of all, I took that because of my experience there in Trenton; I knew what my accounts were; I knew just exactly how a corporation acts. I had a—I leased L. S. Crossin, and they were in a long process of sitting and waiting; they wait you out. We had leases on the Adam Fischer Estate. Leases on the United Cigars, Judge Warren; and it was the same old thing; they waited for you to come and when they do not move, you finally go in to them. I had the Adam Fischer Estate leased solely to the Neady Company and the heirs of the estate refused to operate because they did
40 not want that type in there, and that was a long process of waiting.

Louis L. Fischer—Cross

Q. You have not told me yet. I will ask you again; what actual work did you do? A. All right, sir. I went with Mr. Martin down and introduced him to Mr. Levinson. I picked out a lease which, to my knowledge—

Q. You picked out what? A. This site. 10

Q. The Levinson site? A. I picked out the Levinson site down there.

Q. Did you pick out that site? A. Yes, sir.

Q. All right. Go ahead. A. Picked out that site. Went down—went down to Mr. Lavinson and introduced myself to Mr. Lavinson and introduced Mr. Martin to him. We operated up until the time I went down South and before I left, I saw that we had seen the three properties were submitted to Mr. Lavinson, in regard to what he was to take. I went to Mr. Lavinson, and at this time Mr. Lavinson—well, at this time Mr. Lavinson, we went down there and started to figure out these three propositions, to see which would be the best deal. Mr. Martin— 20

Q. With Mr. Lavinson? A. With Mr. Lavinson, down in the New Jersey Shoe Co., which is his wholesale store; and we sat there—

Q. Pardon me. What three propositions do you refer to in your testimony? A. There is a letter—there were letters; the exact figures I do not know, but they all came to the same conclusion— 30

Q. You mean, with reference to the Lavinson property? A. Yes, sir. So these three propositions that were submitted to Lavinson, we sat there and worked with pencil and paper. I worked with Mr. Lavinson as to which would be 40

Louis L. Fischer—Cross

the better deal, and we came to the same deductions, and worked with pencil and paper. I don't think Mr. Martin took part in that negotiation.

Q. He was there? A. Yes, but he did not figure. And we came to the same conclusion, that
 10 he was getting the same thing in the end. So he said one was as good as another, it was just a question of getting the lease sooner or later.

Q. Was there anything else you did actively? A. Outside of when I came back; just asked Mr. Lavinson how things were going, and what we could do. And I told him we would have to wait, just as I always found, for a big corporation.

Q. It was true, to the time you went South,
 20 the proposition was inactive? A. I wouldn't say so. Childs had submitted three propositions.

Q. Is that the reason you went South? A. It slowed down to the point where it was a process of waiting. The bids had been submitted and I said to Martin: "Let them soak now. Now is the time," which had been my experience with these big corporations.

Q. What figures were discussed in the matter
 30 of those three propositions that you have referred to? A. That is a little bit too much. That is a tax on my memory, to know what they were.

The Court: I can't see, for the life of me, what difference the figures of the other two properties make—even what the figures are—on this. It is admitted that there was a commission of \$14,000. That is all you are disputing about. I can't see what

Louis L. Fischer—Cross

the figures of other two properties have to do with it.

(Discussion.)

The Court: Go ahead. And cumber the record as far as you want to. 10

Q. Did you have any negotiations with the Childs interests at all in connection with this matter? A. No, sir; outside of through Mr. Martin, who had an entree there, he said.

Q. You didn't see him there at all, did you? A. No, sir.

Q. Did you have any communications with Mr. Lavinson or any other owner of this property on which the lease was closed? A. No, sir. 20

Q. Mr. Martin had all that? A. Yes, sir.

Q. Work to be done? A. Yes, sir. It was turned over to me, though.

Q. Mr. Fischer, if this deal had not gone through, did you expect to pay half the cost that Mr. Martin—

The Court: No, no.

Q. —would bear? 30

The Court: No, I won't allow that.

Q. Was there any agreement as to the expenses that might be incurred in this transaction? A. No, sir.

Mr. Smith: I don't think that has any bearing, your Honor.

The Court: I will sustain the objection.

Mr. Yauch: That is all. 40

Simon H. Lavinson—Direct

SIMON H. LAVINSON, sworn for complainant, testified as follows:

Direct-examination by Mr. Smith:

Q. Mr. Lavinson, what is your business? A.
10 Retail and wholesale shoe business.

Q. Where is your business? A. At Broad and Front.

Q. Did you, with Aaron Rosenblatt—

The Court: Trenton?

The Witness: Yes.

Q. Did you, with one Aaron Rosenblatt—on the premises 12 and 14 East State Street, Trenton? A. Yes, sir.
20

Q. Did you, on October 20, 1927, make or enter into a broker's agreement with John V. Martin for the payment of commission for negotiating a lease of this premises to the Childs Company?

A. What date?

Q. October 20, 1927.

Mr. Yauch: There is no dispute there was a lease executed.

Mr. Smith: I merely prove it because it is denied in the answer.
30

A. Twentieth day of October.

Mr. Smith: I will offer it. May I have that.

Q. And thereafter, on—

The Court: Do you want it marked?

Mr. Smith: Yes.

40 (Agreement marked Exhibit C-12 in evidence.)

Simon H. Lavinson—Direct

Q. On November 15, 1927, did you execute a lease of those premises with the Childs Company, in New York? A. 15th day of November, 1927.

Q. And was that lease drawn for the term and in accordance with the provisions of the broker's agreement? A. Yes. 10

Q. For the term of 29½ years, at a certain rate? A. Yes, sir.

The Court: Let it be marked and given back to Mr. Lavinson.

(Paper marked Exhibit C-13.)

Q. And on November 15, 1927, in the City of New York, did you pay to the defendant, John V. Martin, a check of \$14,160? A. November 15, 20 1927; yes, sir.

Mr. Smith: May I see that check?

The Court: Let that be marked.

Q. And what was that check for?

(Check marked Exhibit C-14.)

A. For commission on the leasing of Childs—of the property that Childs—the company.

Q. In July, 1926, did Fischer call on you with Mr. Martin to discuss the leasing of the premises? A. I can't give you the exact date. I can only refer to my files to see. 30

Q. The latter part of July, 1926. A. Well, the first letter that I have coming from the Childs Company, addressed to Mr. Martin, is October 13, 1926.

Q. I asked if Mr. Fischer called on you with Mr. Martin in July, 1926? A. Well, I don't re- 40

Simon H. Lavinson—Direct

member the exact month. It must have been prior.

The Court: Did these two men call on you?

The Witness: Yes, they did.

10 Q. And did they each discuss the question of leasing this premises with the Child Company?
A. Yes, sir.

Q. Did they tell you at that time who were the prospective lessees? A. I don't remember whether they told me on the first occasion or second.

20 Q. Well, on the second occasion did Mr. Fischer discuss this same matter with you? A. Well, in the presence of Mr. Martin at that time.

Q. In the presence of Mr. Martin? A. Yes.

Q. And about how long after the first occasion was this? A. Well, I couldn't exactly tell you. I can tell you, probably, about how many visits they made together.

30 Q. About how many visits did they make together, please? A. Well, I would say that Mr. Martin and Mr. Fischer were in three or four times.

Q. In—after July, 1926, and in the fall of 1927?
A. No, I would say up—that is, together, they saw me three or four times on the entire leasing.

40 Q. Did you see Mr. Martin during the interval between January, 1927, and April? A. I saw Mr. Martin from the first time that they both saw me up to the time we consummated the lease, on an average of at least once a week or more than that.

Simon H. Lavinson—Direct

Q. Where? A. At Trenton.

Q. Did you see Mr. Fischer at any time, between the spring of 1927 and the conclusion or the execution of the lease? A. Mister—this is only what I know, Mr. Fischer went to Florida and upon his return from Florida he stopped in on one or two occasions. 10

Q. And was his discussion with you, at that time, always with respect to this lease? A. Well, he simply would ask: "How are matters going," or words to that effect.

Q. During the interval of January and the time that Mr. Fischer returned from Florida, what actually was done to further the concluding of this lease; what actually was done with Mr. Martin? 20

A. What date was that?

Q. Between January, 1927, and the time Mr. Fischer returned from Florida, was there much activity on the matter of this lease, during that time? A. Well, I can't recall the exact date. I could if I could refer to my letters.

Q. I don't want the exact date. I want to know whether there was any activity? A. There was a time when the proposition lay dormant.

Q. Was that the time? A. I don't know the exact time. 30

Q. It was active when Mr. Fischer— A. If I can look at this correspondence, I can answer accurately.

Q. Between whom? A. The entire correspondence between the Childs Company, Mr. Martin and myself.

Q. I want any correspondence in relation to Mr. Fischer. A. I haven't any, to my knowledge. 40

Simon H. Lavinson—Direct

Q. Can you recall, without reference to the correspondence, what was done in between January and say June, 1927? A. I cannot recall that. I can only tell you that—

Q. Then, answer this—

10

The Court: Are there any letters between January and June, in that file?

The Witness: I would say, yes.

Mr. Smith: Do you want those letters introduced, your Honor.

The Court: No, because Martin's letters to Fischer claim he was working on that—

The Witness: Pardon me, your Honor. You mean in 1928; January, 1928?

20

Mr. Smith: No, 1927.

The Court: 1927.

The Witness: Oh, 1927.

Mr. Yauch: From January 1 to June.

The Witness: I have one letter here, January 24, 1927, and I have one here, March 30, 1927.

The Court: That is two.

The Witness: And I have one here, April 29, 1927.

30

The Court: That is three.

The Witness: April 30, 1927.

The Court: Four.

The Witness: May 4th.

The Court: Five.

The Witness: May 13th.

The Court: Six.

The Witness: May 18, May 19, 1923; June 4, June 15.

40

The Court: Well, that is about a dozen letters.

Simon H. Lavinson—Cross

Q. Those letters have reference to this transaction and stated the correspondence between you and Mr. Martin and Mr. Childs— A. Well, I would say, almost all of them.

Q. Probably. A. Almost all of them, because there might be a letter slipped in that does not belong to this transaction. 10

Q. Not more than a dozen letters over a period of three or four months?

The Witness: Your Honor—

The Court: A dozen letters, yes. I counted them.

Q. You testified that Mr. Fischer came to see you and talked about this matter with you, after he returned from Florida; and then in the summer of 1927 and extending into the fall, the matter became active, did it not? A. I really can't tell you the period of time, unless I look it up. As I said before, it was dormant and then for that period it got lively again. We livened it up. 20

Q. You knew that Mr. Fischer was associated with Mr. Martin? A. Only in respect of that coming in to meet me together.

Q. You dealt with them jointly, did you not, at that time? A. At that time, yes. 30

CROSS-EXAMINATION by Mr. Yauch:

Q. Is any of that correspondence you have there, Mr. Lavinson, with Fischer, the complainant in this case?

The Court: No. He said no.

A. In this—

Simon H. Lavinson—Cross

Q. Did you have any correspondence at all with him? A. Not to my knowledge.

Q. During the period from January, 1927, to June, 1927, Mr. Martin continued to come down to Trenton, didn't he? A. Mr. Martin was in
10 Trenton at all times, you might say, up till the deal was consummated.

Q. In reference to this particular matter? A. Yes.

Q. Did Mr. Fischer introduce you to—or introduce Mr. Martin to you? A. Well, I would say they both introduced themselves.

Q. They both walked in together? A. I can't just recall who introduced—

20 Q. Did you know Mr. Fischer, before that occasion? A. No.

Mr. Yauch: That is all.

The Court: That is all.

Mr. Yauch: I move to dismiss the complainant's bill of complaint, after his closing his case, because I do not think they have carried the burden of proof.

30 The Court: Do you want to make that motion? It precludes you from making a defense.

Mr. Yauch: If the Court won't permit me to do that—

The Court: That is the rule of the Court of Chancery; if you want to make a motion to dismiss, I will listen to it, but if I deny it, then you are precluded from putting in a defense.

40 Mr. Yauch: I think I will put the entire case in. I have only one witness.

The Court: We will take a recess for five minutes.

John V. Martin—Direct

DEFENDANT'S EVIDENCE.

JOHN V. MARTIN, sworn for defendant, testified as follows:

- Direct-examination by Mr. Yauch: 10
- Q. Mr. Martin, you are the defendant in this case? A. Yes, sir.
- Q. Were you in the real estate business, in November, 1927? A. Yes, sir.
- Q. And how long had you been in the real estate business, at that time? A. About two years.
- Q. And did you have any experience in the matter of effecting leases of properties? A. Only two prior to that. 20
- Q. Had you done any work for this company prior to that time? A. The Childs Company was the first lease I ever had anything to do with, the first real estate transaction, practically.
- Q. Prior to that time? A. Yes.
- Q. When did you start to work, start to do any work in the matter of the lease between the Childs Company and Lavinson and the other owner of that property? A. The first time anything tangible was begun was when I went over to New York and met Ellsworth Childs. He asked me what I was doing. I told him I was a broker for myself. He said, "Martin, I think we are in the market for a location in Trenton. Go down and get some location." That was around September or October. 30
- Q. 1926? A. 1926. And that is when I went down in Trenton; that is when the transaction started. 40

John V. Martin—Direct

Q. And then what did you do right after that in connection with this matter? A. Oh, we just went down there. Here is how—Vice Chancellor, I want to—this is the first time I have ever been in Court.

10 Q. Don't offer any explanation. A. I want to tell the whole story.

The Court: Answer the questions of your Counsel. That is sufficient.

Q. Tell me what you did, from that time on, in connection with this matter. A. Why, I called up Fischer and told Fischer to meet me at Trenton. When Fischer met me down there in Trenton, we looked—we went around the main thoroughfares and we looked at three properties; one of them was the property where the deal was closed. They had two other properties around on North Broad Street and one on West Broad Street. We then went over to McDermott. He said he had a friend over there in McDermott's office. And we went over to see Mr. McDermott, and then from there we went to see Lavinson, which we found out was the property. The property in question had a very big sign on it: "For
20 Lease," and it was common knowledge to everybody in town, every real estate broker.

Mr. Smith: I object to that.

The Court: Strike it out.

The Witness: Then we—we went—Fischer went to Lavinson just on three occasions, that is all. Then he immediately—

40 The Court: Strike it out. You don't know how many times he went.

John V. Martin—Direct

Q. You were with him? A. He went with me two times.

The Court: Three times. Very well, that is all right.

The Witness: Yes. And after that he went 10
down to Florida. We were very friendly, we
made a lot of—I wrote him letters, which were all
friendly letters—nothing really pertaining to the
transaction or the deal, other than I thought he
was interested. He was interested in a couple of
pieces of property down there. Very friendly
—just merely told him how the thing was getting
along. But in the meantime, I was going down
to see Lavinson on an average of once a week. 20
One week I think I went down there four times
to see him. And the discussion—the deal started
in 1926, in September, and was completed in No-
vember, the 14th; that is when the deal was closed
and all in between this time Fischer never did
anything to help me. He was down in Florida.
And when he came back, he went down to the
seashore and he stayed down at the seashore until
September. He immediately came up in Decem- 30
ber and went to work for the Fiedler Corpora-
tion. The deal was very active, at that time, be-
tween August and September—until November,
the deal was very active. He came back and went
to work for Fiedler, outside of meeting him there
on it and having lunch with him and just merely
casually saying, “How is the deal getting along?”
I just mentioned, with a casual nod. After the
whole transaction was over with, I said, “Lou,
how much do I owe you on this?” I went to Lou 40

John V. Martin—Direct

and asked him how much I owed him on the transaction for his work. I asked him to help me when we first started out and he was of a little assistance to me the first couple of times we went down there. So he said, "Well, I am leaving it up to you." So it put me in a rather embarrassing position. I went around and asked a few of my friends, four or five of them—I said, "What do you think Fischer is entitled to on the transaction?"

The Court: No.

Q. Just what did you offer him and what happened? A. I offered him \$750 and he got very, very resentful, because I offered him that; and he said, "I am not going"—I said, "Why, Lou, that is a lot of money." I said, "You are not down in Miami where they are making all these millions and trillions." I said, "This is real money." I said, "You only put in about two days' work." I said, "What else have you done?" So then there was a little bone of contention, we let it go at the time, and then about, I think, three or four weeks later, he came around and he said, "Jack, I want some money." I said, "I am not holding up your money." I said, "You can have your money." And I said, "I will give you 750." He said, "I think I am entitled to more." I said, "You can tell me where you are entitled to more, and I will give it to you." So one day he came over to my new office and I was a little bit worried about the whole thing and wanted to clear it up and he said, "Jack, I want this money and want it cleared up." I said, "All right, Lou; I will

John V. Martin—Direct

give you a thousand dollars and let's forget about this." So he sits down with a pencil and paper and he said, "Well, I ought to get \$1,500." "Well," I said, "You are not entitled to it and I am not going to give it to you." So then I said, "Now, you think it over and think what you done 10 to earn your money." I said, "I am not making any sharp bargain with you or trying to cheat you out of your money." I said, "I am willing to pay you." I said, "If it wasn't for friendship, I wouldn't give you over \$250 for what you did." So then we met about two weeks later and he said, "Jack, I want a couple of hundred dollars." I said, "All right. You can have it." So the check he shows here was the check I made out, and I 20 left it at the battery station, 56 William Street, and it laid there about three weeks. So he calls me up on the telephone and he says, "Jack, I want a couple of hundred." I said, "Come on over and get it." I said, "There is a check waiting here for you," so he came over there; I gave him the envelope, which was sealed—it was left there about three weeks; he opened it up and said, "I want 500." "Well," I said, "Now, Lou, you asked for this couple of hundred," I said, "It has 30 been laying here three weeks for you," I said, "You didn't seem to be worried about it." "Well," he said, "I want more money and," he said, "If you aren't going to give me any more money, I want you to mark in this check 'This is a part of the commission.'" So I said, "All right. Let me have the check," and I destroyed the check and gave it back to him. So he gets 40 real mad about the whole thing. "Well," he

John V. Martin—Direct

said, "You are going to have the biggest law suit you ever had." I said, "Well, Lou, I am sorry about that, but I am not worried about it."

Q. All right. I would rather get down to the other facts. That was up to the end, wasn't it, up to the end of your negotiations? A. That was
10 after, yes—that was after the whole thing was—

Q. Yes. A. —closed.

Q. You remember being at Mr. McDermott's office in Trenton? A. Yes, very clearly.

Q. And did you go to the Lavinson property before you went to McDermott's office? A. Yes, sir.

Q. And Mr. Fischer was with you? A. Yes.
20 In fact, we went to the three properties before we ever went to McDermott's office.

Q. Did you say, in the presence of Mr. McDermott and Mr. Fischer, at McDermott's office, words to the effect—or words that you would split 50-50 with Mr. Fischer, as to the commission? A. The only 50-50 basis that I ever spoke of at any time—I want this very clear—

Q. All right. Now, answer the question. A.
30 (Continuing) The only 50-50 that was ever discussed at all was in McDermott's office—that was discussed in McDermott's office was all joking and kidding about this Childs deal was going to be so much money in it we were all going to do this and that; and I said in the presence of Mr. Martin, "McDermott, I am splitting 50-50 with a New York broker, so don't think there is a lot of money in it," and they knew that very plainly. I told them that and I told Fischer even before we went
40 down to Trenton, before I met him in Trenton, I

John V. Martin—Direct

told him through my friendship with Ellsworth Childs I was getting this proposition and I agreed to split 50-50 with them, that I had that gentlemen's agreement with them.

Q. And did you say anything as to that being the reason why you would not take him in on the commission on that deal? A. I told him as far as anybody else getting any money, there would not be any money in it for me. I told him—I said, "I will take care of you for what you did and pay you for it," I said, "But don't think you are going to get all the money, because I got to split 50-50 with Ellsworth Childs." 10

Q. All right. Now, referring to the conversation that you had with Mr. Bratsch at the time you were riding up from Princeton to Mr. Fischer's home in Belmar; did you tell Mr. Bratsch that you were in on the deal—that Lou was in on the deal with you, that Trenton deal? A. The way I remember the whole conversation with Mr. Bratsch was this: I never met Mr. Bratsch in my life. Lou told me he was going down to Princeton for the Princeton game and asked me if I would meet him and take him over to Belmar. I told him I would be glad to. We got in the automobile and talked about the game; we talked about Florida real estate; we talked of other things— 20 30

Mr. Smith: If your Honor please, that is not an answer.

Q. Just answer the question. We want to get through by four o'clock, if we can. Did you say to Mr. Bratsch that Lou was in on the deal with you and that you wanted to— A. Emphatically no. 40

John V. Martin—Direct

Q. —split; you were going to split? A. No, never said I was going to split; never said he will have any interest in the commission or anything.

10 Q. Did you tell Miss Fischer, Miss Ruth Fischer, that you were going to split the commission with Lou, Mr. Fischer? A. We never had any conversation—

The Court: Just say yes or no.

The Witness: No.

Q. Did you call up Miss Fischer or did you call up Mr. Fischer at his Belmar home on numerous occasions, making appointments with Mr. Fischer
20 to meet him in Trenton or Newark or other places, with reference to this deal, the Trenton deal? A. I only called up Mr. Lou Fischer's house twice and left word that he should meet me in Trenton, that is all.

Q. I mean, you mean you called up twice with reference to this deal? A. In this particular deal, and left word he should meet me at Trenton. On another occasion I specifically told Miss Ruth Fischer that I wanted him to go with me to talk
30 to Lavinson.

Q. Now, who prepared the broker's agreement that is in evidence? A. Mr. Smith prepared it.

Q. And how did Mr. Smith get into the case? A. He was a personal friend of Lou Fischer's and, not having an attorney and never having any work of this sort, he suggested that I go to Mr. Smith, and upon his suggestion I went there.

Q. Now, did Mr. Smith render a bill for the
40 services that he rendered? A. Yes, he did.

John V. Martin—Direct

Q. Who was the bill rendered to?

Mr. Smith: I object. It has nothing whatever to do with it.

The Court: I will let him state who the bill was rendered to.

Mr. Yauch: That is all I want to ask. 10

A. The bill was rendered to Lou Fischer and Mr. Martin.

The Court: That is all.

Q. The first bill, I am talking about. A. What first bill?

Q. The bill for Mr. Smith's services. A. That is how it was rendered. 20

Q. It was rendered to you—

The Court: Oh, no.

Q. To Mr. Fischer and to you? A. Yes.

Q. Was there any change in that after the time it was rendered? A. No, no change at all.

Q. There was no change. Who paid the bill? A. I did.

Q. Well, out of what moneys was the bill paid? A. I paid it by check, \$90, I think. 30

Q. When did you pay it? A. Why, about a week or two after he sent it to me, I think; about three weeks. I don't know.

Mr. Smith: He can put the bill in evidence to prove the date.

The Court: I don't think that is important. He has admitted that the bill was to both of them. 40

John V. Martin—Direct

Q. The bill for Mr. Smith's services was to both you and Fischer?

The Court: Yes.

Q. All right. Who did all the negotiating with
10 the Childs interests, in reference to this matter?

A. John V. Martin did all the negotiating—no one else.

Q. And did Mr. Fischer do anything in an active manner, outside of those three or four visits that you have referred to, when he was present with you at conferences with Levinson? A. He never did, except attend two meetings that I went to Lavinson.

20 Q. I show you carbon copies of telegrams and letters, appearing to be sent by Louis Fischer to yourself, and ask you to look at them. A. This particular wire here was sent—

Mr. Smith: I object.

Q. Never mind. Now, all right. Was there any other correspondence that you received from Mr. Fischer, while he was in Florida? A. He never wanted to answer my letters when I wrote
30 them.

Q. Answer my question. A. No, I never received any other correspondence.

Mr. Yauch: I offer these as one exhibit.
(Correspondence, etc., marked collectively as Exhibit D-1.)

John V. Martin—Cross

CROSS-EXAMINATION by Mr. Smith:

Q. You heard Miss Fischer testify that you talked to her about this matter when you were at her residence in Belmar? A. Once again, please.

Q. You heard Miss Fischer testify that you talked to her about this matter when you were at her residence in Belmar? A. I heard her testify that we talked about it. We did not talk about it. 10

Q. Did you speak to her, as she testified? A. No, not as she testified.

Q. Her testimony is not correct? A. No.

Q. You heard Mr. Bratsch testify that you discussed this matter with him on the ride from Princeton to Belmar? A. And his testimony is absolutely incorrect. 20

Q. All right. And you heard Mr. Lavinson testify that Mr. Fischer came to Trenton with you on four or five occasions, after July, 1926. Is that right? A. Well, the dates are wrong.

Q. I didn't ask you that. I didn't mention any dates. A. I understand Mr. Lavinson to say we went down there, exactly—to be precise and accurate—on three occasions.

Q. Is that right? A. If Mr. Lavinson said four, three or four, that is perfectly all right, but we went three times. 30

Q. You said three times? A. Yes, sir—together; that is all we did.

Q. And you heard Mr. McDermott state that when you came to his office that you discussed the matter with him and that Mr. Fischer told him, in your presence, it was a 50-50 agreement. Is that correct? A. No.

Q. That all is not correct? A. No, it is not correct. 40

John V. Martin—Cross

The Court: What did you say?

The Witness: The 50-50 agreement was in talking—

Q. You said something about a 50-50 agree-
10 ment. A. I told him that I was splitting with
Ellsworth Childs, the New York broker, on a 50-
50 basis.

The Court: All right.

The Witness: That is exactly what I said.

Q. Did you mention the name "Childs" on that occasion? A. Yes, sir.

Q. The first occasion? A. Yes, sir.

20 Q. Did you tell him how much you were going to pay him? A. No, sir; I didn't know how much I had to pay him.

Q. Why did you go to Mr. Fischer in the first instance and ask him to help you on this deal?

A. I went to him because he was supposed to know Trenton; he lived in Trenton.

Q. What did you say when you went to him?

30 A. I said, "Lou, I think I can make a deal with Childs down at Trenton. Come down and give me a lift, and get some properties down there."

Q. What did he say? A. He said, "All right. I will meet you down there."

Q. What was said about division of profits?

A. No division at all. I told him emphatically I had already an agreement with Ellsworth Childs to split 50-50.

Q. When did you tell him that? A. Before we
40 went to Trenton.

Q. Why did you tell him that? A. Because he

John V. Martin—Cross

wanted to know—that is why we are in Court today. He wants more money than I got.

Q. All right. I don't want you to answer that. Do you know what Mr. Fischer expected to get from you?

The Court: No.

10

A. No.

Mr. Smith: I will withdraw the question.

Q. When you came to my office in 1927 to draw this broker's agreement, do you remember what you told me? A. Yes, distinctly.

Mr. Yauch: I—

The Witness: Yes. Excuse me. All right, go ahead.

20

Mr. Yauch: I withdraw it.

Q. The first time you came, were you with Mr. Fischer?

Mr. Yauch: I don't know that we ought to go into this. I don't think the witness is called upon to do it. I think we ought to cut it short. This is confidential.

The Court: Apparently you were his counsel.

30

Mr. Smith: Your honor please, on motion to strike out the answer filed in this proceeding, I prepared an affidavit of the facts that transpired in the presence of Mr. Fischer and—

The Court: Well, you represented both of these men, there is no question about that.

Mr. Smith: At one time I did, but now there is litigation between them.

The Court: Well, you cannot go back on one and side with the other. That is a confidential

40

Discussion

communication. There is no question about it. Anything he may have said to you in his office, you cannot—

Mr. Smith: In the presence of Fischer?

The Court: No. It doesn't make any difference.

10 Of course, if he is willing to waive it, that is a different matter.

Mr. Yauch: I object to it.

Mr. Smith: I withdraw the question.

The Court: Have you anything further?

Mr. Smith: No, because, if your Honor please, on direct-examination of this witness, counsel for the defendant has proceeded in drawing out a categorical denial of all the evidence on the plain-
20 tiff's side. I have no further examination.

The Court: It seems to be quite clear there was an agreement as to commission, and there is no question about that, and I understand the prayer of the bill is for an accounting.

Mr. Smith: This is, in effect, a final hearing on a motion to strike out the answer, according to the order made by Vice Chancellor Backes.

The Court: I know, but I, on final hearing, ordered a final accounting; I have heard it on bill
30 and answer.

Mr. Yauch: Surely the Court has not heard anything about expenses or disbursements.

Mr. Smith: That is a question of accounting. I presume the Court would either hear the testimony or refer it to a Master.

The Court: I will refer it to a Master.

Mr. Yauch: The only question I want to bring before the Court's attention, the Court has de-
40 cided there should be an accounting?

The Court: Yes.

Discussion

Mr. Yauch: Shall it be limited? I think the complainant has failed to establish by a fair interpretation of all the evidence, the testimony that is before the Court, that there was a 50-50 arrangement as to the fees.

The Court: No. I think there was. 10

Mr. Smith: On the contrary—

Mr. Yauch: When we consider that Mr. Fischer—the only active thing he did in the deal was to go to Mr. Lavinson's place of business, my client said, three times, Mr. Lavinson says three or four, and I think Mr. Fischer said seven or eight—(interrupted).

The Court: Well, now, Mr. Yauch, the situation, as I see it, is this: That Mr. Martin produced Mr. Ellsworth Childs, who wanted a place in Trenton, and Mr. Fischer produced a man. And that was just about 50-50. 20

Mr. Yauch: There was no testimony that he met him.

The Court: Mr. Lavinson said these two men came to him together. Now, he is a perfectly impartial man. This man said, "I got Ellsworth Childs." He admits he doesn't know anything about Trenton real estate. Here is this man Fischer, who owns property, lives there and knows all about it. He said, "I will go to Lavinson and tell him about this Childs property." One got the man that wanted the place and the other got the place for the man, and I think it is about 50-50. 30

I will refer it to Howard Isherwood, Esquire, Special Master, and it is to be divided on a 50-50 basis, but all expenses and all that sort of thing, must be brought out before the Special Master, so he can tell which half was to be charged and why. 40

EXHIBIT C-1.

CITY Trenton, N. J.

LOCATION 12-14 E. State St.—Three stories

SIZE 35x110—Alley leading from Warren St.

10 LENGTH OF LEASE selling price of property
 \$250,000. Your own terms. \$15,000. first seven
 years, \$17,500.00. second seven years, \$21,000.
 third seven years, \$24,000. last nine years.

TERMS/

TAXES \$3420.70 yearly—\$3.16 per M.

INSURANCE \$25,000. carried on building and
 this sum would replace present building

20 PRICE PER FRONT FOOT Asking \$7,142.56
 per ft.

PRICE PER SQUARE FOOT \$62.3

ASSESSED VALUATION (LAND) \$103,000.

ASSESSED VALUATION (BUILDING) \$5,-
 250

ON WHAT PERCENTAGE OF ACTUAL
 VALUE IS ASSESSMENT BASED? about
 30 75%

APPRAISAL VALUATION about \$240,000.

PRESENT INCOME AND VACANCIES
 ITEMIZED (BUILDING) \$400. a month under
 a ten year lease which was a trade out under the
 sale. The purchaser in consideration of reduced
 rent obtained the property at reduced price from
 restaurant man. Verified reported offer of West-
 40 ern Union \$7200. net for 15 years. But owner did
 not care to split frontage.

Exhibit C-1

PROBABLE INCOME (BUILDING) The lease was net to landlord.

OPERATING EXPENSES ITEMIZED (owner last year) Taxes \$3420.70 Repairs \$200.00 (estimated) Ins.

10

CONDITION OF BUILDING (Kind of Building, Location of Stairways, Elevator and Columns) old three story dwelling. A new front would need to be constructed for Childs use. Three ft. entrance to upper floors off State St. Present frontage divided 1/2 to restaurant 1/2 to Western Union Telegraph.

TRAFFIC COUNT

20

MORTGAGES or Other Encumbrances on Property \$47,000 first mortgage. Local bank with trust funds offers \$125,000 first and wants same.

REMARKS: (Including diagram and shape of lot with figures showing length of each line) The adjoining building recorded a noni fide sale four months ago 25x110 at \$7,000 a front foot.

1. Will only lease in its entirety.

2. Landlord lease this net.

30

3. Western Union has had 25 ft. front for past 7 years, wished a renewal but owner would not allow building to remain divided. Other 25 ft. has been occupied by a restaurant for 25 years (Stout's) and building has not had a vacant day in memory of local business men. Restaurant once occupied by entire frontage but owner three other business activities became embarrassed selling same to present owner and making as part

40

Exhibit C-2

of sale a 10 year lease at \$400.00 a month rental. Present owners sheets show same as being carried at a loss of \$2500.00 for past 4 years due to old lease expiring April 1st, 1927. But present holders will move out for very little. All figures quoted on lease are net, tenant paying taxes and repairs. Old lease was net to owner, hence no itemized operating sheet is attached. Full length cellar.

EXHIBIT C-2.**NEW JERSEY SHOE COMPANY**

20

Trenton, N. J.
October 26, 1926

Mr. J. V. Martin
56 William Street
Newark, New Jersey

Dear Sir:

30 With reference to Mr. E. Childs' letter of October 25, I regret very much to say that the proposition submitted by the Childs Company is very unfair. It is no secret, and I would appreciate it if you would ask the Childs Company to check up through their banking connections in New York City, the exact amount that has been paid for front footage on State Street. I am only basing my figures upon actual sales in the vicinity of my property. I cannot understand why only
40 two weeks ago they offered me \$175,000. for my

Exhibit C-2

property, and now they come back with a counter offer of \$150,000. This seems to be rather ridiculous.

In regard to the ninety-nine year lease, at \$9,000. I would have to be in the asylum to make this lease. 10

In the second paragraph of his letter, it seems as though he leaves a little room to work out something that may be advantageous to them and agreeable to myself. I am not desirous of putting up a building for the Childs Company, due to the fact that after I put a building up for them, it is of no use to any other business except the restaurant, and it would be like investing fifty or sixty thousand dollars that I could not possibly see any future returns on. However, I would appreciate your sending me plans and specifications of a building that the Childs Company feel as though they care to have on this property, and I will take it up with my architect and builder, and it is possible that I may be able to erect a building suitable to them, due to the fact that the building is in such shape that it could possibly be reconstructed to their ideas. 20 30

I am desirous of doing business with the Childs Co., but the proposition must be advantageous to both of us. I am only basing my figures, as I have stated before, on present market values, which they can verify through their New York banking interests.

I trust that you will be able to carry on your negotiations and arrive at a more favorable prop- 40

Exhibit C-2

osition from the Childs Company. If not, I will have to dismiss the idea of have the Childs Company on my property.

Very truly yours,

10

SHL:MBH

Dear Lou:

The contents of this letter were of my own desire. I thought possibly that your old boy friend Ellsworth may get down and work a little harder in order to make the deal. I am afraid
20 that he has his mind too much on the stock market, although he has not been able to catch on to the falling prices. Will see you either Thursday or Friday in Trenton. Working on a very big deal on Broad Street, in Newark, twenty-one year lease, at Fifty Thousand Dollars a year net. If I make this one, I am going to China for the rest of my life, to live in sweet comfort in the Oriental atmosphere, where money has no value.
30 Happy days.

JACK

EXHIBIT C-3.

December 17th, 1926.

Dear Lou:

Lavinson told me Monday that someone was in to see him in regard to your status on the Child's deal. He told them that you had nothing to do with it other than working through my office, that I was handling the whole thing. 10

I am still at 56 William Street, and have my name in the window very plainly on a cardboard J. V. MARTIN, REAL ESTATE BROKER, and a certificate of license on the wall. I believe this covers the Real Estate Board's rulings. The first of January I move into the Essex Building and have office space with a lawyer. Will notify the Board in a few days of my intentions to move. 20

The deal now looks better than it ever did since we were on it. The C Company have practically agreed to give Lavinson a straight rental of \$16,500.00 for thirty (30) years. He to advance \$60,000 toward a three (3) story building. You will remember that Lavinson agreed to put up the \$60,000.00 if Childs would give him a straight rental of \$16,500.00 so it now looks as though we are looking at the world thru rose colored glasses, everything looks rosy now. 30

I am making bookings now on the Berengaria to sail March 15th to tour all the Capitals of the European nations to sell them the idea that Childs should have a restaurant in each one for the American tourists so that they may have ham and eggs Ala Smith Biltmore. 40

Exhibit C-4

Have an appointment with Lavison Sunday, will write you Monday the outcome of the conference.

10 Give my regards to all the beautiful girls down South, and tell them very quietly that I am a comer with a Million Smackers and a lover of travel.

Happy days,

JACOB

EXHIBIT C-4.

20

WESTERN UNION

Received at 21-23 West Flagler Street, Miami, Flo.

1926 Dec 16 PM 927

NC 898 10 NITE NEWARK N. J. 16

30 2454

L. L. FISCHER

MIAMI SHORES CO 125 EAST FLAGHER
ST MIAMI FLO SIGNED IN WINDOW CON-
SPICOUSLY LISENCE ON WALL WRITING
MOVE FIRST

J. V. MARTIN

40

EXHIBIT C-5.

WESTERN UNION

Received at 21-23 West Flagler Street, Miami,
Flo.

1926 Dec 22 PM 9 40 10

C 6 42 25 NITE NEWARK NJ 22

2355

L L FISCHER,

MIAMI SHORES CO 125 EAST FLAGLER
ST MIAMI FLO. TALKING DRAWING
LEASE BUILDING ONLY OBSTACLE NOW 20
COPY OF YOUR UNITED OR KRESGE
LEASE WOULD HELP LAVISON AND DEAL
IF POSSIBLE LET ME A COPY.

J. V. MARTIN

EXHIBIT C-6.

THE ROBERT TREAT

Newark, New Jersey.

Dear Lou-

10

Building the only thing to be settled. Lavinson and Ellsworth to meet next week to talk it over and possibly it will be advanced a little further. Ellsworth told me today that he may go Europe with William around the twenty and he would like to have Trenton closed before he goes away. David Schulte your old boy friend leased for 10 yrs. Warren and State same side
20 as Lavinson building. Outside of that there is nothing new.

Let me hear from you.

Kind regards

JACK

EXHIBIT C-7.

THE ROBERT TREAT

Newark, New Jersey

Thursday

Dear Lou.

10

Deal now looks very good again. Conference today between Ellsworth and Lavinson was very satisfactory. Lavinson is to build the building and Ellsworth conceded him a few details which made Lavinson feel very good and today he was very joyous. Next month should bring the deal to a close. Lease is to be redrafted and submit to William for approval. The girl in the office 20 has pilot me thru the troublesome waters just wonderful. The last letter to Lavinson woke him up.

He has nothing else to do but make the deal. I am working very hard and believe I have worked it to a point of closing.

Weather here is very very COLD—no fooling either.

Hope this will find you well and happy Regards 30 to all.

Yours for Child always

MARTIN (SKY)

Dec. 30th, 1926.

40

EXHIBIT C-8.

JOHN V. MARTIN

REAL ESTATE

56 William Street

Newark, N. J.

10

Feb. 21st, 1927.

Dear Lou:

Please do not mention a word about the C Co. in regards to Trenton. Everything is now working very smoothly and the lease is being drawn and I believe they, meaning the C Co. will O.K. it. Something has turned up which is too long
 20 to write and I cannot tell you. Therefore, I will appreciate it very much if you will just keep the situation to yourself and if possible mislead anyone in regards to it in a diplomatic way.

I had quite a talk with Vincent Bradley last Thursday. Lavinson introducing him to me. Out of courtesy both to Lavinson and Bradley I told them I would give no information whatsoever out in regards to the C Co. coming to Trenton.
 30 Therefore, I ask you to keep secret with me which I know you will. Say nothing about the deal.

Kindest regards

JIM MOLANEY
 The Boston Strong Boy

40

EXHIBIT C-9.

JOHN V. MARTIN

New Address: #31 Clinton St.

Newark, N. J.

March 21st, 1927. 10

Dear Lou:

In regards to the Ellsworth deal, everything points to a closing before long. No other one had anything to do with the deal outside of yourself. On two or three occasions I received counsel from a fellow by the name of Nugent here in town who has had considerable experience in the business.

Bradley told Lavinson he would like to meet me, and Lavinson took me over and introduced me to him about a month ago. He was very pleasant and *codial*. Someone either told Lavinson or Bradley that my step-father was connected with the "Call" and that he knew the governor down in Trenton (Stokes) intimately, besides we both knew Kearney, the publisher of the paper, so I judge Bradley being a smart boy figured it would not be a bad idea to make my acquaintance and check out on the other proposition. Lavinson also took me in to meet Gov. Stokes and we had quite a talk together. The Governor and Pop both served on the Botney-Worsted Mills board of directors at the same time, and I know the Governor would like Pop's support very much and he may get it too. The Governor told me that if he could carry Essex County he would be elected to the Senate. I promised him I would give him the County vote; then the three of us all had a good laugh.

Exhibit C-10

10 The reason why I did not want you to say anything about the deal is that Lavinson, his lawyer and maybe Bradley and myself will buy the adjoining property. We have an option to buy at \$150,000. On this deal I am taking it very, very slowly. Although the C Co. in that block will certainly improve all the property.

Isaac Silver are in the market for a location in Winston-Salem, N. C. and Asheville. I have written to both towns to people that I know personally for information. It is possible that I may want you to stop on your way up to do a little work for me and I will re-imburse you for your expenses and cut you in on the deal also.

20 Let me know about a week ahead of time before you leave.

Kind regards,

Very truly yours,

JACOB

EXHIBIT C-10.

30 **THE PORT NEWARK NATIONAL BANK**
of Newark

Newark, New Jersey Dec. 7th, 1927 No. 115

Pay to the order of L. L. Fischer.....\$250.00

Two hundred and.....

JOHN V. MARTIN, Special

40

EXHIBIT C-11.

The Robert Treat
Newark, New Jersey

Dear Lou:

E. C. has practically agree to give Lavinson 10
\$16,500 net for 30 years this is what Lavinson
held out for. The lease is now being *tentenantly*
formed. The building is still the troublesome is-
sue. Lavinson wants to build according to C.
Company plans—but I doubt if they will stand
for this. Lavinson some how feels that the C
Company will put up a building for less than \$60,-
000. and made a profit.—this personally I do not
feel would be the case. However—the building is 20
the only thing that remains from preventing Lav-
inson signing on the Line. I feel after *monover-*
ing around some way that this will be cleared
up. Hope this will find you better. I certainly
am working up here for you. I walking around
with coat collar up and scarf around my neck
and act cold so the rich people will go down south.
I never hesitate to mention that this is a cold
winter—and it is—

30

Happy days

JACK

SNO FLAKE
FOR
DUCO ALWAYS

40

EXHIBIT C-12.

MEMORANDUM OF AGREEMENT made this Twentieth day of October, 1927, between Simon H. Lavinson and Aaron M. Rosenblatt, of the City of Trenton, County of Mercer and State of New Jersey, parties of the first part, and John
10 V. Martin, Realtor, of the City of Newark, County of Essex and State of New Jersey, party of the second part.

Whereas the said parties of the first part are the owners of properties commonly known as #12-14 East State Street, in the said City of Trenton, and have authorized, and do hereby authorize, the said party of the second part to negotiate a lease of said premises between the said
20 parties of the first part and Child's (S. P. P. I. C.) Company, a corporation of the State of New York; and

Whereas, the said party of the second part, who is a duly authorized broker of the State of New Jersey, has undertaken, and hereby undertakes, to effect the lease aforesaid upon the following terms, to wit: Said lease to run for a term of twenty-nine and one-half (29½) years,
30 at the yearly net (S. P. P. I. C.) rental of Sixteen Thousand Dollars (\$16,000.00), the aggregate net (S. P. P. I. C.) rental for the entire term of said leasehold to be Four Hundred and Seventy-two Thousand Dollars (\$472,000.00), net.

Now this Agreement Witnesseth: That for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, each to the other paid by the parties hereto, receipt whereof is
40 hereby mutually acknowledged, the parties of the

Exhibit C-12

first part agree that they will pay, or cause to be paid, to the party of the second part for his services as broker in negotiating and effecting the execution of a lease as aforesaid, a commission of 3% three per cent, on the aggregate net rental of the aforesaid lease amounting to Four Hundred and Seventy-two Thousand Dollars (\$472,000.00), which commission shall be payable only if said lease is executed and delivered by both owners and said Childs Company and if said lease is so executed and delivered said commission shall be payable upon execution and delivery in cash. 10

It is further understood and agreed that this agreement supersedes any and all agreements for brokerage commission effecting the said lease herein mentioned, which may have been entered into by the parties hereto, and that such other agreement or agreements, as the case may be, are hereby rendered null and void. 20

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above mentioned.

SIMON H. LAVINSON (L. S.)
 AARON M. ROSENBLATT (L. S.)
 JOHN V. MARTIN (L. S.) 30

Signed, sealed and delivered
 in the presence of
 Sol Phillip Perlman
 Ida Cohn

40

Exhibit D-1

State of New Jersey,
County of Mercer. ss:

10 Be It Remembered, That on this twentieth day
of October, in the year of our Lord One Thou-
sand Nine Hundred and Twenty-seven, before me,
the subscriber, a Notary Public of New Jersey,
personally appeared Simon H. Lavinson, Aaron
M. Rosenblatt and John V. Martin, who, I am
satisfied, are the persons mentioned in the within
Agreement, to whom I first made known the con-
tents thereof, and thereupon they acknowledged
that they signed, sealed and delivered the same
as their voluntary act and deed for the uses and
purposes therein expressed.

20

GABRIEL LAVINSON
Notary Public of New Jersey
(Seal)

EXHIBIT D-1.

(Consists of four separate letters numbered D-1)

30

February 11, 1927

J. V. Martin,
56 William Street,
Newark, N. J.

Copies locked in Deposit Box Home You can
get copies from Public Records at Court House
in Mercer County Stop Any Lease is a Public
Record for your use can obtain any number of
copies from Essex County Court House. By
40 naming specific lease desired Let Lavinson's
Lawyer draw lease.

LOU

Exhibit D-1

Sent December 15, 1926

Mr. John V. Martin,
56 William Street,
Newark, New Jersey.

10

Be sure you have notified Realty Board of change of address and handed in certificate for change stop Display certificate and name on exterior of office with words Real Estate if only temporary sign stop Reason following in letter They are gunning acknowledge receipt of this

LOU

20

December 13, 1926.

Mr. John V. Martin,
56 Williams Street,
Newark, New Jersey.

Dear Jack:

I received your letter of December 1st with regard to the Childs restaurant lease in Trenton. 30
I believe you did right in again opening the affair up and I suggest that you stay pretty close to the girl in the office and do whatever she might suggest.

I would go to see Lavinson however, and ask him if he really cares to consider the Childs people under the old offers.

I truthfully believe that Childs is going to worry this thing along, realizing that Lavinson 40

Exhibit D-1

is not ripe enough for rental so long as he has a tenant for this property.

You can reach me for advice if you want it, by night letter.

- 10 Only the other day I was wondering, as I read of the recent snow storms in the north, if you might have any sunburn lotion left over from last summer. If so, forward it to me at cost.

Sincerely yours,

LOUIS L. FISCHER

LF/mor
c/o Miami Shores Company,
20 125 East Flagler Street,
Miami, Florida.

January 7, 1927.

Mr. Jack Martin,
56 William Street,
Newark, New Jersey.

—Attention Leasing Dept.—

- 30 Dear Jack:

I received your letter telling me of the possibility of Childs signing for \$16,500. net for thirty years and I must "hand it to you" for the way in which you have "out-waited" them.

I have no suggestions to make on the next stop as I certainly feel you are far from the amateur class which is the only one that needs sugges-
40 tions.

Exhibit D-1

In the matter of the President of the Board I have the inside track on how that come about and what the intentions were along this line. They did not figure you in on the deal at all and immediately went gunning for me picking out a possible flaw in the conducting of my real estate activity. The only thing they found against me was the fact that I did not have my name and the words "real estate" on the door of the office. As soon as I learned of their intentions from inside sources I immediately wired you to fulfill all the letters of the real estate law so that when they discovered you in on the deal there would not be any possibility of throwing us off on technicalities. In other words, they had one ball to fire at this deal and they took the shot. This is all brought about by the fact that so many of the big deals in Trenton property were being placed by the out of town brokers, and they secretly decided to break this practice by using the office of the president. I can assure you that they can not interfere now without bringing suspicion on themselves as they are using the office of the commission to restrain business when the real reasons for its existence is to protect and foster the same.

I know I held their fire long enough to give you time to get your sign on the window and comply with the other regulations of the law, and it looks like all sixes and sevens from here on.

I figure on being with you real soon now, as I am not enjoying my self down here due to several bad cases of sunburn from swimming.

Best of luck and remember me to Molly in Childs.

Happy days,

NOTICE OF MOTION TO SETTLE FORM OF DECREE FOR ACCOUNT.

IN CHANCERY OF NEW JERSEY

	Between		
10	LOUIS L. FISCHER, <div style="text-align: right;">Complainant,</div>	}	On Bill, etc.
	and		
	JOHN V. MARTIN, <div style="text-align: right;">Defendant.</div>		

To Wolber & Gilhooly, Esqs.,

20 *Solicitors for Defendant.*

30 Take Notice that on Tuesday, May 29, 1928, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, at Chancery Chambers in the Industrial Office Building, at #1060 Broad Street, Newark, New Jersey, I shall apply to the Hon. Alonzo Church, the Vice-Chancellor to whom this cause has been referred, to settle the form of the decree for account to be entered in the above entitled cause.

Dated: May 22, 1928.

CHAS. S. SMITH,
Solicitor for Complainant.

DECREE FOR ACCOUNT.

(Filed June 1, 1928)

IN CHANCERY OF NEW JERSEY

Between

LOUIS L. FISCHER,

Complainant,

and

JOHN V. MARTIN,

Defendant.

10

On Bill, etc.

This cause coming on to be heard in the pres- 20
 ence of Charles S. Smith, solicitor for the com-
 plainant, and Wolber & Gilhooly, solicitors for
 the defendant;

And the court having examined the pleadings
 and having taken proofs orally and in open court,
 and having heard and considered the arguments
 of counsel thereon, and being satisfied that the
 complainant and the defendant entered into an
 agreement of joint adventure in the month of 30
 July, 1926, pursuant to the terms of which said
 complainant and the defendant undertook to ne-
 gotiate a lease of certain premises in the City of
 Trenton, New Jersey, owned by Simon H. Lav-
 inson and Aaron M. Rosenblatt to the Childs
 Company of New York, and to divide equally be-
 tween the said complainant and the defendant the
 amount of such commission as might be received
 for negotiating the said lease; that the defend- 40
 ant has received the sum of \$14,160, commission

Decree for Account

as aforesaid; that the defendant has never accounted to the complainant for any part of said commission, and that the defendant has paid no moneys to the complainant on account of the agreement aforesaid;

- 10 It is, on this 1st day of June, 1928, Ordered, Adjudged and Decreed that the said defendant, John V. Martin, account under oath for the said commission received by him, and make full and true discovery and disclosure of where the said fund arising out of said commission is located, and how the same is invested, and by whom it is held and possessed, and what expenses have been incurred, and what disbursements have been
- 20 made, so that it may be determined which half of said fund shall be charged therewith, and why, before Howard Isherwood, one of the masters of this court, to whom the said matters and things are hereby referred to be ascertained by and reported on by him.

It is further Ordered that the said master report what balance appears to be due from said defendant to the said complainant.

- 30 It is further Ordered that the said master make this report to this court with all convenient speed; and all further equity is reserved until the coming in of said master's report.

Respectfully advised

ALONZO CHURCH,
V. C.

- 40 We hereby consent to the form of the above Order.

Sol'rs of Defendant.

DEPOSITIONS.

IN CHANCERY OF NEW JERSEY

Between

LOUIS L. FISCHER,

Complainant,

and

JOHN V. MARTIN,

Defendant.

On Bill, etc. 10

Depositions taken in the above entitled cause, before me, Howard Isherwood, a Master in Chancery of New Jersey, this 14th day of June, 1928, at 2:35 o'clock in the afternoon, at my office, No. 738 Broad Street, Newark, New Jersey, in pursuance of an order of reference dated the 1st day of June, 1928, and in the presence of Charles S. Smith, Esq., Solicitor of Complainant, and Edward J. Gilhooly, Esq., appearing for Wolber & Gilhooly, Solicitors of Defendant. 20

JOHN V. MARTIN, defendant, being duly sworn, testified as follows: 30

Examination by Mr. Gilhooly:

Q. I show you a check dated November 16th, 1927, to the order of E. Childs, in the amount of \$4250.00, and ask you if that check was given by you to Mr. Childs? A. Yes.

(Offered in evidence check dated November 16th, 1927, marked Exhibit D-1.) 40

Deposition of John V. Martin—Direct

Q. Who was Mr. Childs? A. The New York broker in the transaction. He was the one with whom I carried on all negotiations.

Q. What effect, if any, did Mr. Childs have on consummating this deal?

10

Mr. Smith: I object. That calls for a conclusion.

The Master: Objection sustained.

By Mr. Gilhooly:

Q. What did Mr. Childs do towards effecting the consummation of this deal?

20

Mr. Smith: I object. The best evidence of that is Mr. Childs' testimony. He knows of his own personal knowledge.

The Master: I admit it.

A. Mr. Childs was the real cause of the deal being consummated because he was the only one to do business with. He carried on negotiations with the Childs Company. I carried it on with Mr. Ellsworth Childs.

Q. Is he connected with the Childs Company in any way? A. No.

30

Q. I show you a check dated November 15th, 1927, to the order of Gabriel Lavinson in the amount of \$4720.00 and ask you what that check was given in payment of? A. It represented one-third of the commission for services in the transaction.

(Offered in evidence check dated November 15th, 1927, in the sum of \$4720.00, marked Exhibit D-2.)

40

Deposition of John V. Martin—Direct

Q. What did Mr. Gabriel Lavinson do towards consummating this deal? A. I was in constant touch with him. He offered some very favorable suggestions at times when it seemed as if the deal was not going through. He is a real estate broker in Trenton, has been for a number of 10 years. He owns a lot of property down there. He has had more experience than I have in the real estate business.

Q. Did you have any contract with Mr. Gabriel Lavinson about commissions? A. Yes.

Q. When was that contract made? A. I think it was made about November 10th, 1927. Mr. Smith at that time prepared the contract.

Q. This deal was consummated in November, 20 1927, and in October, 1927, you say Mr. Smith prepared this contract, who did Mr. Smith represent? A. He was supposed to represent me.

Q. Did Mr. Smith represent Mr. Fischer, too? A. Not to my knowledge, or consent.

Q. I show you a bill dated December 2nd, 1927, from Charles S. Smith, addressed to Lewis Fischer and John V. Martin; did you pay that bill? A. Yes, with my personal check.

(Offered in evidence, bill dated Decem- 30
ber 2, 1927, in the sum of \$90.00, marked
Exhibit D-3.)

Q. Mr. Martin, did you pay any money to Mr. A. S. Nugent? A. I did.

Q. How much? A. \$2,000.00.

Q. What was Mr. Nugent? A. A co-broker whose services I solicited to close the deal. He worked with me for over a year on it. 40

Deposition of John V. Martin—Direct

Q. What particular services did Mr. Nugent render? A. He did everything. I was with him every week to discuss the transaction. On three or four occasions when the deal looked as if it would fall through, he helped out. One of them
10 was that the property was misrepresented to the Childs Company. They said they had 32x110. When they found out, they went to Trenton and got the dimensions of the property and they found out that instead of 32x110, they had 32x104, which six feet was half of the alleyway, and then there was an encroachment on the property. The adjoining property had the right of way and they couldn't build on it. When this particular item
20 came up, the Childs people did not want the property. They took the stand that they could not build on the whole property, that they really only had 32x104 and then the triangular piece was sliced off, which put them to a disadvantage.

Q. What did Mr. Nugent do towards clearing up that situation? A. When I told him about that he didn't say anything right away. He said we would dope out some way to get around it. He said that he would go to Lavinson and have
30 him buy the adjoining property; that if he buys the adjoining property that he would then clear up the encroachment and give the Childs people all he originally contracted for.

Q. Was that done? A. That was done.

Q. Was there any controversies between Childs and Lavinson about the aggregate rentals? A. No controversies at all.

Q. Any difference? A. They didn't want to go
40 through with the deal after we got the encroach-

Deposition of John V. Martin—Direct

ment cleared up. They were very unfavorable towards the deal. The Board of Directors was very much opposed to it.

Q. Did you go to Trenton? A. Nugent suggested, he told me to go to the Childs people and go to Lavinson and have the rent reduced \$500 10
a year.

Q. Did you from time to time consult with Mr. Nugent? A. Always.

Q. During this time was Mr. Fischer around?

Mr. Smith: That matter was determined by the Vice Chancellor at the hearing.

Q. Did you make any payment to James T. Emerson? A. \$100 for services rendered. I used 20
his place of business for four or five months.

Q. Where was it? A. 56 Williams Street, Newark, N. J. I had no office and people used to get in touch with me through him. I had no office at that particular time.

Q. When did you start these negotiations? A. I started in December, 1926, around December 13th. It may have been two days one way or the other.

Q. Did you pay anything to Edith G. Rhoades? 30
A. \$100.00.

Q. What services did she render? A. She was my stenographer. I put her to a lot of inconvenience coming back from New York and she would stay over and write letters. Saturday afternoons I would keep her in the office. I thought she was entitled to it for extra work.

Q. She was in your employ all during this time? A. Yes, sir.

Deposition of John V. Martin—Direct

Q. What salary were you paying her? A. I didn't pay her any salary. I paid her a flat salary of \$25.00 a month for her services and desk room in Carl Abbruzzese's office.

Q. Did you pay anything to Leo Donnelly? A.
10 He went down to Trenton one Saturday in his automobile and spent the whole day. Charles F. McDermott can verify that.

Q. Did you spend anything to get a plat? A. Yes, I had to get that for the exact location. That was \$25.00.

Q. I notice you have on your itemized statement \$15.00? A. I think it was \$25.00. I never did get the bill. Lavinson got the bill and I re-
20 imbursed him.

Q. What do you think it was? A. \$15.00.

Q. Did you spend anything for blueprints? A. Twenty-five cents.

Q. Was it necessary, or did you find it necessary to telephone to Trenton and New York in order to carry on your negotiations? A. Practically every day either by telephone or going to New York or Trenton to make appointments.

Q. Do you know how much you paid for tele-
30 phone bills? A. I spent close to \$200.00. I can't prove all of them.

Q. What about the \$114.35? A. That doesn't include any private telephone calls I made in pay stations.

Q. Have you the telephone slips from which this list is made up? A. Yes, sir.

Mr. Smith: I object to that testimony unless the slips are produced.

Deposition of John V. Martin—Direct

The Master: I will give you the right to produce the telephone slips. The slips can be introduced at such time as the slips are produced. Objection sustained unless the slips are produced in certification of the list, otherwise stricken out. 10

Mr. Gilhooly: I am not consenting to have the testimony stricken out unless I produce the slips, because I believe his testimony is the best evidence of what he paid and these private records of the telephone company are not the best evidence.

Q. How often during these negotiations did you go to Trenton? A. It is very hard to say. There were some weeks when I was down there for three or four days. There would be weeks when I was down there once. The next week three or four times, maybe. 20

Q. How much did you pay in carfare and hotel expenses in going to Trenton? A. \$750.00 for one year and two months.

Q. What did that represent? A. That represents carfare to Trenton, meals, taking Lavinson out, going to New York back and forth to see Mr. Childs. 30

Q. Were you in touch with Mr. Lavinson every time? A. That was the only purpose I went down there for.

Q. What did you discuss? A. This deal in Trenton, the deal with the Childs Company.

Q. What, if anything, did you spend for rent during this time? A. \$25.00 a month.

Q. Over how long a period did this take? A. One year and two months. 40

Deposition of John V. Martin—Direct

Q. Did you have any other deal on at this time?

A. No, sir. Couldn't possibly work any other deal.

By Mr. Smith:

10 Q. You testified that you dealt with Gabriel Lavinson as a broker? A. Yes, sir.

Q. Did you not deal directly with Simon Lavinson, the owner? A. Yes, sir.

Q. When you dealt with Gabriel Lavinson, did you inform Mr. Fischer that you were doing so? A. No, sir.

Q. Mr. Fischer was your associate in the deal, wasn't he? A. Not to my knowledge.

20 Q. The court has so found.

Mr. Gilhooly: I object. Argumentative.

Mr. Smith: I withdraw the question.

Q. When you made this payment to Mr. Lavinson, did you tell Mr. Fischer about it? A. Yes, sir.

Q. When? A. I was in your office when we drew the contract.

Q. Where were you when you told him you paid this money? A. Right here in Newark.

30 Q. I will put the question this way: How did you deliver the payment to Mr. Lavinson? A. By check.

Q. Where did you make the payment? A. I gave it to his son, Gabriel Lavinson, at the Pennsylvania Hotel, New York City. You were present. The day the deal was signed.

Q. You gave it to his son? A. Yes, sir.

40 Q. Was Gabriel Lavinson present? A. No, he was not.

Deposition of John V. Martin—Direct

Q. Did you know he got the payment? A. Yes, sir. His cancelled check. I know his signature from other business.

Q. Did you have any other deal on with Mr. Lavinson at that time? A. No, sir.

Q. Did you have any other deal on in Trenton at that time, at all? A. No, sir. 10

Q. Did you have a deal involving people by the name of Isaac Silver & Bros. Company?

Objection by Mr. Gilhooly.

Q. I show you a letter dated June 15th, 1927, addressed to you, with copy of a letter dated June 15th, 1927, attached, the said company being referred to in the first letter mentioned; did you receive that letter? A. Yes, sir; I did. 20

Q. You know who Isaac Silver & Bros. are?
A. I think I do.

(Offered in evidence, letter dated June 15th, 1927, marked Exhibit C-1 for identification.)

Q. Just why was it necessary to have Gabriel Lavinson as a broker in this deal, when you admit you were dealing directly with Simon Lavinson? A. Because Simon Lavinson said there would be no deal except his father was in on it. 30

Q. Did you tell that to Mr. Fischer? A. Yes, sir.

Q. Where? A. Right here in Newark, when he came back.

Q. What did he say? A. He didn't say anything about it. The deal wouldn't go over if there was any objection to it. 40

Deposition of John V. Martin—Direct

Q. After you made the payment to Gabriel Lavinson, you told him about it? A. Yes, sir; I told him.

Q. You told him you made it? A. Yes, sir.

Q. Did he ever make any objection to your paying it? A. No, sir.

Q. With reference to the payment of \$90.00 for services rendered by me, you testified you paid that bill? A. Yes, sir; personal check.

Q. The bill was rendered in your joint names? A. Against my consent, which I told you about.

Q. Didn't you send me a letter asking me to leave the bill in both names? A. No, sir.

Q. You testified you gave Mr. Nugent \$2,000? A. Yes, sir.

Q. How did you give it to him? A. I cancelled his note for \$750.00, gave him \$250.00 in cash, a note for sixty days for \$200.00 and he has a note now for \$750.00.

Q. What did Mr. Nugent do? A. He was with me continually on the deal and I wrote Mr. Fischer in regards to it.

Q. I show you a letter dated March 21st, 1927, referring to Mr. Nugent; did you write that letter? A. Yes, sir; I did.

(This letter was Exhibit C-9 at the hearing before the Vice Chancellor.)

I offer letter dated March 21st, 1927, addressed to "Dear Lou," and signed "Jacob," marked Exhibit C-2 for identification.

Q. At the time Mr. Nugent performed these services, was he in the real estate business in Newark? A. Yes, sir.

Deposition of John V. Martin—Direct

Q. Where was his office? A. On Mt. Pleasant Avenue. It was in Mr. Allen's office on Mt. Pleasant Avenue.

Q. Was it Mr. Allen's office or Mr. Nugent's office? A. He had his office there the same as I have with Mr. Carl Abruzzese. 10

Q. Who first broached the subject to Mr. Nugent? A. I did. I asked him to help me on the Childs deal. I didn't have enough experience.

Q. Did you tell that to Mr. Fischer? A. I told that to Mr. Fischer when he came back from Miami in May, 1927. I told him very plainly that Mr. Nugent was helping me out on the transaction at that time. He didn't think Mr. Nugent had very much experience and I said, "He knows 20 more about the real estate business than you will ever know."

Q. During the time you negotiated with Mr. Nugent, did he continue to have offices on Mt. Pleasant Avenue? A. He did.

Q. Was it a fact that he worked for Mr. Philip Bowers? A. No, sir. He was not working for Philip Bowers.

Q. How did you pay these telephone bills? A. By check. 30

Q. Have you got the checks? A. Yes, sir.

Q. Here? A. No. I can get them.

Q. You testified you spent \$750.00 on trips from here to Trenton? A. More than that.

Q. How did you pay for that? A. Cash.

Q. How many times a week did you go to Trenton on this particular deal? A. I went to Trenton at least three times a week for a period of one year and two months. 40

Deposition of John V. Martin—Direct

Q. No other deal? A. No, sir.

Q. None whatever? A. No, sir.

Q. You testified that you transacted some of your business in the office at 56 William Street, Mr. Emerson; did you have desk room? A. Yes, sir.

Q. When did you take it? A. When I left Bowers.

Q. When was that? A. I believe in August or September, 1926.

Q. How long were you there? A. Until January, 1927.

Q. Where did you go after that? A. Carl Abruzzese's office, Room 908, 31 Clinton Street.

Q. How much rent did you pay at 56 William Street? A. I gave Mr. Emerson \$100.00. I gave him that for doing me favors for over a year and two months.

Q. You testified you gave the stenographer \$100.00? A. Yes, sir.

Q. Were you paying her a salary at the time? A. No, sir.

Q. You were paying for her services? A. Yes.

Q. How much? A. It was all included, \$25.00 a month. Office rent and stenographer's services.

Q. You did that on your own authority? A. Yes.

Q. Did you consult Mr. Fischer on any of these payments? A. Yes. Two disbursements; one to the secretary of this Childs Company and I thought I told him I would give the girl in the office something. I meant the stenographer, in Mr. Emerson's office.

Deposition of John V. Martin—Direct

Q. Did you ever try to deal direct with the Childs Company? A. No, I dealt with Ellsworth Child.

Q. Did you make an agreement with him to pay him? A. Yes.

Q. Did you tell that to Mr. Fischer? A. I told 10
it to him before he left for Miami in September.

Q. When you made the payment of \$2,000.00 to Mr. Nugent, did you ever tell Mr. Fischer how much you intended to pay him, Mr. Nugent? A. No.

Q. He never knew that? A. He knew I was going to compensate Mr. Nugent.

Q. Did Mr. Fischer object to the payment to Lavinson? A. No. 20

Q. You had no other transaction in Trenton? A. I myself had no other transaction in Trenton.

Q. Did you have any other transaction in Newark with Mr. Childs? A. Yes. The first deal I made was with Mr. Childs with the Philip J. Bowers Company.

Q. During the time this transaction was pending? A. No.

By Mr. Gilhooly:

Q. How was your commission paid? A. One 30
check.

Q. The commission you received from Lavinson, did you get cash or notes? A. I got one note.

Q. How much was the note for? A. The note was for \$2,360.00.

Q. The balance in cash? A. No. We just crossed checks on the note.

Q. What do you mean by that? A. He made 40

Deposition of John V. Martin—Direct

out one check. It was agreed that he would take his personal note to help the transaction because Ellsworth Childs had to receive all cash. That was the agreement. To help the deal out, I told him I would take his note to help him out. I received \$2,360.00 in notes and the balance in two checks.

10 Q. Did Mr. Fischer ever advance any money towards your expenses? A. No.

Q. Did he ever offer to? A. No.

Q. I notice on the bill submitted by Mr. Smith that there is a charge on October 21st, consultation with Messrs. Martin & Fischer, examination of amended broker's agreement, etc., and examination of agreement between John V. Martin and Gabriel Lavinson; was Mr. Fischer present at that conference? A. Yes.

20 Q. Was he present at the time the agreement was drawn? A. Yes, sir.

Q. In Mr. Smith's office? A. Yes, sir.

Q. That was discussed in the presence of Mr. Smith and Mr. Fischer? A. Yes, sir.

Q. Was Mr. Smith present when the deal was consummated between Childs Company and Lavinson? A. No.

30 Q. Was he present at the office of Childs Company in New York for which he charged \$25.00? A. No, he was not present at the office.

Q. Where was that conference? A. In the Pennsylvania lobby, New York City. He met me there.

Q. Was that the time you made the payment to Gabriel Lavinson? A. That was the time I made the payment to Simon Lavinson. He O.

Deposition of John V. Martin—Direct

K.'d the note I received from Mr. Lavinson, saying it was perfectly all right to take it.

Q. Mr. Smith represented you at the time? A. I thought so.

By the Master:

Q. How much did you receive, all told, as your commission? A. \$14,160.00. 10

Q. You received a note for \$2,360.00? A. Yes, sir.

Q. The balance in checks which were cashed? A. We expected checks.

Q. Did you receive the balance in checks which were eventually cashed? A. I received two checks and cashed them.

Q. The two checks with notes make a total of \$14,160.00? A. Yes, sir. 20

Q. Those checks were made payable to you? A. Yes, sir.

Q. You testified here that you gave \$100.00 for services rendered, to a Miss Rhodes? A. For services rendered in the transaction, overtime.

Q. She was the stenographer in the lawyer's office? A. Yes. It was necessary for me to keep her after hours and on Saturdays to take care of my correspondence. She did it for over a year. When she was finished I felt that I owed it to her for extra time. 30

Q. Did you carry on any other business during this time? A. I was working in some other transactions. They didn't mean anything. I couldn't have the time to work on many other transactions.

Q. You mean to say that for one year and two months that was the only business or piece of 40

Deposition of John V. Martin—Direct

business you did? A. That was the only one I did.

Q. What was the \$100.00 for services rendered you testified about? A. I gave that to Joseph T. Emerson. I used his place from September un-
10 til January, 1926. I used it after that time.

Q. That was your office for the transaction of your business wasn't it? A. Yes.

Q. You got a check to show you made this payment? Have you got the cancelled checks to show you paid it? A. Yes, sir.

Q. Where are they? A. I didn't bring them with me. It was only \$100.00.

Q. You say you had an arrangement with this
20 man Lavinson, written agreement? A. Yes.

Q. Have you got it? A. I believe it is in there.

Q. This Miss Rhodes you talk about, she did your other work? A. Yes, she is the only stenographer I had.

Q. For that entire period? A. Yes, sir.

Q. What necessitated Mr. Leo Donnelly going to Trenton with you? A. At that time I didn't have a car. I got a telephone message from Mr. Childs wanting a description of the property.
30 He wanted it Monday morning.

Q. You went to Trenton that day? A. Saturday morning.

Q. When? A. At about ten or eleven o'clock.

Q. Don't you know you can go faster to Trenton by train? A. I didn't have the money to pay the carfare for both of us.

40 (Offered in evidence copy of agreement dated October 20th, 1927, marked Exhibit D-4.)

Deposition of John V. Martin—Direct

Q. This check marked D-2 for \$4,720.00, made payable to Gabriel Lavinson is the commission that was paid pursuant to the terms of the agreement mentioned in D-4, is it not? A. Yes.

Q. This plat of the property who did you pay the \$15.00 to? A. I gave it to Lavinson. I told him to have it made. I think I gave him a check. 10

Q. Who did you give it to? A. Simon Lavinson, the owner of the property.

Q. The \$750.00 for hotel and carfares, meals have you got anything to show these disbursements? A. Yes, the girl in the office had notes every time I went to Trenton.

Q. One time you went you had to go by car. It cost \$15.00 to go. You say you couldn't pay carfare? A. I couldn't get a check cashed. 20

Q. On a Saturday morning? A. I had to be in Trenton before twelve o'clock to get into the Court House.

Q. How did you arrive at the sum of \$750.00? A. I figure that anyone who will go to Trenton can't do it for less than \$10.00. My expenses were really more than \$750.00.

Q. How did you arrive at the figure of \$750.00? A. I base it on the different trips I made and the carefare and expense. 30

Q. Is that the best evidence that you can give? A. No, I can give proof by Mr. Simon Lavinson that he was there and the money was spent on him. I took him to meals, took him to the movies. I did everything I could to make the deal. I got off at four o'clock to go to Trenton. I had to come back and be in New York the next day at 40

Deposition of John V. Martin—Direct

eleven o'clock to go to Mr. Ellsworth Childs. I can prove I wasn't home.

Q. How do you arrive at \$750.00. You ask for that allowance, how do you figure it? A. I can show it through my checks.

10 Q. Where are your checks? A. Mr. Emerson cashed them for me. I made my income tax for that amount. I showed the Government I spent that much money on the transaction. It was more than that but I just put \$750.00. That was over a period of one year and two months.

Q. This was the only transaction that you say you had for a year and two months? A. Yes, sir.

20 Q. That is the best record that you have of the amount you spent on carfare, hotel, meals during that entire time in putting through this transaction? A. Yes, sir.

Q. Where does this \$350.00 office rent come in? A. I paid each month I paid Carl Abruzzese \$25.00 a month.

Q. When was this deal finally put through? A. November, 1927.

Q. How long had you been working on the deal? A. One year and two months.

30 Q. From what date? A. September, 1926.

Q. You paid Carl Abruzzese from when? A. January 1st, 1927.

Q. That is for ten months that is only \$250.00? A. The stenographer made an error in the figures. It is \$250.00.

40 Q. You also paid \$25.00 a month from September, October, November and December, 1926, at Mr. Emerson's down on William Street? A. Yes, sir.

Deposition of John V. Martin—Direct

Q. Where are the notes and the check you gave Nugent? A. I gave him cash.

Q. How much did you give him all told? A. \$2,000.00.

Q. Did Mr. Fischer know you were making this deal with Nugent? A. He received some money out of it. 10

Q. When and where? A. When he came back in May. I told him Nugent was in on it and I told him I was giving him something. He felt he was competent enough.

Q. You were a real estate broker at the time? A. Yes, sir.

Q. Did you consult Fischer when you paid him this \$2,000.00? A. No, sir. We weren't on speaking terms. 20

Q. You didn't tell him anything about it? A. No.

Q. Didn't write to him? A. No, sir.

Q. When was the first time he got any inkling or notice that you were paying Nugent \$2,000.00?

A. My testimony to the Vice Chancellor. I mentioned it in my affidavit.

Q. When did you receive your license to act as a broker? A. I believe around August or September, 1926. I have only been in the real estate business for two years. My first position was with Philip Bowers. My first real deal was with the Childs Company. After that I went in business for myself. Mr. Childs called me up and told me he wanted to see me and he sent me to Trenton. 30

Q. Why did you pay Ellsworth Childs the amount of the check of \$4,250.00 represented by 40

Deposition of John V. Martin—Cross

Exhibit D-1? A. That was our verbal agreement before the transaction started. He was to receive the same agreement from Philip J. Bowers Company.

10 Q. What did Philip J. Bowers have to do with this deal? A. Mr. Childs said I was to work with him on the same basis as Philip Bowers.

Q. Did he have anything to do with Childs Company? A. He is a brother of William Childs the fellow that runs the restaurants.

Q. Did Fisher know anything about this payment of \$4,250.00 to Childs? A. Yes, sir.

20 Q. When did he learn that? A. I told him as soon as the deal was about to be closed. I told him I was going to give him the money. He was supposed to get one-half of what I got. He got \$4,250.00 because I took the note. He said he would knock off the \$250.00 and I take the note. That was before the lease was signed. It wouldn't have been signed unless he got the cash. He wanted cash. The Childs Company wouldn't have signed the lease.

30 Q. Did Fischer know this? A. Yes, when the deal originally started. I told him before we went to Trenton. I said we had to split with Mr. Ellsworth Childs or there would be no deal.

By Mr. Smith:

Q. This note that you say you got from Lavinson was that eventually paid? A. No, sir; it is still in the bank with my endorsement on it.

Q. What does it represent? A. Part of the commission.

40 Q. Has any part of the note been paid? A. Yes, two payments. One for \$200.00. I just re-

Deposition of Alfred S. Nugent—Direct

newed it. There is now \$1,800.00. The note was originally for \$2,360.00. There has been two payments on the note. He sent \$310.00 and \$210.00. It was due the 15th for three months for the payment of \$310.00. He paid \$250.00 on the first.

Q. The balance due on that note amounts to \$1,800.00? A. Yes. 10

Q. He is good isn't he? A. I hope so.

ALFRED S. NUGENT, being duly sworn, testified as follows:

Examination by Mr. Gilhooly: 20

Q. What is your business? A. Real Estate.

Q. In 1927 were you a real estate broker? A. Yes.

Q. Did you work with Mr. Martin on the Childs Company deal? A. Yes.

Q. Did you receive any compensation from him? A. I did.

Q. How much did you receive? A. \$2,000.00.

Q. How was that paid? A. By the cancellation of a note which I owed Martin. \$750.00 it was for. He cancelled that note. He gave me the cash, \$250.00 and a note for sixty days for \$250.00 and I still hold the note for \$750.00. 30

Q. Is that amount unpaid? A. I still hold the note.

Q. What did you do in connection with this transaction? A. In the early part of 1927 Mr. Martin was in continuous touch with me regarding the deal. He would come to my house even- 40

Deposition of Alfred S. Nugent—Cross

ings and at my office and I met him at Emerson's office on William Street to talk over the transaction. He would recite to me the condition of affairs and ask me about it. What moves he would make he would make them such as I suggested.

10 Q. Were these conferences frequent? A. Very frequent.

Q. Over how long a period did that last? A. Up to sometime the latter part of May.

Q. What year? A. 1927.

Q. From what time? A. From around I think in November or December, 1926. I remember it was shortly after he started the transaction.

20 Q. Were you ever in communication with Mr. Fischer? A. No.

Q. Did he ever consult you? A. I didn't know Mr. Fischer until a couple of weeks ago.

Q. Was Mr. Fischer's connection with this deal ever discussed by you and Mr. Martin? A. No.

By Mr. Smith:

Q. Who besides Mr. Martin did you consult with about this deal? A. No one else.

30 Q. Did you ever go to Trenton? A. No.

Q. Did you ever see Mr. Childs? A. No.

Q. About how long would these conferences last? A. Vary in length? I should say the least amount of time ever spent was perhaps a half hour; on the other hand he would come to my house and spend the entire evening.

Q. Did you ever go to the office? A. Yes.

40 Q. How long would you be at the office? A. Two hours.

Deposition of Alfred S. Nugent—Cross

Q. You would discuss this deal exclusively for two hours? A. No, perhaps talk about the weather.

Q. When he came to the house in the evening was it an emergency requiring him to call there?

A. Yes, sometimes.

10

Q. What was one of the emergencies? A. What seems to me one of the vital things in the transaction, when he first discovered the discrepancy in the description of the property. I don't know who found it he told me about it.

Q. Did you ever make any effort to find out if that was so? A. No. I suggested to Mr. Martin that he go to the Court House in Trenton and know the exact size of the property and put that particular card on the table right away.

20

Q. Do you know whether he went to the Court House? A. No.

Q. Did you try to find out? A. No.

Q. Did you find out whether he communicated that fact to Mr. Childs? A. He later told me he did.

Q. Did he tell you what happened? A. He told me on the strength of the fact that there was a discrepancy in the size of the property Mr. Childs took the stand that the deal would not go through and along about the time when the deal looked as if it was going smoothly.

30

Q. When was that? A. Along about March or April, 1927. Mr. Martin came to my house one evening and told me that the transaction had exploded by reason of an encroachment on the property which would prevent the erection of a building.

40

Deposition of Alfred S. Nugent—Cross

Q. What did he ask you to do about that? A. He asked me what I would suggest that he do. I told him the only logical move would be to have Mr. Lavinson purchase the adjoining property and wipe out the easement.

10 Q. Did he tell you what happened? A. I don't know just how I came by this knowledge, probably told by Mr. Martin.

Q. Don't you remember? A. No.

Q. Did you ever check up on your advice to him? A. Not at all.

Q. Your services covered the period from December to May? A. Yes.

Q. Who fixed the value of your services? A. I
20 did.

Q. Did you render him a bill? A. No.

Q. When did you broach the subject to him? A. About the time he discussed the easement.

Q. You told him at that time your services would cost him \$2,000.00 whether the deal would go through or not? A. No, contingent on the deal's consummation.

Q. What did this note for \$750.00 represent that he took? A. Personal note.

30 Q. Money that he loaned you? A. Yes.

Q. Was that money secured by this note? A. Yes.

Q. He paid you \$250? A. Yes.

Q. How? A. In cash.

Q. When was that? A. That was sometime in November, 1927.

Q. Then how did he pay you after that? A. At that time he also gave me two further notes,
40 one for \$250.00 for sixty days which was later paid.

Deposition of Alfred S. Nugent—Cross

Q. How was that paid? A. That was paid in cash, and a note for \$750.00 which I still have.

Q. When was that due? A. It is a demand note.

Q. You haven't called it yet? A. I will discount it. 10

Q. Did you ever hear of Mr. Fischer in this deal? A. In the last couple of months.

Q. How long have you known Mr. Martin? A. Since about June or July, 1926.

Q. Are you in business for yourself? A. Yes.

Q. Now? A. Yes.

Q. Were you then? A. Yes.

Q. Are you in the habit of rendering your services as a real estate man? A. Yes. 20

Q. Are you in the habit of giving advice? A. Yes, that is my business.

Q. Yet the only one you spoke to in this whole deal was Mr. Martin, you never attempted to see anybody else? A. No.

Q. Never suggested that it be wise to see anybody else? A. At one time, but I didn't think it would be expedient to appear in the picture in New York.

Q. How often each week did he see you? A. 30
Varying times, some weeks he was at my house three and four times. I went to see him during the day maybe once or twice.

Q. Was that the only transaction he had with you? A. Yes.

Q. No other? A. No.

By the Master:

Q. Did you ever have any transaction with him before this? A. Yes. 40

Deposition of Alfred S. Nugent—Cross

Q. How many? A. One.

Q. What was that about? A. That was on a small deal. At that time we were both employed by Bowers. We had two transactions while employed by Bowers. We cooperated together on a deal and split the commissions.

10 Q. You were friendly with him, weren't you? A. Yes.

Q. He consulted you beginning December, 1926, told you about this deal? A. About that time.

Q. From that time on to May he was in touch with you about the deal? A. Yes.

Q. When did you first speak about the bill for services rendered? A. Sometime in May, 1927.

20 Q. Up to that time you didn't tell him your services were being charged for? A. No.

Q. Why did you fix the sum of \$2,000.00? A. Because of the situation. The situation was this: Here was a deal involving a commission of some \$14,000.00 in which several people were involved. As it stood at the time without my services nobody made any money. I considered my services were worth it.

30 Q. How did you figure the \$2,000.00? A. I think I am a pretty good broker and that my services were worth that.

Q. You set a flat fee? A. Yes.

Q. And he cancelled a note? A. Yes.

Q. He paid you in cash the \$250.00? A. Yes.

Q. Where was your office at that time? A. 319 Mt. Pleasant Avenue, near Clay Street. I had space in Robert Allen's office, the builder.

Q. That was your office? A. Yes.

40 Q. Then he gave you two additional notes, one for \$250.00 and another for \$750.00? A. Yes.

Deposition of Alfred S. Nugent—Cross

Q. The one for \$250.00 has been paid? A. Yes.

Q. You still have the \$750.00 note? A. Yes.

Q. When did he give you these notes? A. About November of last year. The latter part of last year, I think in November.

Q. When you told him in May that your services were worth \$2,000.00, did you get payment of it then? A. I made that contingent upon the consummation of the deal. 10

Q. Did you have any written agreement with him? A. No.

By Mr. Smith:

Q. Did you say that you were just a business acquaintance of Mr. Martin's, or a friend? A. Business acquaintance. 20

Q. Yet you borrowed \$750.00 from him? A. Yes.

Q. In one sum? A. No, varying sums.

Q. What were some of those sums? A. I remember one amount of \$125.00, an amount of \$300.00, then various amounts ranging from \$5.00 to \$50.00.

Q. Over what period of time? A. Some four or five months.

Q. What year? A. 1926, when I first met him. 30

Q. You were friendly enough to borrow money from him? A. Yes. We returned favors.

Q. You were co-workers in Bowers at the time? A. Yes. We had deals together.

Q. Was part of this \$2,000.00 in payment of other deals? A. No.

Q. How were the other deals paid for? A. On the consummation of the deal paid for in cash.

Q. Would you say that this \$750.00 that you 40

Deposition of Louis L. Fischer—Direct

borrowed from him was what you owed him on deals? A. No.

Q. Personal loans? A. Yes.

Q. You were friendly enough to get personal loans? A. Yes.

10 Q. No other deals that you owed money to him for except what you testified to? A. Yes.

Mr. Gilhooley reserves the right to produce Mr. Simon Lavinson and to produce checks not produced at this time, and also telephone slips.

20 LOUIS L. FISCHER, complainant, being duly sworn, testified as follows:

By Mr. Smith:

Q. You were associated with Mr. Martin in this transaction? A. Yes.

Q. Did he speak to you about an agreement to pay Gabriel Lavinson some money? A. Yes, sir.

Q. What did you say to him about it? A. I strongly objected.

30 Q. How did you object, what did you say to him? A. I said, "This deal cannot go through that way."

Q. Where did he speak to you about it? A. In your office.

Q. Who else besides yourself and Mr. Martin and myself were present? A. One young lady, your stenographer.

Q. How did you find out that the payment of
40 \$4,720.00 had been made to Mr. Lavinson? A. After the deal was consummated.

Deposition of Louis L. Fischer—Direct

Q. Did you know anything about it before that?

A. No.

Q. Did Martin tell you? A. No.

Q. Did you ever discuss the payment after?

A. Not that I recall. I had knowledge of it but not through him. 10

Q. Did you ever at any time after that meeting at my office approve of this agreement with Mr. Gabriel Lavinson? A. No, sir.

Q. Was that done without your approval? A. Yes.

Q. With reference to Mr. Nugent, I show you a letter dated March 21, 1927; have you seen that letter before? A. Yes, sir.

Q. From whom did you receive it? A. Mr. 20
Martin.

Q. Who made the notations on that letter? A. Mr. Martin.

By Mr. Gilhooly:

Q. Who underscored the second sentence in Exhibit C-2 for identification? A. That was not underscored at the time I received it. I initialed it to show. I made a note on the paper.

Q. There is a mark "I F"; did you make that? 30
A. No, sir.

Q. Who made that? A. I presume Mr. Martin. I received it that way.

(Offered in evidence letter dated March 21, 1927, marked Exhibit C-2.)

By Mr. Smith:

Q. When did you learn that Mr. Martin had paid \$2,000.00 to Mr. Nugent? A. Not until the day the affidavits were served on us to that effect. 40

Deposition of Louis L. Fischer—Direct

Q. You had no direct information of that from Mr. Martin? A. No, sir.

Q. Did Mr. Martin ever discuss with you any other deals he had in Trenton? A. Yes, sir.

10 Q. What did he say? A. He said he had one deal to purchase the adjoining property adjoining the Childs lease property on East State Street.

Q. Did he tell you he was working on that deal, too? A. Yes.

Q. That had no connection with this Lavinson deal, did it? A. No.

Q. Did Mr. Martin ever tell you anything about his expenses to Trenton, N. J.? A. No, sir.

20 Q. About the payment to Mr. Childs, did you know that there was to be a payment to Mr. Childs at any time? A. Yes, sir.

Q. What did you say to Mr. Martin about that? A. I acquiesced to that.

Q. You agreed to that payment? A. Yes, from the beginning.

Q. Did you know the amount that was actually paid? A. No, sir. I have never seen it.

30 Q. Here is the check in evidence for \$4,250.00; did you know that was the amount paid to Mr. Childs? A. No, sir.

Q. How much did you expect to be paid? A. Right around that figure, around \$4,000.00.

Q. It is for \$4,250.00? A. Yes, sir.

Q. As to the Gabriel Lavinson payment, did you agree to that? A. No, sir.

Q. You had no knowledge of it? A. No, sir.

Q. You disapproved of it? A. Yes, sir.

40 Q. As to the Nugent payment, did you have any knowledge of that? A. None whatever.

Deposition of Louis L. Fischer—Cross

Q. Did you ever meet Mr. Nugent? A. Not until three weeks ago.

By Mr. Gilhooly:

Q. You don't know very much about this transaction at all? A. I wouldn't say that. 10

Q. The negotiations were started about August, 1926, isn't that right? A. Yes.

Q. Then you went to Trenton on how many occasions with Mr. Martin? A. All told about ten or twelve.

Q. Give us the dates of those visits. What months were they in? A. I guess about four months, two in September, there must have been four around in October.

Q. Of what year? A. 1926. 20

Q. Six trips you made? A. Yes.

Q. When were the others? A. Two trips around November and I went away. There were two trips made the following May, 1927.

Q. Isn't it a fact that you went to Trenton seven times as testified in Chancery? A. I did so testify.

Q. Is it right or wrong? A. It was right.

Q. You went away to Miami when? A. November, 1926. 30

Q. You remained in Miami how long? A. I came up here one week after Easter. That was in April.

Q. During that time did you ever communicate with Lavinson in any way? A. No.

Q. In May you made two trips to Trenton? A. Yes.

Q. Did you see Lavinson? A. No.

Q. Did you see Mr. Childs between May and November when the deal went through? A. No. 40

Deposition of Louis L. Fischer—Cross

Q. Did you see any of the Lavinsons between May and November? A. No.

Q. Did you conduct any negotiations during that time with interested parties? A. No, sir.

Q. Did you attend the closing? A. No, sir.

10 Q. Did you and Mr. Martin go to Mr. Smith for the closing to have the commission agreement drawn up? A. Yes.

Q. At your suggestion you went to Mr. Smith, Mr. Smith had been your attorney? A. Yes.

Q. Mr. Smith was acting for both? A. Yes.

Q. When Mr. Smith drew up the commission agreement between the owner of the building and Mr. Martin you weren't joined? A. At the time
20 of the making of the deal he said, "Fischer, I know this deal and I got the contacts." He told me that I would help the deal by keeping out.

Q. At that particular time an agreement was drawn up to give Gabriel Lavinson one-third of the commissions? A. No, sir; not that I know of.

Q. Weren't you present on October 21st at Mr. Smith's office? A. Yes, sir. While the agreements were being drawn up I was there.

30 Q. Was there discussed at that time an agreement between Martin and Gabriel Lavinson? A. Yes.

Q. Mr. Smith drew the agreement? A. To the best of my knowledge. I didn't see it actually drawn.

Q. You knew he was drawing the agreement? A. Over my protest.

Q. Did you tell Mr. Smith that his services
40 were no longer required? A. No.

Deposition of Louis L. Fischer—Cross

Q. You acquiesced in his agreement? A. I said
 “No, I will not do it.”

Q. You stood by then and registered your objection and did nothing else? A. I registered my objection and left. I didn't know anything about it. It was all done so smoothly. 10

Q. You knew that your interests were being protected? A. Yes.

Q. You knew the deal was closed, approximately? A. Yes.

Q. You stayed out, you didn't want to queer the deal? A. No, sir.

Q. You knew Mr. Martin was making frequent trips to Trenton? A. Yes.

Q. He wrote to you and told you? A. Yes. 20

Q. You knew he was incurring expenses, didn't you? A. With other deals.

Q. Not with your deal at all? A. With this and other deals.

Q. Can you mention any specific deal outside of the adjoining property? A. He told me that he put some money in with Mr. Childs and bought a piece of property on Jackson Street in Trenton, I think Montgomery and Jackson Street. He did put some money in a deal with Mr. Lavinson. 30
 Mr. Martin told me that himself.

Q. Did you at any time advance any funds to cover expenses? A. No.

Q. Did you communicate by letter with Mr. Martin between the months of March and November? A. Yes. I came up here in April. He was at my house most every week-end from May on practically discussing this transaction.

Q. They were very frequent visits were they not? A. Yes. 40

Deposition of Louis L. Fischer—Cross

Q. You knew he was making trips to Trenton?

A. I went with him on several.

Q. You went twice in May is that correct? A. I may have gone.

10 Q. Can you mention any specific dates? A. Approximately two trips in May, maybe one in June. There were two that I made alone.

Q. When you went down there you met Lavininson? A. Yes.

Q. You said before you had no conversation with Lavinson between May and the time the deal closed? A. My trips down there were in May and June.

20 Q. You had nothing to do after June? A. Except when he came to my house every week-end to see what to do.

Q. You acted in an advisory capacity? A. Yes.

Q. No personal contacts? A. No, sir.

Q. When do you claim that the agreement was entered into for this joint venture with you and Mr. Martin? A. Back in September, 1926.

30 Q. As a matter of fact wasn't it in July, 1926, that you claimed this took place? A. It could have been. It has been over a year and a half ago, in July, August or September. I tell you the reason why I say September I sent a letter in September to Mr. McDermott in Trenton which refreshes my recollection.

Q. You knew he had trouble putting this deal through? A. I didn't know.

Q. As a matter of fact didn't you abandon this project when you went to Miami? A. No, sir.

40 Q. You were working for another company

Deposition of Louis L. Fischer—Cross

weren't you? A. No, sir. I was making adjustments on my own property.

Q. You were down there for the purpose of adjusting property of your own in Miami and trying to sell it too? A. No.

Q. You were down there for several months? 10
A. Yes.

Q. You did nothing but made adjustments on your own property? A. Yes.

Q. How many properties did you have down there? A. I handled approximately \$375,000.00 worth of property.

Q. Did you get compensation for that? A. I did.

Q. So you were working for other people down there? A. Yes, but not a firm. 20

Q. You came back in May, were you working for anybody then? A. No, sir.

Q. You remained up from May until the deal was closed? A. Yes.

Q. Why didn't you go to Trenton and go to Childs? A. Mr. Martin said to keep out of it. He said he could handle it alone. He said that from the beginning that I shouldn't meet Mr. Childs. He said he had the contacts, that he had Lavinson and that he knew him better. 30

Q. As a matter of fact, Mr. Fischer, didn't you know that unless Gabriel Lavinson was taken into this deal that there would be no deal? A. No, sir. He was only Mr. Simon Lavinson's father.

Q. Was't that commission paid of one-third to reduce the amount of commission that the owner would have to pay? A. Not that I know of. 40

Deposition of Louis L. Fischer—Re-direct

By Mr. Smith:

Q. Did you have any expenses in connection with your trips to Trenton? A. Yes.

Q. How did you pay for it? A. In cash.

Q. Have you got a record? A. No, sir; straight
10 from memory.

Q. Have you any idea what you paid out? A. Yes.

Q. About how much did you pay? A. \$3.50 round trip. I did that about six times.

By the Master:

Q. Do you know anything about this money that was to be paid for rent at the office of Mr. Martin? A. No, sir.
20

Q. Did he ever tell you that you were to take out of this deal the office rent at William Street or his office on Clinton Street? A. No.

Q. Did he ever tell you that he was going to pay this girl Miss Rhoades for stenographic services? A. No, sir.

Q. Did you know about the trip to Trenton with Leo Donnelly for which he gave him \$15.00? A. No.

30 Q. Did you know anything about this plat he got of the property? A. No.

Q. Do you know how much the telephone cost? A. No, sir.

Q. Did Mr. Martin make any claim for hotel, carfare and dinner expenses? A. No.

Q. Did he ever speak to you about them at all? A. No, sir.

40 Q. Did he ever say anything about an amount he had collected or money he spent for those things? A. No, sir.

Deposition of Louis L. Fischer—Re-direct

Q. You thought didn't you that that was going to be taken out? A. A reasonable amount of expenses I was certainly willing to allow. Not car-fare and hotel expenses for other trips he made. Other business he had down there. He bought property with Lavinson and the property adjoining this leased property and this Isaac Silvers deal he was working on at Trenton at that time. 10

Q. I show you that letter Mr. Fischer, have you seen that before? A. Yes.

Q. Where did you see it? A. I received it from Mr. Martin.

Q. Does that letter refer to the Lavinson deal? A. No, another deal entirely.

(Offered in evidence letter dated June 15th, 1927, marked Exhibit C-1.) 20

By Mr. Smith:

Q. When did you make a demand on Mr. Martin for payment of your part of the commission?

A. About the first of December, 1927.

Q. Did he tell you then about these expenses he paid? A. Yes.

Q. Did he tell you he paid Lavinson? A. Yes. He said, "I paid Lavinson some money." He mentioned the sum and I said, "I objected from the beginning and I do now. It is not right." 30

Q. Did he tell you about Nugent? A. No, sir.

Q. Never? A. Not until later. I tried to keep this clean. He wouldn't give me any money. We went and had meals together for over three weeks. Then when he gave us a check for \$250.00 that was when the quarrel arose. He tore off his signature and threw it at me. I thought it was time to break then. 40

Deposition of John V. Martin—Direct

JOHN V. MARTIN, being recalled, testified further as follows:

By Mr. Gilhooly:

10 Q. It has been testified to by Mr. Fischer that you told him you had other deals in Trenton? A. That is incorrect.

Q. With reference to a deal for the adjoining property to the Childs property which was leased were you interested in that? A. No, sir.

20 Q. This letter from Perlman & Lerner, Exhibit C-1 to what does that refer? A. Lavinson and Perlman are heirs to a property and they were very anxious to get Isaac Silver on the property and Mr. Kind submitted the proposition to Silver and Lavinson asked if I would help Kind out. I said I would be glad to.

Q. Did you make any trips to Trenton for that purpose? A. No. I went to New York once. They asked me when I was in New York to stop in to see Mr. Isaac Silver who I knew.

Q. Did you do anything else? A. No.

30 Q. Did you tell Mr. Fischer that you invested money with Lavinson in Trenton property? A. Yes, I did.

Q. What did you tell him on that? A. Lavinson had a piece of property he wanted me to buy a half interest.

Q. Did you buy it? A. No, he released me on it.

By the Master:

Q. Is this the letter you wrote? A. Yes.

40 Q. What do you mean in this letter when you state "the reason why I did not want you to say

Deposition of John V. Martin—Cross

anything about the deal is that Lavinson, his lawyer and maybe Bradley and myself will buy the adjoining property. We have an option to buy at \$150,000.00''? A. They wanted me to go in with them. It did have something to do with the deal. I said I would go along. I never intended to. 10

Q. You didn't work on this deal when you were down there on the Childs deal? A. No, nothing when I went down there. I went to see Mr. Silver. I never had anything to do with that when I went to Trenton.

By Mr. Gilhooly:

Q. Did you ever communicate by letter with Mr. Fischer advising him that Mr. Nugent was taken in on the deal? A. Yes, March 21st I told him that he helped me out. 20

Q. Did you write only the one time? A. No, on three or four occasions.

Q. Have you got copies of the letters? A. My copies were destroyed. I can prove that from the stenographer. I wrote him three or four letters.

By Mr. Smith: 30

Q. Can you recall the dates of any of those letters? A. Yes, when he was in Miami.

Q. When was that? A. In January, February and March.

Q. But you wrote him March 21st, did you write him after that? A. Yes.

Q. Did you write him after that with reference to that? A. At that particular time after he left here which was in November right after Thanksgiving I wrote to him about once a week. 40

Louis L. Fischer—Direct

Q. I mean after this date. A. Yes, right up until he came back from Miami. I sent him a wire before he left Miami.

Q. Where are the copies? A. I changed offices. I went to the girl and asked about it and she said
10 they were destroyed.

LOUIS L. FISCHER, being recalled, testified further as follows:

Q. This letter Exhibit C-2 in the first paragraph it says, "On two or three occasions I received
20 counsel from a fellow by the name of Nugent here in town who has had considerable experience in the business," do you remember that? A. Yes, sir.

Q. What did you do about it? A. I sent Mr. Martin a letter back and said to keep this deal clean.

Q. Have you got copies of the letters? A. Yes, sir. I have a letter in which Mr. Martin wrote back to me that no one else was involved.

30 By Mr. Smith:

Q. Did you receive any other letters than that of March 21st? A. No.

Q. About Nugent? A. No, sir.

Q. That was the only letter you got about Nugent? A. Yes.

By Mr. Gilhooly:

Q. You say you wrote back and said to keep Mr. Nugent out of this deal and keep it clean? A.
40 Yes. I didn't know him I just heard about him. I never saw him.

Deposition of Simon H. Lavinson—Direct

IN CHANCERY OF NEW JERSEY

Between, LOUIS L. FISCHER, Complainant, and JOHN V. MARTIN, Defendant.	}	On Bill etc. 10 Depositions.
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Continuation of the taking of depositions in the above entitled cause, before me, Howard Isherwood, a Master in Chancery of New Jersey, this 1st day of August, 1928, at 2:30 o'clock in the 20
 afternoon, at my office No. 738 Broad Street, Newark, N. J. in pursuance of an order of reference before recited and in the presence of Charles S. Smith, Esq., Solicitor of Complainant, and Edward J. Gilhooly, Esq., appearing for Wolber & Gilhooly, Solicitors of Defendant.

SIMON H. LAVINSON, being duly sworn, testified as follows:

30

By Mr. Gilhooly:

Q. Where do you live? A. Trenton, N. J.

Q. Were you the owner of the property which was leased to the Childs Company? A. I am.

Q. Did Mr. Martin take up with you negotiations regarding the leasing of this property? A. Yes.

Q. What is your father's name? A. Gabriel Lavinson.

40

Deposition of Simon H. Lavinson—Direct

Q. Was Gabriel Lavinson interested in this transaction in any way? A. He was.

Q. What was his position in the transaction?
A. He was to receive one per cent of the commission.

10 Q. Was he a co-broker with Mr. Martin? A. I don't know whether you can call it that. Without him the deal couldn't have been made.

Q. What do you mean? You insisted on that arrangement? A. I did for the amount of work he put in.

Q. You insisted that he be paid one per cent? Do you know whether or not he was paid one per cent? A. He was.

20 Q. Were you present when the matter was closed? A. Yes.

Q. Was payment given to your father? A. It was given to me and in turn given to my father.

Q. You in turn gave it to your father? A. Yes.

Q. In what amount? A. \$4,720.00.

Q. How often did Mr. Martin visit you at Trenton or elsewhere for the purpose of conducting negotiations regarding the leasing of this property?
30 A. I testified to that in Court and I don't want to testify any different.

Q. What is your recollection? A. I would say on an average of between one and two times a week.

Q. Where would he see you? A. At my home, at the Stacy Trent Hotel, in my store, warehouse.

Q. How long did these negotiations last? A. About fourteen months.

40 Q. Were these visits which Mr. Martin made

Deposition of Simon H. Lavinson—Direct

to you in connection with the Childs lease or in connection with any other matter? A. The Childs lease only.

Q. There was some discussion at a previous hearing at which you were not present regarding an A. J. Silver deal, was Mr. Martin interested in that deal to your knowledge? A. No, sir. 10

Q. Did he ever make any special trip to Trenton to consult you about such a deal? A. No.

Q. Did you ever negotiate with Mr. Martin in any other deal? A. I asked if he was acquainted with this Silver crowd? He said he knew one of the Silvers. I asked him if he wouldn't stop in at New York when he was in New York and talk with Mr. Silver and probably get me some information. 20

Q. Do you know whether he did that? A. He did on one or two occasions. In other words, I asked him to interview the Silvers. He said he was acquainted with one of the Silvers boys. I asked him if he would stop in and talk with him and see how they felt about the deal. My father and me were negotiating with them.

Q. Did Mr. Martin take any special trip to see you about that other deal in Trenton? A. No, sir. 30

Q. Do you know whether or not Mr. Martin had occasion or was compelled to remain in Trenton overnight while carrying on these negotiations? A. He did.

Q. Do you know whether they were frequent or infrequent? A. I wouldn't say frequent, once in a while. 40

Deposition of Simon H. Lavinson—Direct

Q. Why would they be necessary? A. At times the hour was late when he couldn't get in touch with me and he thought it best to stay over. There was information that he wanted from the Childs Company and myself which was urgent.

10 Q. Why was it necessary to conduct negotiations over a period of fourteen months, continuous or intermittent? A. Anybody knows the Childs Company knows that it take more than fourteen months to make a deal with them. They dicker continually. There were times when we thought the deal was not going through.

Q. What was Martin's purpose in seeing you? A. He would straighten out certain details with
20 me and go back to Childs and do the same.

Q. Did you ever visit New York with Mr. Martin? A. Yes.

Q. How many times? A. I couldn't say.

Q. Who paid the expenses on these trips? A. Mr. Martin.

Q. Including hotel expenses? A. At times; yes, sir.

30 Q. From your experience which you had in conducting these negotiations with Mr. Martin and from observations you have made would you say he reasonably spent \$750.00 in expenses.

Mr. Smith: I object to that. It calls for a conclusion from the witness.

The Master: Objection sustained.

40 Mr. Gilhooly: I think that while it calls for a conclusion but it calls for a conclusion based on his observations. He is entitled to a reasonable amount of expenditures. If he can tell from his observations

Deposition of Simon H. Lavinson—Direct

that he spent that, that is the nearest he can get to it. It is the best evidence because Mr. Martin kept no daily record.

The Master: The testimony of this man was not to the effect that he was there all the time. The amount that you are claiming is the amount of all the expenses. You are asking him whether he knows that all the expenses this man incurred were of a certain reasonable value. 10

By Mr. Gilhooly:

Q. Could you tell us from observations you made in conducting these negotiations whether or not the expenses of Mr. Martin in going to Trenton and New York while in your company amounted to \$750.00? 20

Mr. Smith: I object because he didn't testify as to how often he was in his company.

By Mr. Gilhooly:

Q. Did you see Mr. Martin on each of his trips when you say he came there once or twice a week?

A. Yes, sir.

Q. He personally conducted these negotiations with you? A. Yes. 30

Q. They were over a period of fourteen months, once or twice a week? A. Yes.

Q. Did he ever see you more than twice a week in any particular week? A. Yes.

Q. How many times about did you go to New York? A. I couldn't answer that.

Q. More than five? A. I couldn't say.

Q. From the observation that you made and from the visits which Mr. Martin paid to you per- 40

Deposition of Simon H. Lavinson—Cross

sonally at such times you saw him in Trenton and times you went to New York would you say he reasonably spent \$750.00? A. Yes.

By Mr. Smith:

10 Q. Was part of the commission paid to Mr. Martin in the form of a note? A. Yes.

Q. How much was that? A. If my memory serves me right I think \$2,500.00.

Q. That was in the form of a note? A. Yes.

Q. Is that still running? A. Yes.

Q. How much is due on it now do you know?
A. I think \$1,900.00 I don't remember.

20 Q. You testified that Mr. Martin visited you in Trenton once or twice a week over a period of fourteen months, how do you fix that period of time? A. From the first visit that Mr. Martin made.

Q. When was that? A. I don't recall the date. I haven't the papers with me.

Q. When was the last visit? A. I don't recall the date.

30 Q. Can you say from memory about when the first visit was and when the last visit was? A. I wouldn't want to answer. I am not positive.

Q. Are you prepared to testify that it was fourteen months? A. That I know.

Q. You are not prepared to say how you know?
A. I don't know the exact dates. They are in my testimony in the Court.

40 Q. What prompts your memory to cause you to say fourteen months, it might be less? A. No, it wasn't. I have the date of the first letter that was written by Mr. Martin and I have the last

Deposition of Simon H. Lavinson—Cross

letter or the date when the negotiations were completed, that was a period of fourteen months.

Q. One or rather two visits a week for fourteen months would be approximately 112 visits, do you realize that? A. Yes.

Q. Are you prepared to say Mr. Martin saw you that number of times? A. At least. 10

Q. You are sure of that? A. Positive.

Q. During that time did Mr. Martin ever have any transaction with you concerning the property on the corner of Livingston and Jackson Street? A. No, sir.

Q. Did he not enter into negotiations with you and others to buy property at that place? A. We were talking about it. Nothing ever came out of it. 20

Q. How much further did the transaction get besides talking? A. That's all.

Q. Did Mr. Martin advance you any money on account of that transaction? A. No.

Q. Did he advance you notes? A. No, sir.

Q. You testified that Gabriel Lavinson received a commission, what did he do in connection with this transaction? A. He was advising me from time to time. He heard the first meeting that Mr. Martin had with me and considerable time after that. 30

Q. With whom did he negotiate? A. Mr. Martin.

Q. Did he ever negotiate with the Childs Company? A. Well, no; he negotiated with me and with Mr. Martin and not with the Childs Company.

Q. How was the commission paid to Mr. Lavinson your father? A. By check. 40

Deposition of Simon H. Lavinson—Cross

Q. Was any part of that commission paid back to Mr. Martin by him? A. Not to my knowledge.

Q. You are not sure? A. I don't know what became of that.

10 Q. Did you pay Mr. Martin any money on account of that property in the Jackson Street deal? A. None whatever. That was all talk. It didn't come to any head.

Q. Did you ever receive any authority from Mr. Fischer to pay moneys to Gabriel Lavinson? A. No, sir.

Q. Did you receive the check payable to Gabriel Lavinson? A. Yes.

20 Q. Did you pay it to Gabriel Lavinson? A. Yes, sir.

By the Master:

Q. How many meetings did you have regarding the Silver matter? A. No meetings.

Q. He talked to you when he was down on the Childs matter? A. Just as I testified, one or two occasions that he went over to see Silver while he was in New York. I didn't give him any instructions to go specially.

30 Q. When he was down in Trenton on that Childs deal how often did you talk on the Jackson Street deal? A. I couldn't say how often. We couldn't continually talk the Childs deal. We had to talk something else.

Q. How many times did you talk about this Jackson Street deal? A. To be frank, I couldn't answer I don't know.

40 Q. How long did it continue? A. I would say a period of two or three weeks.

Deposition of Simon H. Lavinson—Cross

Q. You were the owner of the property that was leased to the Childs Company? A. Yes.

Q. When were these arrangements made that your father was to get some money out of it? A. When I found out I was taking so much of his time. 10

Q. How long after the negotiations were started? A. About two months. I would have to bother him myself night and day.

Q. What did your father have to do about the deal, Mr. Martin was down there wasn't he doing the negotiating, representing the Child's Company? A. I wanted my father's advice.

Q. Is your father a real estate broker? A. Yes, sir. 20

Q. Licensed? A. Yes, sir.

Q. He represented you in the transaction? A. He was advising me. I was taking a lot of his time at all times. It was a big proposition and I didn't want to take the entire burden on my shoulders. I said, "Jack before going any further I want my father to get a portion of this commission or I won't make the deal."

Q. He was advising you? A. Yes, sir. 30

Q. Representing your interests? A. Yes.

Q. Mr. Martin was representing the Childs interest? A. Yes.

Q. In other words, your father was acting in an opposite position? A. That is true. There were a lot of things that helped the deal or the deal wouldn't have been consummated. I found that he was paying a commission to Ellsworth Childs. After a lot of talk we agreed to pay three per cent. The New Jersey rate was two per cent. 40

Deposition of Simon H. Lavinson—Cross

That one per cent didn't cost him anything. I know in Trenton it is two per cent.

Q. You gave him the extra one per cent so that your father would have it? A. Yes, we had an agreement to that effect.

10 Q. Written agreement? A. Yes.

Q. Have you a copy here? A. No. I can testify that Mr. Smith saw the agreement.

Q. Did you know at any time that this man Fischer was in the deal? A. The first visit Mr. Martin made was with Mr. Fischer talking about the Childs deal.

Q. That is Mr. Fischer, the complainant? A. Yes.

20 Q. Did you take up with Mr. Fischer then the question of how much was to be paid to your father at the time you told Mr. Martin that your father was to get a part of the commission? A. No, sir. Mr. Fischer was in Florida. It was no loss to them because they got one per cent extra.

Q. Is this a copy of the agreement? A. I don't know.

30 Q. That was made on October 20th, 1927, that was just prior to the time the lease was consummated? A. The Childs commission agreement between Mr. Martin and myself was made just before the deal was consummated. I think Mr. Smith saw both of those agreements.

By Mr. Smith:

Q. You were represented by an attorney in Trenton? A. I was.

Q. Who was he? A. Mr. Perlman.

40 Q. Who was the co-owner of the premises in question? A. Mr. Rosenblatt.

Deposition of Simon H. Lavinson—Cross

Q. Did you tell Mr. Rosenblatt that Gabriel Lavinson was going to receive a commission? A. I did.

Q. What did Mr. Rosenblatt say about that? A. He was simply a partner and is entitled to one-half of the profits but I do everything that is necessary in every way, share and form. 10

Q. I think you testified that you saw Mr. Martin on substantially all the visits he made to Trenton? A. We transacted the Childs deal on those occasions.

Q. Why was it necessary for Gabriel Lavinson to be in on this deal? A. He was in the deal from the start. Mr. Fischer was talking in the wholesale house with my father himself. 20

Q. Why didn't you tell Mr. Fischer that Mr. Gabriel Lavinson was in on the deal? A. He was in Florida.

Q. Did you testify that he was there when your father was there in the warehouse? A. I say that the question of one-third of the commission was taken up later.

Q. Referring to the agreement for the payment of moneys to Gabriel Lavinson was that about the time that the matter was first suggested? A. No. As I said before about two months after when we started negotiations. As far as I was concerned I didn't have to take that up with Mr. Fischer. Mr. Martin agreed, that was all I cared. 30

Q. As a matter of fact was it not testified to that this matter was originally negotiated in June, 1926? A. I can't recall dates.

Q. If it was negotiated in June, 1926, two months later you say this question of commission 40

Deposition of Simon H. Lavinson—Cross

to your father was first suggested? A. Yes, about two months.

Q. How do you know Mr. Fischer was in Florida at that time? A. I saw some mail.

10 Q. You are not prepared to testify that he was in Florida at the time this arrangement was made between you and Mr. Martin? A. I saw Mr. Fischer five times. I couldn't take up anything with him.

Q. You saw him five times after the matter was negotiated? A. Yes.

Q. On any one of those five occasions you never told Mr. Fischer your father was to receive any money? A. No.

20 Q. You knew that Mr. Fischer was associated with Mr. Martin? A. I didn't know to what extent.

Q. Did you know that Mr. Fischer was associated with Mr. Martin? A. To what extent.

Q. In furthering or conducting this Childs lease? A. You ask me for an answer that I can't answer honestly. I can't answer something I don't know.

30 Q. You knew he was interested in furthering the consummation of this lease? A. I took it for granted he was because he first came in on the deal.

Deposition of John V. Martin—Direct

JOHN V. MARTIN, being recalled, testified further as follows:

By Mr. Gilhooly:

Q. Are there any calls on these two typewritten lists which have been compiled, are there any calls on there which are not in connection with that Lavinson deal? A. Positively not. 10

Q. That's all the telephone slips from which they were taken? A. Yes.

Q. Did you add any missing ones in on this list? A. No.

By Mr. Smith:

Q. From whom did you receive these telephone company slips? A. From the Telephone Com- 20
pany.

Q. In whose name is 7381 Market listed? A. Carl Abruzzese.

Q. Where is he located? A. 31 Clinton Street, room 804.

Q. Did Mr. Abruzzese make any of the telephone calls which appear on the list that is offered in evidence and which is taken from these slips? A. No, sir.

Q. How do you know that? A. Because I 30
checked them off. The girl kept a special record of each Trenton call I made.

Q. Where is that record? A. I asked her for it.

Q. In whose name is telephone 5699? A. Battery Trading Company.

Q. Who put the 1927 on that list? A. I did.

Q. Why did you put it on there? A. Because there are some in 1926. 40

Deposition of John V. Martin—Direct

Q. Which of them are in 1926? A. This is marked January, 1927, it represents the year.

Q. You have said that the girl in your office made a list of the calls that appear on this and itemized them on this list here? A. She re-
10 checked them up.

Q. You kept a list of the calls you made to Trenton? A. Yes.

Q. Is that list available? A. No.

Mr. Smith: I don't think that this should be admitted. It is testified that there is a record of the calls. This is not the original record. Neither of these records contains
20 the name of the witnesses. There is nothing to indicate which calls the witness made. Witness testifies that there is a list which shows the calls that he did make and I think these should not be admitted until that list is submitted.

Mr. Gilhooly: We have produced the Telephone Company's record of calls from which the compilation was made. The list from the Telephone Company is the best
30 evidence and that supplemented with the testimony by the witness that the only calls which he charged up to this particular transaction are on that list and taken from the Telephone Company list and that is the best evidence and the only possible evidence that can be produced and if there is anything in existence that will throw some light on this matter I will produce it. It is an
40 item of \$114.00. This is corroborative of the fact that he did spend that money.

Deposition of John V. Martin—Direct

By Mr. Smith:

Q. How did you pay for these calls? A. By check.

Q. Have you got the checks? A. I don't know. I think I have. Of the 5699 Market I haven't got the checks. Several months when I paid the checks I paid the \$25.00 for my rent. Sometimes I paid my rent and the telephone all at once. It wasn't an awful big item. 10

The Master: I won't admit those for the reason that the slips from the Telephone Company are evidence of the fact that certain telephone calls were made under those numbers but there is no evidence to show who made those calls or that those calls were paid for or by whom they were paid. The telephone bill was apparently paid by the subscriber and until some list is produced and some evidence of payment is shown I don't see how they can be admitted. 20

By Mr. Gilhooly:

Q. Can you procure any list to supplement these lists to show which calls have been made by you? A. No. 30

The Master: I will admit them for what they are worth.

MASTER'S CERTIFICATE.

I certify that the foregoing depositions were taken by May C. Smith, a stenographer selected by me and by me duly sworn, faithfully and truly to take stenographically and reproduce in type-writing the testimony given, and that such depositions were taken in my immediate presence and hearing by said stenographer, sworn as above stated, and I believe that they accurately state the said evidence.

HOWARD ISHERWOOD,
Special Master.

20

EXHIBIT C-1.

PERLMAN & LERNER
COUNSELLORS AT LAW
Trenton, New Jersey

June 15, 1927.

30 Isaac Silver & Bros. Company
130 Fifth Avenue,
New York, N. Y.
Attention of Mr. A. J. Silver,
Re: 112-114 S. Broad Street,
Trenton, N. J.

Dear Sirs:

Mr. Lavinson and I made a special effort to
40 get in touch with the heirs with reference to the

Exhibit C-2

proposition submitted by your Mr. A. J. Silver concerning the leasing of the above premises, so that we could reply immediately to the proposition. We have been able to have a conference with Mr. Lavinson's father and the Perlman heirs. After considerable discussion, the proposition, as submitted was acceptable to them, although Mr. Lavinson, Sr. does not look with favor upon spending money for changes in the building. This objection, however, can most likely be overcome if the other details of the lease will be satisfactory. 10

The proposition submitted was as follows: a lease for twenty-one years, with the following net rentals: \$25,000.00 per year during the first seven years, \$27,500.00 per year, during the second seven years and \$30,000.00 per year during the third seven years; in addition, eight per cent per annum for any expenditures for proposed improvements, the cost of which should not exceed the sum of \$30,000.00. 20

May we not hear from you with reference to this matter within the next few days?

Very truly yours, 30

SOL PHILLIPS PERLMAN

EXHIBIT C-2.

Letter dated March 21, 1927, which was Exhibit C-9 before Vice Chancellor. 40

See page 107.

EXHIBIT D-1.

GUARDIAN TRUST COMPANY
OF NEW JERSEY

No. 53

Nov. 16th, 1927

10 Pay to the order of E. Childs.....\$4,250.
Four Thousand Two Hundred Fifty.....Dollars
\$4,250. JOHN V. MARTIN.

Endorsement: D-1
E. Childs

20

EXHIBIT D-2.

GUARDIAN TRUST COMPANY
OF NEW JERSEY

No. 48

Newark, N. J. November 15, 1927

30 Pay to the order of Gabriel Lavinson...\$4,720.
Four Thousand Seven Hundred Twenty..Dollars
\$4,720. JOHN V. MARTIN.

Endorsement:
Gabriel Lavinson.

40

EXHIBIT D-3.

CHARLES S. SMITH

COUNSELLOR-AT-LAW

Prudential Building

Newark, N. J.

10

Proctor in Admiralty

Telephone Mitchell 3594

December 2, 1927

Lewis Fischer and John V. Martin

To

Charles S. Smith, Dr.

To professional services re lease of Simon H.
Lavinson et al—Childs' Company

20

Oct. 19 Office conference Messrs. Martin
& Fischer, 12:15-1 P. M. Consulta-
tion and advise: \$10.00Office conference Messrs. Martin
& Fischer, 4-5.30 P. M. Consulta-
tion and Advice; Preparing
broker's agreement for commis-
sion between Simon H. Lavinson
et al and John V. Martin re lease
of premises #12-14 East State
Street, Trenton, N. J. two copies 15.00

30

Prepared memorandum agreement
between Simon H. Lavinson et al
and John V. Martin for payment
of commission in consideration of
effecting mortgage loan of \$180,-
000. from the Metropolitan Life
Insurance Co. on aforesaid prem-
ises; two copies; 10.00

40

Exhibit D-3

	Oct. 20	Telephone communication with Mr. Martin in Trenton, advice as to change in broker's agreement suggested by S. P. Perlman, attorney for Lavinson;	5.00
10	Oct. 21	Office consultation with Messrs. Martin and Fischer; examination of amended broker's agreement, and advise re acceptance of payment contrary to the terms of said agreement; examination of agreement between John V. Martin and Gabriel Lavinson 12-12.45 P. M.	10.00
20	Nov. 15	Preparation of agreement between John V. Martin and Simon H. Lavinson re payment of moneys to Gabriel Lavinson as associate broker—two copies	15.00
		Attendance at office of the Childs' Co. #200 Fifth Avenue, New York City. 2-5.30 P. M.	25.00
			Total—\$90.00

30 Received payment
December 28, 1927

CHAS. S. SMITH

Chas. S. Smith

Paid by personal check
of John V. Martin.

EXHIBIT D-4.

Trenton, N. J. Oct. 20, 1927

Memorandum of Agreement made this Twentieth day of October, 1927, between John V. Martin, realtor, of the City of Newark, County of Essex and State of New Jersey, party of the first part, and Gabriel Lavinson, real estate broker, of the City of Trenton, County of Mercer and State of New Jersey. 10

Whereas by an agreement entered into this day between Simon H. Lavinson and Aaron M. Rosenblatt, of the City of Trenton, County of Mercer and State of New Jersey, and the said John V. Martin, by which agreement the said John V. Martin is to receive three per cent commission for the negotiating of a certain lease between the said Simon H. Lavinson and Aaron M. Rosenblatt, and the Childs Company, on the leasing of property Nos. 12 & 14 East State Street, Trenton, N. J. 20

Now this agreement witnesseth: That the said John V. Martin is to pay over to the said Gabriel Lavinson, one-third of the said commission received to the said Gabriel Lavinson, real estate broker, for his services rendered in negotiating said lease. 30

Said one-third commission is to be paid over to the said Gabriel Lavinson in cash at the time when said John V. Martin will receive his commission from said Simon H. Lavinson and Aaron M. Rosenblatt. 40

Master's Report

In witness whereof the said parties have here-
unto set their hands and seals, the day and year
first above written.

J. V. MARTIN L. S.

10

GABRIEL LAVINSON L. S.

Signed, sealed and delivered
In the presence of
Marguerite B. Hutchkiss

A true copy

Thomas Barber,
Clerk.

20

MASTER'S REPORT.

(Filed Nov. 23, 1928.)

IN CHANCERY OF NEW JERSEY

30	Between LOUIS L. FISCHER, <p style="text-align: right;">Complainant,</p> and JOHN V. MARTIN, <p style="text-align: right;">Defendant.</p>	}	On Bill, etc.
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40 In pursuance of a decree of this Court made
in the above entitled cause on the first day of
June, 1928, whereby it was ordered, adjudged and

Master's Report

decreed that the above named defendant, John V. Martin, account, under oath, for the said commissions received by him, and make full and true discovery and disclosure of where the said fund arising out of said commissions is located, and how the same is invested and by whom it is held 10 and possessed and what expenses have been incurred, and what disbursements have been made so that it may be determined which half of the said fund shall be charged therewith and what balance appears to be due from said defendant to the said complainant, and that the said several matters be referred to me, Howard Isherwood, one of the Masters of this Court to ascertain and report thereon. 20

I respectfully report to his Honor, the Chancellor, that I have been attended by Charles S. Smith, Solicitor for the Complainant, and Edward Gilhooly, representing Wolber & Gilhooly, Solicitors of Defendant, and have taken the depositions of the witnesses produced before me concerning the several matters above referred to me and have examined into the matters so referred to me. 30

The Court has decided that the complainant and the defendant had entered into an agreement of joint adventure in the month of July, 1926, and that in pursuance thereof had negotiated a lease, the commissions for which are the subject of controversy. Under the circumstances, the law regarding joint adventures must govern.

I find and report that the amount paid to the defendant as commissions in the transaction was 40 \$14,160.00.

Master's Report

I further find and report that the said defendant paid Ellsworth Childs the sum of \$4,250.00, which said amount was agreed upon between the complainant and defendant so that this claim is allowed.

10 I further find and report that the defendant paid to one Gabriel Lavinson the sum of \$4,720.00, the payment of which is objected to by the said complainant.

It appears from the testimony that the lease involved the sum of \$472,000.00 and the defendant states that the lessor would not make the lease to the Childs Company unless his father, Gabriel Lavinson, received one-third of the commissions amounting to the sum of \$4,720.00. I doubt very much that the son (lessor) would have permitted a deal of this proportion to fall through just because his father, Gabriel Lavinson, did not receive a portion of the broker's commission. Defendant states that he discussed this question with the complainant, who objected to giving that amount to the said Gabriel Lavinson, and then the defendant, without again discussing the matter with complainant, proceeded to make an agreement in writing with the said Gabriel Lavinson, which was more than a year after the joint adventure had been in existence, and at the consummation of the transaction paid the said Gabriel Lavinson, pursuant to the agreement, the sum of \$4,720.00, without the consent of the complainant. By making this commission agreement with Gabriel Lavinson, defendant pur-
ported to act as the agent of the complainant.

20
30
40

Master's Report

This might be binding if there were a partnership existing between the complainant and defendant, but there was not. As has been hereinbefore stated, the only relation existing between the parties hereto was that of joint adventure. In joint adventures the one element that is noticeably lacking is the right of one joint adventurer to act as the agent of the other or others. 10

After the defendant had discussed with the complainant the question of the proposed arrangement with Gabriel Lavinson, and the complainant had objected to the payment of any money to him, the defendant could have abandoned his joint adventure with the complainant and proceeded with the transaction alone, but this he did not do, and I question very much the good faith of the defendant in proceeding to enter into the agreement and in paying to Gabriel Lavinson the sum of \$4,720.00. 20

To allow this disbursement by the defendant to Gabriel Lavinson would be in effect to nullify the ruling of this Court that a joint adventure existed between the parties hereto for it would be holding that the defendant had a right to act as the agent of the complainant in introducing a new joint adventurer into the transaction. The payment of this amount was not justified and is not allowed. 30

I further find and report that defendant claims credit for a disbursement of \$2,000.00 to a man named Alfred S. Nugent, a real estate broker, for services rendered in the transaction in question. From the testimony given it was apparent 40

Master's Report

that both defendant and Mr. Nugent were trying to create the impression that Mr. Nugent rendered very valuable service, but their recollections were very vague as to the number of times Mr. Nugent was consulted and the purport
10 of the consultations, except twice, one of which, as Mr. Nugent stated, was as to "an encroachment on the property which would prevent the erection of a building." Mr. Nugent testified that he advised the defendant "that the only logical move would be to have Mr. Lavinson (the owner of the property in question) purchase the adjoining property and wipe out the easement."
20 This was the easiest and best way to get rid of the encroachment, but the defendant certainly did not need the services of a real estate broker to advise him concerning it, for it was something that anyone with ordinary intelligence should know, and besides, the defendant was also a licensed real estate broker. The other time was when Mr. Nugent suggested to defendant that he go to the lessor and lessee and have them agree upon a \$500.00 reduction in rent. I believe that
30 the only services rendered by Mr. Nugent were those stated in Exhibit C-2, a letter written by defendant to complainant, which states, amongst other things, "On two or three occasions I received counsel from a fellow by the name of Nugent here in town, who has had considerable experience in the business."

Both defendant and Mr. Nugent had been employed in the real estate office of Bowers & Company and knew each other and I don't believe
40 there was any thought of Mr. Nugent charging

Master's Report

defendant for his services or the defendant had any idea of paying for the same at the time the matters were discussed by them, but that the charge was only thought of when the trouble arose between complainant and defendant. At any rate, the services rendered, in my opinion, were not worth anything in the transaction and the payment of \$2,000.00 to Mr. Nugent will not be allowed. 10

I further find and report that the payments of \$90.00 for legal services for the cost of plat of the City of Trenton, \$15.00, and for the cost of blue print, \$.25, are not contested and will be allowed. 20

I further find and report that defendant claims credit for a disbursement made to a Mr. Donnelly for driving him to Trenton on a Saturday morning in his car for the purpose of obtaining a description of the property in question by Monday morning. If this were the only purpose in making the trip to Trenton, the information desired could have been more easily obtained by telephoning to Samuel Lavinson, the owner, at Trenton, to send a description to him by mail, or by going to Trenton by train. In my opinion, the trip to Trenton by automobile was not justified and that disbursement is not allowed. 30

I further find and report that the defendant claims credit for disbursements made on visits to Trenton in the transaction for carfares, hotels, meals and entertainment in the sum of \$750.00. 40

Master's Report

It is quite apparent that defendant did not keep any books in connection with this transaction. He merely makes a bald statement that he made trips to Trenton at least three times a week for about fourteen months, and also made trips to
10 New York at different times, which were more than the amount claimed, but he is sure they were more than \$750.00. As to the trips to Trenton, he is corroborated to some extent by Mr. Samuel Lavinson, the lessor. Defendant also testified that he could show by his checks how much he spent, but none of the checks were produced and offered in evidence. I am satisfied that the defendant did make some trips to Trenton and
20 New York, but the proof is so indefinite and unsatisfactory I cannot determine what proportion should be charged to this transaction and for that reason must disallow the entire claim.

I further find and report that the defendant claims credit for \$100.00 for the use of the William Street property and for \$300.00 office hire. Defendant was a licensed real estate broker and in examining Exhibit C-2, which is his letterhead,
30 I find that he first had an office on William Street, which was afterward changed to 31 Clinton Street, Newark, N. J. He undoubtedly transacted all of his business during the period that this transaction was pending at these two offices. His testimony was that he paid for the use of the William Street property for the months of September, October, November and December, 1926, the sum of \$100.00 or \$25.00 per month and for office hire at 31 Clinton Street from January to
40 September, 1927, inclusive, \$25.00 per month, or

Master's Report

\$250.00 in all, instead of \$300.00, as claimed. In other words, for office rent in which to transact any real estate business he might have had, during the period in question he paid the sum of \$350.00 and he wants to charge this transaction with the entire amount and tries to show the reasonableness of it by testifying that this was the only transaction he did in the whole fourteen months, although he did admit when pressed on cross-examination, that he did have other transactions. I believe he did have other business and to allow these disbursements for the use of the William Street property and office rent would be eminently unfair to the complainant. This claim is disallowed. 10
20

I further find and report that defendant claims credit for \$100.00 he paid to a stenographer in the law office of Mr. Abruzzese for keeping her after hours and on Saturdays to take care of his correspondence. Defendant testifies that he gave her that amount when she was finished because he felt that he owed it to her for extra time. Defendant does not produce the stenographer to prove that he paid this amount to her, or show any reason for not producing her; neither did he produce any copies of the correspondence, nor give any reason for not producing it. This was apparently a gift and not a charge made by the stenographer to him, and should not be charged as a disbursement in this transaction. This claim is also disallowed. 30

I further find and report that defendant claims credit for telephone calls made during the transaction amounting to \$114.35. As to those charges 40

Master's Report

defendant produced toll service slips for telephone calls made to New York, Trenton and Belmar which total the above mentioned amount, and testifies that all of these calls were made in the transaction in question from the offices on William
10 Street and Clinton Street. Both of these telephones were listed not in his name, but in the names of others. Presumably the bills were chargeable to and paid by the subscribers. No checks are produced showing either direct payment to the Telephone Company or reimbursement to the subscribers. The proofs submitted do not convince me that all of those calls were made in
20 connection with this transaction, nor even that all were used by the defendant. Under such circumstances because of such indefinite and unsatisfactory proofs, I cannot determine what, if any, are chargeable to this transaction and hence must disallow the claim.

I further find and report that Mr. Gilhooly, of counsel with defendant, on page 8 of his brief makes claim that defendant is entitled to the reasonable value of his own services over the entire
30 period of the negotiations. This, upon the Court's finding that this was a joint adventure, I cannot subscribe to or allow.

I further find and report that on the full amount of commission \$14160.00 defendant is entitled to a credit for the payments made to Ellsworth Childs \$4250.00, for legal services \$90.00, for plat at Trenton \$15.00 and for blue print \$.25 making
40 a total of \$4355.25 which leaves a balance of \$9804.75 of which last mentioned amount complainant is entitled to the sum of \$4902.37.

Exceptions to Master's Report

I further find and report that the commission of \$14160.00 was paid to defendant partly in cash and partly by note. Of this amount \$2360.00 was represented by the note of Samuel Lavinson on which there is still due the sum of \$1800.00.

All of which is respectfully submitted this 22d day of November, 1928. 10

HOWARD ISHERWOOD,
Master.

EXCEPTIONS TO MASTER'S REPORT.

IN CHANCERY OF NEW JERSEY

20

(Filed Nov. 30, 1928)

Between

LOUIS L. FISCHER,

Complainant,

and

JOHN V. MARTIN,

Defendant.

On Bill, etc.

30

To:

CHARLES SMITH, Esq.,
Solicitor for Complainant,
Prudential Building,
Newark, New Jersey.

Dear Sir:

PLEASE TAKE NOTICE that the defendant takes the following exceptions to the report filed by

40

Exceptions to Master's Report

Howard Isherwood, Special Master, to whom the above entitled cause was referred:

- 10 1. Exception is taken to that portion of the report wherein the Special Master disallowed a credit for payment in the amount of \$4720.00 made to Gabriel Lavinson.
2. Exception is taken to that portion of the report wherein the payment of \$2,000.00 made to Alfred S. Nugent is disallowed by the Special Master.
- 20 3. Exception is taken to that portion of the report wherein the Special Master disallowed a disbursement paid to Mr. Donnelly, and which disbursement was in the amount of \$25.00.
4. Exception is taken to that portion of the report wherein the Special Master disallowed expenditures of \$750.00 made by the defendant by reason of certain visits made by him to Trenton in connection with the transaction alleged in the complaint.
- 30 5. Exception is made to that portion of the report wherein the Special Master disallowed the payment of \$100.00 as rent for the use of the William Street property and \$300.00 for office hire.
6. Exception is made to that portion of the report wherein the Special Master disallowed the payment of \$100.00 made by the defendant for stenographic hire.
- 40 7. Exception is made to that portion of the report wherein the Master disallowed the sum of \$114.35 paid by the defendant for telephone calls.

*Order Dismissing Exceptions and Confirming
Master's Report*

8. Exception is made to that portion of the report wherein the Master disallowed the claim of the defendant for reasonable value of his services.

Respectfully yours,
WOLBER & GILHOOLY, 10
Solicitors for Defendant.

ORDER DISMISSING EXCEPTIONS AND CONFIRMING MASTER'S REPORT.

IN CHANCERY OF NEW JERSEY

(Filed Dec. 11, 1928) 20

Between

LOUIS L. FISCHER,

Complainant,

and

JOHN V. MARTIN,

Defendant.

On Bill, etc.

30

Exceptions having been filed by the defendant, John V. Martin, to the report of Howard Isherwood, one of the masters of this court, on the matters referred to him by an order of this court made on the first day of June, 1928, and the matter coming on to be heard in the presence of Charles S. Smith, Esq., solicitor for the complainant, Louis L. Fischer, and Wolber & Gilhooly, Esqs., solicitors for the defendant, John V. Mar- 40

*Order Dismissing Exceptions and Confirming
Master's Report*

tin, and the court having considered the matter and the arguments of counsel thereon;

10 It is on this 11th day of December, 1928, ORDERED that all of the exceptions to the master's report be and the same are hereby overruled and dismissed;

It is further ORDERED that the said master's report be and the same is hereby in all things ratified and confirmed according to the true tenor and meaning thereof;

20 It is further ORDERED that the defendant pay to the complainant the costs of these proceedings to be taxed, which costs shall include an allowance of \$500 to be paid to Howard Isherwood, as special master in this cause, and a counsel fee of \$350 to be paid to Charles S. Smith, solicitor for and of counsel with the said complainant, within five days after the service upon him of true but uncertified copies of this decree and of said taxed costs; and that in default of such payment, execution issue therefor according to the practice of
30 this court against the goods and chattels, lands and tenements, hereditaments and real estate of the said John V. Martin.

E. R. WALKER,
C.

Respectfully advised,
Alonzo Church,
V. C.
(A True Copy.)
40 Thomas Barber,
Clerk.

ORDER FOR SUBSTITUTION OF ATTORNEY

IN CHANCERY OF NEW JERSEY

Between LOUIS L. FISCHER, <div style="text-align: right;">Complainant,</div> <div style="text-align: center;">and</div> JOHN V. MARTIN, <div style="text-align: right;">Defendant.</div>	}	On Bill, etc. 10
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It appearing to the court that Wolber and Gilhooly, Esqs. have heretofore appeared as solicitors for the defendant in the above entitled matter and their consents being annexed hereto to the substitution in their place and stead of Stein, McGlynn & Hannoeh, it is on this 10th day of January, 1929 20

ORDERED, that Stein, McGlynn & Hannoeh be substituted as solicitors for the defendant, John V. Martin.

EDWIN ROBERT WALKER,
Chancellor.

Respectfully advised, 30

Alonzo Church,
V. C.

We hereby consent to the entry of the foregoing order.

WOLBER & GILHOOLEY,
Solicitors for Defendant.

(True Copy)

40

REPORT ON THE PROGRESS OF THE WORK

CHARLES S. SMITH

COLLEGE OF ENGINEERING

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

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New Jersey Court of Errors and Appeals

Between,

LOUIS L. FISCHER,

Complainant-Respondent,

and

JOHN V. MARTIN,

Defendant-Appellant.

On Bill, etc.

On Appeal
from the
Court of
Chancery

Brief on behalf of Appellant.

This is an appeal by the defendant from a decree of the Court of Chancery, advised by Vice Chancellor Church on June 1, 1928, determining that the complainant and defendant had entered into an agreement of joint adventure and directing defendant to account under oath for the commissions received by him (State of Case p. 117) and also an appeal from the order of the Learned Court below entered on December 11, 1928, which dismissed the defendant's exceptions to the Master's report and confirmed said Master's report in all respects (State of Case p. 191).

New Jersey State Library

STATEMENT OF FACTS.

Louis L. Fischer and John V. Martin had known each other about fifteen or sixteen years (State of Case p. 17, ll. 33-35, p. 44, ll. 25-26) and until the dispute which is the subject of this appeal arose, they were very close friends, visiting one another frequently and even spending week-ends together (State of Case p. 19, ll. 27-30; p. 62, ll. 32-35). Both men were in the real estate business, Fischer for a period of approximately six or seven years (State of Case p. 67, ll. 33-38) and Martin from about 1925 (State of Case p. 81, ll. 13-17).

In September, 1926, Martin learned from a certain Ellsworth Childs, a New York broker, that the Childs Company would be interested in a location for a restaurant in Trenton, New Jersey (State of Case p. 81, ll. 25-40). Martin accordingly set to work to secure a suitable property in Trenton, and naturally asked for some help from his friend Fischer, who had had several more years experience in matters affecting leases of properties and had owned some property in Trenton. Fischer and Martin met in Trenton at Martin's request in the early part of September, 1926, visited Charles McDermott, who was a real estate broker and friend of Fischer's, and then went together to see Simon H. Lavinson, who, together with Aaron Rosenblatt, owned certain property at 12 and 14 East State Street. Neither Fischer nor Martin had known Lavinson before this visit (State of Case p. 47, ll. 27-31) and they made in all three or four visits together (State of Case p. 76, ll. 22-33). Martin worked incessantly for a period of one year and four months in negotiat-

ing a lease between the Childs Restaurant and Lavinson and Rosenblatt, until the lease was finally executed between the parties on November 15, 1927 (State of Case p. 75, ll. 1-17). During this period, Martin went to see Lavinson at Trenton relative to the deal, "on an average of at least once a week or more than that" (State of Case p. 76, l. 33-p. 77, l. 3), while Fischer stopped in on Lavinson on one or two occasions when he would simply ask, "'How are matters going?' or words to that effect." (State of Case p. 77, ll. 2-15). The complainant was in Florida from Thanksgiving 1926 (State of Case p. 57, ll. 38-40) until his return in April or May, 1927, when he went to the seashore for the summer, coming back to Newark in November, 1927, when he went to work for the Fiedler Corporation (State of Case p. 58, ll. 19-31; p. 83, ll. 26-37; p. 19, ll. 17-24).

On October 20, 1927, the defendant John V. Martin entered into a written agreement with Simon Lavinson and Aaron M. Rosenblatt whereby the defendant was authorized to lease the premises 12-14 East State Street, Trenton, for a period of 29½ years at the yearly net rental of \$16,000.00. This agreement further provided that the owners would pay the defendant 3% on the aggregate net rental of the lease amounting to \$472,000.00, which commission would be payable in cash if and when the lease is executed and delivered by both parties thereto. (State of Case pp. 110 and 111). On the same date the defendant entered into an agreement in writing with Gabriel Lavinson, which agreement referred to the agreement above described and provided that John V. Martin pay over to

said Gabriel Lavinson one-third of the commission received by Martin in consideration for services rendered by Gabriel Lavinson, in negotiating said lease (State of Case pp. 179 and 180).

The lease was executed and delivered on November 15, 1927, and Martin received \$14,160.00, being \$2,360.00 in notes and the balance in checks which were cashed (State of Case p. 133, ll. 10-24). The defendant paid Ellsworth Childs \$4,250.00 of this commission for his work in the deal by check dated November 16, 1927 (State of Case p. 119, ll. 30-40; p. 120, p. 176, Exhibit D-1) and one-third, amounting to \$4,720.00, to Gabriel Lavinson by check dated November 15, 1927, in accordance with the agreement previously made (State of Case p. 120, ll. 30-40, Exhibit D-2, p. 176).

Fischer demanded payment of part of the proceeds of the commission and Martin offered him \$750.00 and at one time tendered him a check for \$250.00. (State of Case, p. 54, ll. 12-30; p. 84, l. 18 to p. 85, l. 39). Fischer then filed a Bill of Complaint alleging that in July, 1926, the complainant and defendant entered into an oral agreement of joint adventure for negotiating the lease in question and alleging that it was agreed to divide equally between them such commission as might be received by defendant. The bill further prayed for an accounting and decree for payment to complainant of one-half of said commission.

The Vice Chancellor, after hearing the testimony produced on behalf of the parties, decided that an agreement of joint adventure had been proved. The Court, thereupon, on June 1st, 1928, advised a decree in favor of the complainant which ordered that the defendant account to the com-

plainant for one-half of his commissions and directed that Howard Isherwood, one of the Masters of the Court hear and report the account of the defendant. (State of Case, pp. 117 and 118.) That there was insufficient facts before the Court to justify such a finding of joint adventure is one of the grounds of this appeal.

In the depositions before the Special Master the defendant proved the payments of \$4,250.00 to Ellsworth Childs and \$4,720.00 to Gabriel Lavinson. The defendant further testified that he paid \$2,000.00 to Alfred S. Nugent for his services as co-broker in aiding to close the deal (State of Case p. 121, l. 34 ff); \$90.00 to Charles S. Smith for legal services (p. 121, l. 26); \$100.00 to James S. Emerson for rent for use of office; \$100.00 to Edith G. Rhoades for stenographic services (State of Case p. 123, ll. 30-40); \$250.00 for office hire; \$750.00 for expenditures in the nature of train fare and hotel expenses (State of Case, p. 125, ll. 18-35); \$114.34 for telephone calls; and several other minor items. The defendant also claimed an allowance for the reasonable value of his services. The Special Master disallowed all of the above claims with the exception of the payment of \$4,250.00 to Ellsworth Childs, \$90.00 for legal services and \$15.25 for a plat of the City of Trenton and blue print (State of Case pp. 180-190). The Master found that the deduction of the allowances from the full commission of \$14,160.00 left a balance of \$9,804.75, of which he reported that the complainant was entitled to the sum of \$4,902.37.

Exceptions to the Master's Report, were filed (State of Case pp. 189-191) and these exceptions

were dismissed and the Master's Report was in all things ratified and confirmed by order dated December 11th, 1928 (State of Case, pp. 191-192). This order is appealed from on the ground that the Master's Report, which it confirmed, was erroneous in that the payments made by and credits sought by the defendant Martin were improperly disallowed.

The argument of this appeal is founded on two distinct and separate propositions. The first is that the requirements for a joint adventure as fixed by the decisions in our state were not met by the testimony before the Court below. And secondly, assuming that a relationship of joint adventure had been proven, the account and report rendered by the Master was erroneous, in that the disallowing of certain items was directly contrary to the principles governing the status of joint adventurers.

ARGUMENT.

I.

There was no agreement of joint adventure between the complainant and defendant.

Let us first see what is meant by a "joint adventure" and then let us examine the testimony to see whether the facts presented by the complainant proved any such relationship.

The following are a few definitions taken from Words and Phrases, Third Series, Vol. IV, page 587 ff.

“A ‘joint adventure’ is an association of two or more persons to carry out a single business enterprise for profit, for which purpose they combine their property, money, effects, skill and knowledge. *Forman v. Lumm*, 212 N. Y. S. 487, 491; 214 App. Div. 579.”

“A ‘joint adventure’ is analogous to, but not identical with, a partnership. It has been defined as an association of two or more persons to carry out a single business enterprise for profit, and is usually, but not necessarily, limited to a single transaction, although the business of conducting it to a successful termination may continue for a number of years. *Elliott v. Murphy Timber Co.*, 244 P. 91, 93, 117 Or. 387; 48 A. L. R. 1043.”

“‘Joint adventure’ is association of two or more persons to carry out single business enterprise for profit. While Courts do not treat joint adventure as in all respects identical with partnership, contractual relations of parties and nature of their association are so similar and closely akin to partnership that it is commonly held their rights and liabilities are to be tested by rules governing partnerships. *Keiswetter v. Rubenstein*, 209 N. W. 154, 157, 235 Mich, 36; 48 A. L. R. 1049.”

“To constitute ‘joint adventure,’ it is not sufficient that parties share in profits and losses, but they must intend to be associated as partners, either as general partners, or merely for duration of joint adventure, and same rules govern partnerships and joint adventures. *Hutchinson v. Birdsong*, 207 N. Y. S. 273, 275; 211 App. Div. 316.”

“A joint adventure can arise only by contract or agreement between the parties

to join their efforts in furtherance of a particular transaction or series of transactions. *National Surety Co. v. Winslow*, 173 N. W. 181, 183; 143 Minn. 66.”

“An agreement between three realty brokers engaged in promoting an exchange of properties for a division of commissions held not to constitute the endeavor a joint enterprise. *Hale v. Brown*, 99 So. 645, 647; 211 Ala. 106.”

“The principal distinction between a partnership and joint adventure is that the latter may be an engagement among several parties to undertake the performance of a single act. *O. K. Boiler & Welding Co. v. Minnetonka Lumber Co.*, 229 P. 1045, 1047; 103 Okl. 226.”

“As distinguished from a partnership, a ‘joint adventure’ is more limited, and confined in its scope principally to a single transaction. *Bary v. Kern*, 199 N. W. 77, 78; 184 Wis. 266.”

“A ‘joint adventure’ is a joint enterprise not amounting to a partnership, and differs from a partnership in that a party to it is not obliged to resort to an accounting, but may sue at law for his share of the profits. *Jorning v. Harriss* (C. C. A. N. Y.), 292 F. 974, 978.”

“A ‘joint adventure’ is similar to a partnership, except that it generally relates to a single transaction, though it may comprehend a business to be conducted for a period of years, while a partnership is formed to transact a particular kind of business. *Finney v. Terrell* (Tex.), 276 S. W. 340, 342.”

“A joint adventure partakes of the nature of a partnership and is governed sub-

stantially by the same rules of law, the principal distinctions being that a joint adventure usually relates to a single transaction, though it may comprehend the business continued for a period of years, and that one party may sue the other at law for a breach of the contract or a share of the profits or losses or for contribution for advances without precluding a suit in equity for an accounting or for a dissolution, and a joint adventure contract need not be express. *Reece v. Rhoades*, 165 P. 449, 453; 25 Wyo. 91."

"Practically the only difference between 'joint adventure' and a 'partnership' is that a partnership is ordinarily for transaction of a general business of a particular kind, while a joint adventure relates to a single transaction; both are governed by the same rules of law. *Welling v. Crossland*, 123 S. E. 776, 781; 129 S. C. 127."

This list of definitions could be continued indefinitely, and innumerable American cases could be cited to prove that a "joint adventure" differs from a partnership only insofar as it is confined to a single transaction or to the performance of a particular series of acts as distinguished from the general conduct of a particular kind of business.

A joint adventure can exist only by the voluntary agreement of the parties to it, and the usual requisites as to form and validity apply to a contract of this character. To constitute such a contract, no particular form of expression or formality of execution is necessary. In the absence of statutory provisions to the contrary, the contract may be oral as well as written. It need not be

express but may be implied in whole or in part from the conduct of the parties.

See:

33 C. J. p. 847.

48 A. L. R. 1055 ff.

Jackson v. Hooper, 76 N. J. Eq. 185, 74 Atl. 130 (reversed on other grounds in 76 N. J. Eq., 592, 75 Atl. 568).

There is no contention made nor has there been any endeavor to prove any written contract of joint adventure. Therefore, the testimony before the Vice-Chancellor must prove either (A) an express oral agreement between the parties or (B) such conduct as will create the relationship by implication.

(A) The testimony, in the State of Case, referring in any way to an oral agreement of joint adventure will be given here in detail.

(a) RUTH FISCHER on direct-examination told of a conversation with Mr. Martin about October, 1926, at State of Case p. 18, ll. 9-22:

“Q. Go on. A. And he asked me if I knew—or if my brother had spoken to me about a deal that he and Lou were working on.

Q. Yes. A. With Child’s Restaurant, and I said, yes, I did—and I mean that Lou did tell me about it.

Q. Did you tell Mr. Martin what your brother had told you? A. No, I didn’t. That was just a general statement.

Q. Did Martin tell you at that time what his relation with your brother was with respect to this transaction? A. *He just said they were both working on this deal together.*

Q. Did he say what the deal was? A. Yes, it was Child's Restaurant in Trenton."

She further testified as to a conversation with the defendant in November, 1927 (State of Case p. 20, ll. 14-24.)

"Q. And what did he say to you about this transaction at that time? A. Well, only that he was waiting for his—or would be very glad to get his commission and what he thought he would do with his, and referred to my brother about his commission, and they spoke about—something about going down to Florida with it, for a trip.

Q. Did he state that the commission was derived out of this transaction? A. Yes."

Much of her testimony was devoted to telling of Martin's numerous telephone calls to the Fischer home. When asked by the Court (State of Case p. 24, ll. 10-14), "Did he mention the Childs Restaurant over the telephone?" The answer was "No, I can't say positively he did." We submit that her testimony contains no proof of any oral agreement of joint adventure between Louis L. Fischer and John V. Martin.

(b) ROBERT H. BRATSCH a friend of Fischer's drove down with Martin from Princeton to the complainant's home at Belmar after a football game. His statements of remarks made by Martin included the following (State of Case p. 26 ff) :

"Q. Was Mr. Fischer's name mentioned in the conversation? A. Yes. Martin more or less eulogized, extolled Fischer; they were in a big deal and this was going to be a good one."

* * * * *

“Q. And just what did Mr. Martin say about it? A. Why, that Fischer was helping considerable on it and that—really, that if I had not known Fischer, I would have thought he was an awfully good fellow because of the manner in which Martin extolled him, he was such a hell of a good fellow socially.”

* * * * *

“Q. Did he tell you that he had asked Fischer to help him in this deal? A. Yes, he did. He told me Fischer was helping him.

Q. Was that statement made without inquiry on your part, or did you ask him that? A. I didn't feel that I knew him well enough to ask him that.

Q. And he made the statement gratuitously, did he? A. That they were both working on this deal; this was going to be a good deal.”

* * * * *

“Q. Did Mr. Martin speak of Mr. Fischer's participation in the deal, on that occasion? A. Participation in the deal?

Q. Yes. Did Mr. Martin say whether or not Mr. Fischer was going to get any of that commission? A. Yes. He remarked two or three times about ‘Lou and I, Lou and the deal, we are on the deal.’ I had in my mind they were both working on it.”

* * * * *

“Q. What words? A. ‘We are in on the deal—our deal.’

Q. ‘Lou and I are in on the deal’? A. Yes. ‘We are on the deal.’

Q. Didn't say on what percentage they were in, did he? A. No; he didn't say what percentage. I didn't feel that was any of my business, to ask him.”

(c) CHARLES M. McDERMOTT was another friend of Fischer's, whose testimony included the

following statements alleged to have been made in his presence by Martin and Fischer (State of Case, p. 31, ll. 26-38):

“Q. What was said about Mr. Fischer, in Mr. Martin’s presence, about his interest in the deal, or anything? A. A 50-50 proposition, if the deal went through.

Q. Which one said that? A. Both of them, if my recollection—(interrupted)

Q. Do you recall which one? A. It was discussed in general—I think Mr. Fischer—Mr. Fischer told me that, too, because I was supposed to get a share of some of the commission.”

* * * * *

State of Case, page 34, lines 11-18:

“Q. Now, when did they mention this 50-50 split that you have referred to in your testimony? A. I think at one of our early meetings we were just discussing the proposition, and it came out in a general way. It was not brought out by me; it was brought out by them—by Mr. Fischer and Mr. Martin.”

The statement at the bottom of page 31 shows that Mr. McDermott was an interested witness for another reason in addition to that of his friendship for Fischer:

“Q. You were to get paid? A. Not fully paid, but compensated for what work I had done around there.”

(d) SIMON H. LAVINSON gave no testimony relating in any way to any agreement of joint adventure between Fischer and Martin. He merely told how the complainant and defendant first came to see him together, and of the subsequent development of the deal in which he did all his

negotiating with the defendant Martin. At page 79, line 27 the following question and answer appear:

“Q. You knew that Mr. Fischer was associated with Mr. Martin? A. Only in respect of that coming in to meet me together.”

It is most significant that even the testimony of the complainant Fischer does not show what the alleged agreement was supposed to be or in fact that a definite oral agreement of joint adventure had ever been made. The following sentences contain Fischer's description of how the supposed contract of joint adventure was made (State of Case, p. 44, ll. 26-29):

“Q. In July, 1926, did Mr. Martin ask you to negotiate with him a lease on a property in Trenton? A. He did.”

Page 45, lines 3-5:

“Q. Did you consent to work with Mr. Martin on this transaction? A. I did.”

That the entire alleged agreement was complete when originally made was stated at page 52, lines 20-21:

“Q. Nothing was ever spoken? A. Was ever spoken, except our original agreement—never.”

And yet this original agreement is not described. Nothing was said as to the percentage of profits and losses each was to share; who was to pay expenses; what tasks were to be assigned to each; and there was no mention made of all the numerous important and pertinent matters to be considered in all common enterprises, whether partnerships or joint ventures.

There was an attempt made to supply some of the details of the agreement by testimony as to statements made by the parties later in the presence of other individuals. Thus, at page 45, lines 18-33, Fischer testified as follows:

“Q. And what did you tell Mr. McDermott, in the presence of Mr. Martin, about this lease? A. I told him that prior to this I had written a letter to Mr. McDermott. I said this was the man I had spoken about in the letter that I was working with, in regards the deal on a 50-50 basis.

Q. What did you mean by a ‘50-50 basis’? A. To split the commission was our understanding.

Q. You mean split it equally? A. Yes.

Q. Do you know whether Mr. Martin heard you, Mr. McDermott? A. He did.

Q. Did he make any comment on it? A. He did not.

Q. Did he dissent from it in any way? A. He did not.”

These statements made in the presence of McDermott cannot be construed as an oral contract, even though Martin may have been silent throughout the discussion. Perhaps McDermott might have been able to rely on the statements made, but certainly the speaker cannot himself use them as a basis of establishing a certain relationship with the defendant. At pages 86 and 91, lines 34-40, Martin denies that these remarks were made, and even if they had been spoken, they do not constitute an agreement of joint adventure nor can they be considered as furnishing part of the terms of any agreement.

The true relationship between the parties can easily be gathered from the testimony. The men

were acquainted for sixteen years and were close friends. Martin asked for Fischer's help on the deal, and Fischer did help him. Fischer most likely expected reimbursement for his work, and Martin intended to pay him and did offer to pay for it. There was no partnership as to the transaction, and it was not a joint adventure. It was the dispute as to the amount of Fischer's compensation which gave rise to the theory of joint enterprise.

At page 84, lines 3-9, Martin said:

"I asked him to help me when we first started out and he was of a little assistance to me the first couple of times we went down there."

And Fischer on cross-examination, at page 70, lines 21-26 testified:

"Q. And all that Mr. Martin asked you to do in this deal was to act in an advisory capacity to him, because of your experience in the leasing of that? A. He asked me to go to work on the deal, which I did do."

Both statements show the situation to be that of an individual asking his friend to aid him in negotiating a lease. The facts do not show that a joint adventure was ever contemplated, nor that there was an oral agreement to that effect between the parties.

The sentence in Exhibit C-9, at page 107, lines 13-15 reading "No other one had anything to do with the deal outside of yourself" seems to have aroused much discussion at the hearing (see State of Case, pp. 52, 60-61). The sentence seems to mean very little and to be rather ambiguous. It

can at most be construed as friendly assurance by Martin to Fischer, after stating that the deal is progressing smoothly, that he, Martin, is appreciative and thankful for Fischer's help.

We respectfully submit that no oral agreement of joint adventure can be pieced together out of the above testimony. A thorough examination of the testimony absolutely fails to disclose any clear or convincing proof of any definite understanding between the parties. The statements made by Fischer himself do not support his contention of a joint enterprise on a "50-50" basis, neither does the testimony adduced from the other witnesses present sufficient facts to support the decision of the Court below concerning the relationship between the complainant and defendant. THE REMEDY OF THE COMPLAINANT WAS IN THE COURTS OF LAW IN A SUIT FOR THE REASONABLE VALUE OF HIS SERVICES. THE GRANTING OF THE ACCOUNTING BY THE COURT BELOW WAS CLEARLY IN ERROR AND IMPROPER.

(B) It is next submitted that no contract of joint venture can be implied from the testimony given before the Court below. Such a contract cannot be raised by implication from the statements above discussed, especially in view of the fact that the State of Case contains many matters which are distinctly repugnant to such relationship.

One matter of this nature is the amount and kind of work done by each man in furtherance of effecting the lease with the Childs Company. Although Fischer and Martin made their initial trip to Trenton together, Martin did practically all of

the work thereafter. Simon H. Lavinson saw Fischer and Martin together about three or four times, Fischer alone once or twice and Martin *at least* once a week for a period of nearly one year and one-half (State of Case, p. 76, l. 22 to p. 77, l. 15). Fischer did not introduce Martin to Lavinson since they were both strangers to Mr. Lavinson before their first visit (State of Case, p. 80, ll. 14-21). The true situation is well stated by Fischer in his own cross-examination at page 73, lines 11-21:

“Q. Did you have any negotiations with the Childs interests at all in connection with this matter? A. No, sir; outside of through Mr. Martin, who had an entree there, he said.

Q. You didn't see him there at all, did you? A. No, sir.

Q. Did you have any communications with Mr. Lavinson or any other owner of this property on which the lease was closed? A. No, sir.

Q. Mr. Martin had all that? A. Yes, sir.”

The agreement for commissions with Simon H. Lavinson and Aaron M. Rosenblatt, the owners, was made solely with John V. Martin (State of Case, pp. 110 and 111). The same is true as to dealings with Gabriel Lavinson and Ellsworth Childs. Fischer was not present at the final execution of the lease and he did not even know the exact time when it did take place. See Fischer's statements on direct-examination (p. 54, ll. 8-15):

“Q. Do you know when the lease was actually executed? A. Sometime in November.

Q. When, 1927? A. 1927. The fall of 1927. It may have been the latter part of October.

Q. And when you learned it had been executed, did you make a demand on Mr. Martin for a part of the proceeds, of the commission? A. I did."

At page 68 lines 15-30 Fischer testified in the following manner as to the character and extent of his services:

"Q. Well, did you do anything in an active manner, outside of consulting with Martin, towards closing this deal with Childs of the lease? A. I went down and took a look at the property, figuring out just about what they would figure on it, inasmuch as I had had experience in leases and I had leased my own property, and I knew just about what there was demanded as to street lines and the like of that, and prior to that, in an advisory capacity, upon Mr. Martin's suggestion, solely. He said, 'Lou, I can handle this deal better alone; the people have become accustomed to me, and,' he said, 'I can get along fine now. All I want you to do is to stand back and figure this thing for me.'"

In view of the above discussion, and bearing in mind the fact that Fischer was in Florida during five or six months of the negotiations, how can it be argued that a contract of joint adventure is implied by operation of law from the conduct of the parties? Everything in the conduct of the men points to Martin doing all the actual work with Fischer as merely the friendly advisor. The enterprise was by no means joint, and the complainant is only entitled to a reasonable compensation for the services and aid which he actually

rendered. When a disagreement arose as to the amount of compensation which should be paid, the Courts of Law provided an adequate remedy against the defendant. Relief should have been sought by a suit at law, and the Bill in Equity in the present case was improper.

It is therefore respectfully submitted that no contract of joint adventure was proved in the instant case, neither one of oral agreement nor one by implication from the conduct of the parties and that the decree of the Court of Chancery entered on June 1, 1928, should be set aside together with all subsequent orders based thereon.

A careful study of the New Jersey cases clearly indicates that the facts above-described do not constitute the legal relationship of joint adventure. In all of the instances in the reports the agreements are definite, certain and were apparently clearly presented to the Court. To consider the facts presented in each case would unnecessarily lengthen this brief, but would concretely demonstrate the fact that the State of Case herein contains no proof of a contract of joint venture between Fischer and Martin. To note the fact situation in a few of the leading cases, will help, however, to present our contention more definitely.

The leading case in our state on the question of joint adventure is *Jackson v. Hooper* (1909) 76 N. J. Eq. 185, 74 Atl. 130, 76 N. J. Eq. 592, 75 Atl. 568, and it is this case which is most often cited for the proposition that the agreement may be implied from the conduct of the parties. Dill,

J. in the opinion for the Court of Errors and Appeals said at page 597 of 76 N. J. Eq. Reports:

“In our view of the case the fundamental question is not whether the complainant has established the agreement alleged, but whether, assuming that he has, the Court has power to enforce it.”

The Court below, however (and this portion of the opinion was not reversed) decided that a contract of joint adventure existed. Howell, V. C. after discussing the rather involved facts of the case and the fact that Mr. Hooper and Mr. Jackson spoke of and wrote of each other as partners, stated (at 76 N. J. Eq. p. 192) that:

“* * * it is likewise true that there has been a uniform, systematic, energetic and successful course of business between these two men. * * *”

We fail to see how the relationship between Fischer and Martin in any way approaches the course of conduct between the two parties in the Jackson case. The testimony before the Vice-Chancellor showed no “uniform, systematic, energetic and successful course of business” between Fischer and Martin, and in the absence of an express agreement there is nothing to indicate an implied agreement or tacit understanding to carry on the negotiations for the Trenton lease jointly.

In *Citron-Byer Co. v. H. E. Salzburg Co.* (1928 Errors & Appeals), 6 Adv. Rep. 836, 141 Atl. 782, the Bill of Complaint for an accounting on the basis of a joint venture was dismissed because the evidence failed to show that the parties had concluded a contract, definite and complete,

in all its terms. In the opinion written by McGlennon, J. it was stated at 141 Atl. page 783:

“Nowhere is there any mention of agreement as to when or in what manner any consideration should be paid. There is no stipulation whatever as to division of labor, division of expense, or how much time each was to contribute.”

We respectfully submit that the same proofs are lacking in the instant case.

The majority of the New Jersey cases concern situations where the agreement of joint adventure is in writing and are in the same group with *Braddock v. Hinchman* (1910, Errors & Appeals) 78 N. J. Eq. 270, 79 Atl. 419; *Warwick v. Stockton* (1896, In Chancery), 55 N. J. Eq. 61; *Traurig v. Levin* (1928, Errors & Appeals) 6 Advance Reports 939, 142 Atl. 48; *Rickey v. Moon Clay & Kaolin Company* (1918, Errors & Appeals), 89 N. J. Eq. 602, 108 Atl. 2. The other cases in which Courts have found agreements of joint adventure required proof and situations of the nature existing in *Kagel v. Johnson* (1925, In Chancery), 3 N. J. Misc. 84, 127 Atl. 664; *Howarth v. Teunon* (1925, Errors & Appeals), 97 N. J. Eq. 364, 127 Atl. 338; *Turtur v. Isserman* (1924, In Chancery), 2 N. J. Misc. 1084, 128 Atl. 151; and *Harris v. Bellett* (1926, In Chancery), 4 Misc. 1031, 135 Atl. 266. In all these cases the proofs abundantly showed the relationship and in some instances the agreement of joint adventure was virtually admitted.

Perhaps the case which is most closely analogous to our present situation is *Walters, et al. v. Mirken*, decided in the Court of Chancery in

1924 and reported in 3 N. J. Misc. 34, 128 Atl. 621. The complainant there contended that there was a joint venture between the two parties as to certain parcels of real estate and asked for an accounting of the profits made from the venture and kept by defendant. The opinion of Vice Chancellor Buchanan reads in part as follows at 3 Misc., page 34:

“That negotiations were had, and some sort of an understanding reached between Walters and Mirken as to dealings in real estate I have no doubt from the evidence; but it is impossible from the testimony to say what were the definite terms and effects of their conversations. Indeed, it is evident from the testimony of Mr. Walters himself, that his conception of the relationship between himself and Mirken, and their mutual rights and duties, was far from being clearly understood even by himself. This is perhaps not unnatural, for the law as to joint ventures is neither completely settled, nor commonly understood, and many, if not most, persons enter into some sort of joint interest in a speculative enterprise with no clear thought or idea in mind, except a division of the anticipated profits, and perhaps also the furnishing of the capital which then appears requisite for the transaction.

“Certainly no partnership was established by the proofs at the hearing. The most that might be found would be a general and indefinite agreement that the parties should thereafter become partners or joint adventurers as to certain transactions thereafter to be agreed on. I am unable to find, from the evidence in this case, satisfactory proof of the actual existence of a joint adventure.”

The Court therefore ruled that no joint adventure was proven, and the Bill of Complaint was dismissed with the further statement that

“moreover, it seems clear that his right of action, if it existed, would be at law and not of equitable cognizance for damages for breach of contract.”

In view of these decisions of our Courts and the facts presented above, it is urged that the decree of the Court of Chancery entered in this case on June 1, 1928, is clearly erroneous, and should be set aside by this Honorable Court.

II.

Even if an agreement of joint adventure is assumed, the report filed by the Special Master erroneously disallowed the expenses incurred and payments made by Martin.

In the next general point of our discussion, we are for the purpose of the argument assuming that the complainant proved a contract of joint adventure requiring an equal sharing of profits. Even on the basis of this assumption, the report rendered by the Special Master was clearly erroneous and showed a complete misunderstanding of the fundamental elements of the relationship of joint adventure.

The defendant proved that he paid \$4,720.00 to Gabriel Lavinson (State of Case, p. 120, ll. 30-40) and the Master so found in his report (State of Case, p. 182, ll. 10-14) in the words:

“I further find and report that the defendant paid to one Gabriel Lavinson the

sum of \$4,720.00, the payment of which is objected to by the said complainant."

The report further reads at page 182, line 38:

"By making this commission agreement with Gabriel Lavinson, defendant purported to act as the agent of the complainant. *This might be binding if there were a partnership existing between the complainant and defendant, but there was not. As has been hereinbefore stated, the only relation existing between the parties hereto was that of joint adventure. In joint adventures the one element that is noticeably lacking is the right of one joint adventurer to act as the agent of the other or others.*

The sentences italicized are clearly *not* the law of the State of New Jersey. The report then goes on to say:

"After the defendant had discussed with the complainant the question of the proposed arrangement with Gabriel Lavinson, and the complainant had objected to the payment of any money to him, the defendant could have abandoned his joint adventure with the complainant and proceeded with the transaction alone, but this he did not do, and I question very much the good faith of the defendant in proceeding to enter into the agreement and in paying to Gabriel Lavinson the sum of \$4,720.00.

"To allow this disbursement by the defendant to Gabriel Lavinson would be in effect to nullify the ruling of this Court that a joint adventure existed *between the parties hereto for it would be holding that the defendant had a right to act as the agent of the complainant in introducing a new joint adventurer into the transaction. The payment of this amount was not justified and is not allowed.*"

The disallowance of this disbursement and the report as filed clearly indicate that the Special Master did not comprehend the nature of the relationship between joint adventurers. The definitions given at the opening of this brief are all to the effect that a joint adventure is practically identical with a partnership, except insofar as it relates to a single transaction. There are no different rules of law as to agency applicable to joint adventures. Members *can* bind the enterprise while acting within the scope of the relationship and for the purpose of the joint venture in the same manner as partners can bind a partnership.

Martin actually made the payment to Lavinson and testified that it was necessary in order to consummate the deal. The testimony of Simon H. Lavinson before the Special Master conclusively shows that the payment was made for the sole purpose of effecting the lease (State of Case, p. 167, ll. 6-28):

“Q. When were these arrangements made that your father was to get some money out of it? A. When I found out I was taking so much of his time.

Q. How long after the negotiations were started? A. About two months. I would have to bother him myself night and day.

Q. What did your father have to do about the deal; Mr. Martin was down there, wasn't he, doing the negotiating, representing the Childs Company? A. I wanted my father's advice.

Q. Is your father a real estate broker?
A. Yes, sir.

Q. Licensed? A. Yes, sir.

Q. He represented you in the transaction? A. He was advising me. I was tak-

ing a lot of his time at all times. It was a big proposition and I didn't want to take the entire burden on my shoulders. *I said, 'Jack, before going any further I want my father to get a portion of this commission or I won't make the deal.'* ”

Furthermore, there is testimony to the effect that Fischer was in Florida at the time that the arrangement was made to pay Gabriel Lavinson part of the commission. (See State of Case, p. 168, lines 20-26, and p. 169, lines 17-23.)

In view of the above, what basis is there for the disallowance of this payment to Lavinson? The expenditure was made in furtherance of the negotiation of the lease and was a necessary payment. It was made in good faith and the obligation was incurred during Fischer's extended stay in Miami, and although Fischer may have told Martin that Lavinson was not entitled to the money, it was an existing obligation at the time Fischer may have made any of his alleged objections.

The Special Master disallowed all of the expenditures of Martin with the exception of the payment to Ellsworth Childs and items amounting to \$105.25. It is unnecessary to take up each item separately because the effect of the report was to absolutely refuse to allow Martin credit for his expenses and payments made over a period of almost a year and four months. Expenses for telephone calls, train fare, hotel bills and office hire incurred by an individual who devoted his entire activities to the transaction during the extended period were utterly disregarded. This wholesale disallowance of the claims made by Martin is wholly contrary to the theory of the

relationship of joint adventure as established both by the various definitions and by the cases.

Unless there is an express agreement or understanding to the contrary, expenses in the operation of a joint adventure must first be deducted before there can be a division of profits. Thus the following statement appears in Volume 33 of *Corpus Juris*, at page 863:

“If the contract is silent as to the amount and character of the expenses to be deducted, or the manner of determining the charge to be made by one of the parties for the use of property supplied or services rendered by him, such expenses will be allowed as are ordinarily incident to the carrying on of a business of the character undertaken, and the use of the property and the services rendered will be taken into account at their reasonable value. Naturally only expenses actually incurred can be charged for; they must be reasonable in amount, must have been incurred in the carrying on of the common business, and must have been such as were chargeable against all the members, for, if one of the parties undertakes to do a certain thing, he cannot charge up against the common fund the expenses incurred by him in doing it, nor can he charge the common fund with expenses incurred by reason of his own negligence or mismanagement.”

The case of *Simmons v. Lima Oil Co.* (1906—In Chancery), 71 N. J. Eq. 174, 63 Atlantic 258, contains the following statement by Garrison, V. C., at 71 Equity Reporter, page 180:

“Since it is not shown that the complainant has contributed any money whatever, or has taken any interest in the capital employed, his rights are solely

those of a joint adventurer in the profits arising out of the exploitation of the properties of the other parties. His rights with respect to this matter would appear to be one of three things, dependent upon conditions:

“If the joint venture had reached a termination and a profit had been made, he would be entitled to one-third of the profit; if the joint venture had reached a point where the other parties who put in the money had been reimbursed their outlay, so that a profit was being currently made, he would be entitled at reasonable times (since there is no specified time in the contract) to his one-third of the current profit; if neither of these two contingencies had happened, but the other party was misconducting himself with respect to this business, and could be held to be legally perpetrating a fraud upon the complainant, the latter would have a right to have the court intervene and wind up the business, and if a profit resulted therefrom decree the complainant’s share thereof.”

Elsewhere in the opinion it is further emphasized that even where a joint adventure has been proven, the complainant is entitled to only a percentage of the *profit* and not a percentage of any “gross amount” which may have been received in the transaction.

Before concluding we wish to call attention to the opinion of Vice Chancellor Pitney in *Warwick v. Stockton* (1896, In Chancery), 55 N. J. Eq. 61, 36 Atl. 488, to show that this case in no way conflicts with the argument heretofore made. The opinion at page 65 of 55 Equity Reports reads as follows:

“There is no provision, expressed or implied, that the complainant should have the usual power of a partner as agent of the firm to bind the partnership and to take part in the details of the management of the business, nor is there anything in the agreement to indicate that he was to become liable for any share of the losses if the business was unsuccessful. He was to have his salary whether the business was successful or not. The express provision for access by complainant to the books of account also indicates that it was not contemplated that he should have an active share and voice in the everyday management of affairs. Such a participation in the business would necessarily give constant access to the books and no special provision therefor would be necessary. These features show that the relations were not those of partners, but of a mere common interest in a joint adventure in which one party took all the risk of loss and the other party had a share of the profits, if any. In my judgment, the defendant continues to be the legal and equitable owner of the whole plant and business, and has the full control thereof, subject to the duty to account to the complainant for the manner in which he conducts it, and for one-half of the profits. He must, of course, conduct it with an honest and faithful endeavor to make it successful and profitable.”

Certain sentences in the above quotation, taken by themselves, are highly misleading, but in view of the facts to which they refer they are by no means inconsistent with our contention that the rights, duties and powers of joint adventurers are the same as those of partners. In the Warwick case the complainant sold defendant the exclu-

sive right to manufacture and sell certain inventions. There was an *express written agreement* between the parties which provided that the *defendant* should (1) furnish all capital and machinery for the enterprise, (2) keep books of account, open to complainant's inspection, and to render accounts periodically, (3) fully manage the business, and finally, (4) pay complainant half the profits after deducting a reasonable rental for the factory. Since this was the agreement between the parties, it is clear that the statements of Vice-Chancellor Pitney refer solely to the situation then before him.

Several items before the Master were disallowed entirely because the defendant could not prove them in proper legal fashion. It was not contended that the payments were not made. It is submitted that this is not proper in an equitable proceeding of accounting. An individual should not be penalized in an informal undertaking, if he cannot produce, let us say, original telephone slips. The Master should have determined upon a reasonable sum to be allowed for such items, and should not have insisted upon such proof as would be necessary if it were a suit at law for a judgment against a third party. In order to disallow any claim completely, there should be definite and convincing evidence of fraud on the part of the claimant or of such conduct as amounts to fraud.

IT SHOULD BE NOTED THAT THE AMOUNT REPORTED DUE TO THE COMPLAINANT BY THE MASTER IS IN EXCESS OF THE ACTUAL MONEYS WHICH THE DEFENDANT RETAINED ON ACCOUNT OF

THE TRANSACTION. The report declared that the complainant Fischer is entitled to \$4,902.37, and there is no dispute as to \$14,160.00 being the gross sum received as commissions and that actual payments were made of \$4,250.00 to Ellsworth Childs and \$4,720.00 to Gabriel Lavinson. No consideration whatever is given to the expenses incurred by Martin during the period of sixteen months, involving numerous telephone calls and trips to Trenton and New York. Nor is any weight attached to the fact that Martin devoted his entire time during this period to the negotiations, and to the fact that the consummation of the transaction was brought about entirely by the work of Martin alone. Nevertheless, this report of the Master was "in all things ratified and confirmed" by order of the Court of Chancery, dated December 11, 1928.

The injustice and inequitable nature of this decree is apparent from even a mere cursory examination of the facts. Assuming, for the sake of argument, that the payments to Childs and Gabriel Lavinson were the *only* payments in the transaction, subtracting the \$8,970 from the total commissions of \$14,160.00 would leave Martin with \$5,190.00. The decree, based on the Master's report, determined that Fischer was entitled to \$4,902.37. This would leave a balance of \$287.63 for the compensation of Martin, the man who originated the plan, secured the lease and earned the commissions, while Fischer, on the other hand, who did nothing, would receive more money than constituted the entire actual profits of the transaction. Even without considering the numerous expenses borne by Martin, the decree

is manifestly contrary to all principles of both law and equity, and should be set aside by this Court.

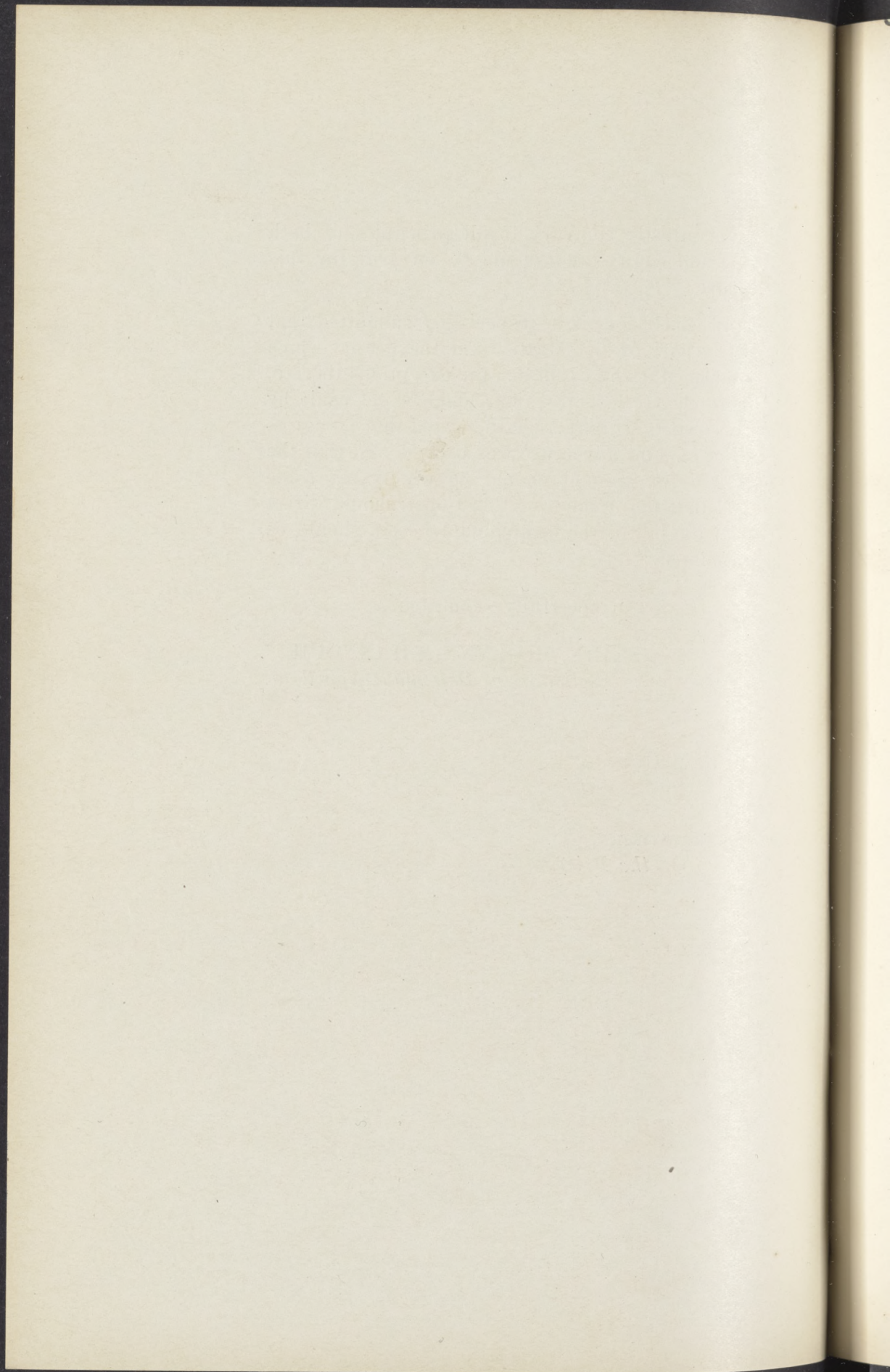
In conclusion, it is respectfully submitted that the report of the Master and the decree which confirmed it and dismissed the exceptions thereto, were clearly in error and should be set aside by this Court. It is further submitted that no agreement of joint adventure was proved, and that the decree for account should be wholly set aside and that the opinion of this Court should direct that the bill of the complainant herein should be dismissed.

Respectfully submitted,

STEIN, McGLYNN & HANNOCH,
Solicitors of Defendant-Appellant.

E. R. McGLYNN,
Of Counsel.

SIDNEY SVIRSKY,
On the Brief.



New Jersey Court of Errors and Appeals

<hr/>	
<i>Between</i>	<i>On Bill, &c.</i>
LOUIS L. FISCHER, <i>Complainant-Respondent,</i>	<i>On Appeal</i>
<i>and</i>	<i>from the</i>
JOHN V. MARTIN, <i>Defendant-Appellant.</i>	<i>Court of</i>
<hr/>	<i>Chancery.</i>
	CHURCH, V.-C.
	Defendant's
	Appeal.

RESPONDENT'S BRIEF.

The bill was filed by Louis L. Fischer against John V. Martin for an accounting of a commission arising out of a joint adventure which consisted of the undertaking by complainant and defendant to negotiate and effect a lease of certain real estate in Trenton, New Jersey, to the Childs Company of New York (p. 8).

Statement of the Case.

Martin asked Fischer to help him negotiate a lease on property in Trenton (p. 44). Fischer consented, and it was agreed orally that Martin and Fischer were to divide equally between them the amount of such commission which might be received, or, as stated by Fischer, they were to split the commission on a 50-50 basis (p. 45, p. 63).

Fischer thereafter devoted such part of his time and efforts as were reasonably necessary to further the common project (pp. 45-55). Fischer's efforts coupled with those of Martin in behalf of the joint enterprise, resulted in a broker's agreement between Simon H. Lavin-

son and Aaron M. Rosenblatt, owners of the property in Trenton, New Jersey, and Martin, whereby the latter was to receive the broker's commission for lease to be executed between the said Lavinson and Rosenblatt and the Childs Company of New York (p. 53). The lease was executed (p. 54); and Martin received the commission of \$14,160 (pp. 131-133).

Fischer demanded of Martin his part of the commission, as provided for in the agreement between them, and was told by Martin that he had conferred with several people, and that he didn't think Fischer was entitled to "50-50" any more (p. 54). Martin finally offered Fischer \$250.00, and when Fischer asked him to note that it was a part payment, Martin demanded back the check, and, upon receiving it, tore off his signature, and Fischer received nothing (pp. 54-55).

The learned Vice-Chancellor found upon the conclusion of the case before him that Martin and Fischer had entered into an agreement of joint adventure which provided that they were to divide equally the amount of the commission which was received for negotiating the lease of the Trenton property of Lavinson and Rosenblatt to the Childs Company of New York, and that the commission paid by the owners to Martin, as aforesaid, was \$14,160, (p. 117) and the Court decreed that Martin account for the commission received by him and make discovery of the expenses incurred and the disbursements made by him by virtue of the agreement (p. 118).

Defendant argues that the decree of the Court of Chancery should be reversed, first, because complainant failed to establish (a) an express

oral agreement between the parties; (b) such conduct as will create relationship by implication; second, because even if the agreement of joint adventure is assumed, the special master erred in disallowing the expenses incurred and the payments made by defendant.

Complainant relies upon the following specifications of points to support his contention that he is entitled to receive one-half of the proceeds of the commission paid to defendant, his co-adventurer, by Lavinson and Rosenblatt upon the execution of the lease of the Trenton property to the Childs Company of New York:

Point 1. There was an agreement of joint adventure between complainant and defendant.

Point 2. By virtue of the agreement of joint adventure, complainant is entitled to receive one-half of the broker's commission paid to his co-adventurer, the defendant.

Point 3. The Master's conclusions as to the allowance and non-allowance of disbursements by the defendant are correct according to law.

Point 4. Co-adventurers must act in good faith with each other.

POINT 1.

There was an agreement of joint adventure between complainant and defendant.

The usual requisites as to form and validity apply to a contract of this character. To constitute such a contract no particular form of expression or formality of execution is necessary. It need not be expressed, but may be implied in whole or in part from the conduct of the parties.

33 C. J. p. 847.

Jackson v. Hooper, 76 N. J. E. 185; 74 Atl. 130 at p. 136.

An examination of the testimony of complainant and his corroborating witnesses and of the exhibits will clearly show that complainant has proved an express oral agreement with defendant to divide equally the commission received by defendant, and has also proved by the conduct of the parties that the contract of joint adventure was created.

On direct examination Louis L. Fischer testified as follows (pp. 44-45):

“Q In July, 1926, did Mr. Martin ask you to negotiate with him a lease on a property in Trenton? A He did.

Q Did you consent to work with Mr. Martin on this transaction? A I did.

Q Did you go to Trenton with Mr. Martin in the month of July, 1926? A It was the latter part of July or the very early part of September.

Q Where did you go? A To Mr. McDermott's office.

Q Did Mr. Martin go to Mr. McDermott's office with you? A He did.

Q And did you discuss this transaction of the lease in Mr. McDermott's office? A I did; and he did, too.

Q And what did you tell Mr. McDermott, in the presence of Mr. Martin, about this lease? A I told him that prior to this I had written a letter to Mr. McDermott. I said this was the man I had spoken about in the letter that I was working with, in regards the deal on a 50-50 basis.

Q What did you mean by a '50-50 basis'? A *To split the commission, was our understanding.*

Q You mean, split it equally? A Yes.

Q Did you know whether Mr. Martin heard you, Mr. McDermott (Mr. Fischer)? A He did.

Q Did he make any comment on it? A He did not.

Q Did he dissent from it in any way? A He did not.

Q Did you discuss the properties to be leased to the Childs Company? A We did.

Q On that occasion. What properties were discussed? A We first brought up the question of the property which was eventually leased.

Q Which was that? A 12 and 14 East State street."

When the negotiations carried on by Fischer and Martin had all but been concluded, and the execution of the lease was pending, the relations between Fischer and Martin were as testified to by Fischer at pp. 53-54.

"Q And when did you learn that the lease was to be executed, the lease between the owners of the Trenton property and the Childs Company? A November—no, it was consummated—around about October or about the time I came into your office with Mr. Martin.

Q And why did Mr.—were you to be included in that broker's agreement? A No, I was not.

Q Rather, was there a broker's agreement entered into with Mr. Lavinson? A There was.

Q Between whom was the broker's agreement made? A Mr. Martin, one party, Mr. Lavinson, and Mr. Rosenblatt, on the other.

Q And why were you not included in it, in the broker's agreement? A On my return from the South, Mr. Martin informed me it was best to leave me go, as he had things in mind, and I was only to act in an advisory capacity. I naturally—(interrupted).

The Court: No, no. You have answered the question.

Q Was it at Mr. Martin's suggestion that your name was omitted from that agreement? A It was.

Q Did you ever see that agreement? A I did.

Q Do you know what it contained? A Yes, sir.

Q Do you know what rate of commission was provided for? A There was a discussion and finally it was three per cent.

Q To be paid by whom? A By Mr. Lavinson.

Q To Mr. Martin? A To Mr. Martin.

Q Do you know when the lease was actually executed? A Some time in November.

Q When, 1927? A 1927. The fall of 1927. It may have been the latter part of October.

Q And when you learned it had been executed, did you make a demand on Mr. Martin for a part of the proceeds, of the commission? A I did.

Q And what happened? A Why, he seemed to be—some discussion then arose as to what he was to pay me.

Q What was the result of the discussion? A The result was, he said he had conferred with several people and *he didn't think I was entitled to 50-50 any more, that he had consulted his father and other men.*

Q And what did he say? A (Interrupting). May I go on?

Q Did he say what he thought you were entitled to? A He said he thought maybe I might be entitled to \$750.

Q Did he offer you any money at any time in settlement of your claim? A \$250."

And on cross examination, Fischer testified at p. 63.

"Q You have known him (Martin) about sixteen years? A Yes, sir.

Q Did Mr. Martin actually mention the agreement of 50-50? A Yes, sir.

Q You are certain of that? A Yes.

Q You are certain he didn't say that he would see that you were properly compensated for whatever you did in the matter?

A No, sir."

Here is specific proof of a definite agreement between complainant and defendant. This proof is corroborated by the conduct of the parties and by correspondence between them. See note signed "Jack" appended to letter (Exhibit C. 2, p. 100) referred to on direct examination of Fischer (p. 49); letter (Exhibit C. 3, p. 101) referred to on direct examination of Fischer (p. 50); telegram (Exhibit C. 4, p. 102), telegram (Exhibit C. 5, p. 103), letter (Exhibit C. 6, p. 104), letter (Exhibit C. 7, p. 105), letter (Exhibit C. 8, p. 106), referred to by Fischer on direct examination (p. 51); letter (Exhibit C. 11, p. 109), referred to by Fischer on cross examination (p. 59).

All of this correspondence offers positive proof that Fischer and Martin were associated together in negotiating the lease of the Trenton property. Letter (Exhibit C. 9, p. 107) testified to by Fischer on direct examination (p. 52), points conclusively to the fact that Martin recognized that Fischer and no one else had worked with him in the transaction. It was an admission against interest, and was made voluntarily.

And the correspondence mentioned on direct examination by Martin (p. 90) and marked collectively (Exhibit D. 1, pp. 112-113-114-115) are additional evidence of the relation between Fischer and Martin. Then, too, Ruth Fischer on direct examination (pp. 17-18) amply corroborates the complainant's assertion of the ex-

istence of a contract of joint adventure between himself and the defendant. The testimony was:

“Q Miss Fischer, do you know the defendant, Mr. Martin? A Yes.

Q How long have you known him? A Oh, about fifteen or sixteen years.

Q And did you, at any time, have a conversation with Mr. Martin, concerning a transaction for a lease of property in Trenton? A One Saturday evening Mr. Martin asked me if Lou had spoken to me.

Q When was that? A Oh, that was 1926, about October.

Q And by ‘Lou’ whom do you mean? A My brother, Lou.

Q Go on. A And he asked me if I knew—or if my brother had spoken to me about a deal that he and Lou were working on.

Q Yes. A With Childs Restaurant, and I said, yes, I did—and I mean that Lou did tell me about it.

Q Did you tell Mr. Martin what your brother had told you? A No, I didn’t. That was just a general statement.

Q Did Martin tell you at that time what his relation with your brother was with respect to this transaction? A He just said they were both working on this deal together.

Q Did he say what the deal was? A Yes, it was Childs Restaurant in Trenton.”

And at p. 20

“Q And what did he say to you about this transaction, at that time? A Well, only that he was waiting for his—or would be very glad to get his commission and what he thought he would do with his, and referred to my brother about his commission, and they spoke about—something about going down to Florida with it for a trip.

Q Did he state that the commission was derived out of this transaction? A Yes.”

It is quite apparent from this testimony that complainant and defendant were to divide the commission, which was the subject matter of their contract, and it is significant that counsel did not cross examine Miss Fischer as to her conversation with Martin, and defendant's only reference to it was his denial on direct examination (p. 88), and on cross examination (p. 91).

Further substantiation of the fact of the relation between complainant and defendant is offered by the testimony of Robert H. Bratsch at pp. 26-27.

“Q Did he tell you that he had asked Fischer to help him in this deal? A Yes, he did. He told me Fischer was helping him.

Q Was that statement made without inquiry on your part, or did you ask him that? A I didn't feel that I knew him well enough to ask him that.”

And at p. 28.

“Q Did Mr. Martin speak of Mr. Fischer's participation in the deal, on that occasion? A Participation in the deal?

Q Yes. Did Mr. Martin say whether or not Mr. Fischer was going to get any of that commission? A Yes. He remarked two or three times about 'Lou and I, Lou and the deal, we are on the deal.' I had in my mind they were both working on it.”

And on cross examination at p. 29.

“Q Did Mr. Fischer say he was going to Europe and pay the cost of the trip out of the money he was going to make on this deal? A No. He said he might go to Europe, he might go South, 'I may do something with this commission,' the same as Martin said, 'I am going to take a trip on my commission.'”

Additional proof of the agreement between complainant and defendant is furnished by the testimony of Charles M. McDermott on direct examination (p. 31).

“Q What was said about Mr. Fischer, in Mr. Martin’s presence, about his interest in the deal, or anything? A A 50-50 proposition, if the deal went through.

Q Which one said that? A Both of them, if my recollection (interrupted).

Q Do you recall which one? A It was discussed in general—I think Mr. Fischer—Mr. Fischer told me that, too, because I was supposed to get a share of some of the commission.”

And at p. 32.

“Q There is no doubt in your mind that this subject of a joint interest in that transaction was discussed among the three of you? A Never in my mind there wasn’t any doubt about it.”

Verification of Fischer’s testimony as to the inception of the lease transaction and his relation to it is found in the direct examination of Martin at p. 82.

“Q And then what did you do right after that in connection with this matter? A Oh, we just went down there. Here is how—Vice-Chancellor, I want to—this is the first time I have ever been in Court.”

And at ll. 16-30.

“Q Tell me what you did, from that time on, in connection with this matter. A Why, I called up Fischer and told Fischer to meet me at Trenton. When Fischer met me down there in Trenton, we looked—we went around the main thoroughfares and we looked at three properties; one of them was the property where the deal was closed. They had two other properties around on North Broad Street and one on West Broad Street. We then went over to McDermott.

He said he had a friend over there in McDermott's office. And we went over to see Mr. McDermott, and then from there we went to see Lavinson, which we found out was the property. * * *"

Martin admits there was a conversation in McDermott's office as to the 50-50 deal. In his direct examination (p. 86, ll. 23-25) he testified:

"Q Did you say, in the presence of Mr. McDermott and Mr. Fischer, at McDermott's office, words to the effect—or words that you would split 50-50 with Mr. Fischer, as to the commission? A The only 50-50 basis that I ever spoke of at any time—I want this very clear—

Q All right. Now, answer the question. A (Continuing). The only 50-50 that was ever discussed at all was in McDermott's office—that was discussed in McDermott's office was all joking and kidding about this Childs deal was going to be so much money in it we were all going to do this and that; * * *"

Martin concluded his testimony here with an explanation that the split was to be with a New York broker.

On cross examination Martin (p. 91) denied the accuracy of Ruth Fischer's testimony; likewise that of Bratsch; questioned that of Lavinson; denied that of McDermott.

Arrayed against Martin's unsupported testimony and his naked denials is a preponderance of evidence in favor of complainant. As the learned Vice-Chancellor said at p. 94.

"It seems to be quite clear there was an agreement as to commission, and there is no question about that, and I understand the prayer of the bill is for an accounting."

Simon H. Lavinson on direct examination at p. 77, ll. 22-29 testified:

“Q Between January, 1927 and the time Mr. Fischer returned from Florida, was there much activity on the matter of this lease, during that time? A Well, I can't recall the exact date. I could if I could refer to my letters.

Q I don't want the exact date. I want to know whether there was any activity? A There was a time when the proposition lay dormant.”

And at p. 79, ll. 19-31.

“Q You testified that Mr. Fischer came to see you and talked about this matter with you, after he returned from Florida; and then in the summer of 1927 and extending into the fall, the matter became active, did it not? A I really can't tell you the period of time, unless I look it up. As I said before, it was dormant and then for that period it got lively again. We livened it up.

Q You knew that Mr. Fischer was associated with Mr. Martin? A Only in respect of that coming in to meet me together.

Q You dealt with them jointly, did you not, at that time? A At that time, yes.”

Fischer on direct examination (p. 49, ll. 22-40) said:

“Q How long did you remain in New Jersey in the year 1926? A Till Thanksgiving of that year.

Q The latter part of November, of course? A Yes.

Q And where did you go after that? A I went South.

Q In your contacts with Mr. McDermott about this deal, when did you last see him? A I saw him just prior to my leaving.

Q Well, when did you return from Florida? A In April of that year.

Q And in the interval did you keep in touch with Mr. Martin? A I did.

Q How? A By correspondence and by telegraph.

Q I see. And was the deal active or inactive, during that stage of the early months of 1927? A It then became inactive."

And at p. 50, ll. 1-19.

"Q Do you know why? A Mr. Martin said it was a question, we couldn't get them together in price, and I said, 'The best thing to do in cases like this is to let these things soak a while, until both parties realize somebody has got to make a move.' I said, 'It will be a long-drawn-out process and we better just sit back and take it easy.'

Q And did Mr. Martin ever communicate with you about the deal? A He did.

Q How? A By letter and by telegrams. I kept copies of all telegrams.

Q In the latter part of December, 1927, (1926?) did you receive a letter from Mr. Martin, which I show you here? A I did."

At p. 51, ll. 20-37.

"Q During the months of January, February and March, you kept in constant communication with Martin? A I—

Q As to the transaction? A I did.

Q Both by letter and telegram? A Yes, sir.

Mr. Smith: I offer these.

(Correspondence and telegrams marked Exhibits Nos. C. 5, C. 6 and C. 7, respectively, in evidence.)

Q On February 21, 1927, this deal you say, was still inactive? A I didn't get your question.

Q In the month of February, 1927, this deal was still inactive? A Yes.

Q I think you testified to that? A Yes.

Q But you had not ceased your active communication with Mr. Martin? A No, sir."

At p. 52, ll. 1-21.

“Q In April, when you returned from Florida, what did you do about this transaction? A Got in touch—

Q (Interrupting.) Whom did you see about it, first? A I got in touch with Mr. Martin immediately, as he had been urging me to come back.

Q Had any question been raised by Mr. Martin up to this time, as to your right to go into this transaction with him? A No, sir.

Q Was there ever any conduct on his part that raised a doubt in your mind? A No, sir.

Q As to his understanding of your position? A No, sir; nothing.

Q Nothing was ever spoken? A Was ever spoken, *except our original agreement—never.*”

Ll. 32-40.

“Q After you saw Mr. Lavinson, on your return in April, did Mr. Martin consult with you? A He did.

Q On how many occasions, from April on? A He was pretty nearly a constant week-end visitor at my home.

Q On other occasions, was this a subject of discussion between you? A It always was. He stayed one week with me—close to a week, maybe four or five days—”

The testimony of Fischer that the deal was inactive while Fischer was in Florida, coupled with the documentary proof that Martin was also working on other matters (see Exhibit C. 2, p. 100, ll. 24-30; Exhibit C. 10, p. 108, ll. 1-19), would seem to refute defendant's argument that he was doing all the actual work as alleged in defendant's brief (p. 19).

POINT 2.

By virtue of the agreement of joint adventure, complainant is entitled to receive one-half of the broker's commission paid to his co-adventurer, the defendant.

The agreement is not rendered invalid by any uncertainty in the duration of the business or indefiniteness in the minor details of the adventure.

Anderson v. Blair, 202 Ala. 209, 80 S. 31.

In the absence of an express agreement between the parties to a joint adventure as to the proportions in which they are to share in the profits thereof, the law presumes that they intended that each should share equally with the others, notwithstanding an inequality in the amounts contributed by them to the capital employed in the venture, or *in the amount of services performed by them, respectively*. But this presumption is not conclusive, and, if the conduct and course of dealings between the parties indicate a different intention, that intention controls. (Italics ours.)

33 C. J. p. 861.

And see 15 R. C. L., p. 502: * * *

So there must be an equality of profits although one of the joint adventurers by his unaided efforts and perseverance brings the enterprise to a successful termination, *especially when he voluntarily solicits a co-adventurer's assistance and enters into an arrangement with him, unconditioned save as to the interests of the parties*. (Italics ours.)

It is submitted that the instant case is exactly in line with this doctrine. Although complainant has actually proved his agreement with defendant as to the equal division of the commission resulting from the negotiation of the lease, he would still be entitled to that percentage of

the commission even though the agreement between the parties was silent as to that fact.

Jones v. Davis, 48 N. J. E. 493, 21 Atl. 1035;

Howarth v. Teunon, 97 N. J. E. 364, 127 Atl. 338;

Zeck v. Bell, 94 Wash. 344, 162 P. 363;

Howarth v. Teunon, *supra*, presents a situation precisely analogous to the instant case, both as to the nature of the controversy between the parties and the disposition of the issues by the Court of Chancery. In that case the complainant made a contract of sale of real estate with certain vendors and paid down \$1,000, \$500 of which he furnished, and \$500 of which was furnished by the defendant. The sale was not consummated. Later another contract was made between the said vendors and the defendant, who took a deed. Complainant offered to join and pay half in the completion of this purchase, but defendant refused. The opinion of Vice-Chancellor Buchanan is quoted as follows (p. 339—127 Atl.)

“Complainant says that the first contract of sale was made pursuant to an oral agreement between himself and defendant that they two should purchase the property as a joint adventure; that the failure to consummate the contract was due to the fault of defendant, who postponed carrying out the requirements of the contract, urging that they find a purchaser before completing the sale. Defendant denies this; says the \$500 he put up was by way of loan to complainant, and that complainant neglected or refused to perform the contract.

Complainant says that in May, 1922, defendant called him up and said he could buy the property for \$17,000 and was going to do it and carry out the original proposition, to which he, complainant, assented. Defendant admits the conversation, but says

he intended to buy the property to 'protect' himself, and to 'protect' complainant.

The determination of the issue rests in large part upon the conflicting testimony of the two parties. In the latter part of defendant's cross examination he seriously impeached his credibility, both by the things he said and his manner in saying them. One thing I may mention in this connection is his deliberate and positive statement that he did not tell complainant in May, 1922, that he was going to buy the property in complainant's name, and his later statement that he might have told this to complainant. There were other features of his testimony that need not be recited in detail; and there was also some other evidence tending toward corroboration of complainant's testimony.

The preponderance of the evidence is in favor of complainant, and I find that the property was bought as a joint adventure, imposing on defendant the obligation to account to complainant, and pay him one-half the net profit on the resale."

The decision of the Court of Chancery was affirmed in the Court of Errors and Appeals.

It will be observed that in *Howarth v. Teunon*, *supra*, the complainant alleged an oral agreement, and that the defendant denied it, and that the Court found there was a preponderance of evidence in favor of the complainant. These elements appear in the instant case with startling similarity. As hereinbefore demonstrated under Point 1, an analysis of the evidence adduced proves the creation of the contract of joint adventure between complainant and defendant, and the agreement of complainant and defendant to split the commission. Complainant's testimony is supported and corroborated by that of his witnesses and by the exhibits, and defendant's case rests entirely upon his denial

of complainant's allegations without any effort to explain the declarations in the communications he sent to complainant. Clearly the instant case comes within the rule laid down in the case of *Howarth v. Teunon*, *supra*.

POINT 3.

The Master's conclusions as to the allowance and non-allowance of disbursements by the defendant are correct according to law.

The Master disallowed the payment of \$4,720. by defendant to Gabriel Lavinson, and at pp. 182-183 reported very fully why he did so. Defendant in his brief (p. 26) charges that the Master did not comprehend the nature of the relationship between the joint adventurers, and refers to the definitions of joint adventurers given at the beginning of the brief, at pp. 7-8-9. All of these definitions are from decisions in jurisdictions other than New Jersey. In this State the leading case on the subject of joint adventures is:

Jackson v. Hooper, 76 N. J. E. 185, 74 Atl. 130.

There Vice-Chancellor Howell dealt very comprehensively with the subject matter. The following are excerpts of his opinion at pp. 134-135, which clearly reveals his idea, as well as that of Vice-Chancellor Pitney, of the distinction between a partnership and a joint adventure, it being held that in the latter relationship the right of a member to act as partner for the other is lacking.

"The complainant claims that he and Horace E. Hooper were partners. If they occupied toward each other the legal relation of partners, certain rights, duties, and liabilities flow therefrom which will need to

be considered. It is not always easy to define a 'partnership' or to state in general terms what actual rights, duties, and liabilities are included in the term. There must, of course, be a business to be carried on for profit. There must likewise be some sort of community of interest and a sharing of profits and losses. But all these requirements may exist, and yet there may be no partnership. It was held in *Cox v. Hickman* (1860) 8 H. L. Cas. 268, in the opinions of Lord Cranworth and Lord Wensdale, that the relations between so-called partners were best ascertained by inquiring whether their agreement was of such a nature as that one was agent for the other or the others. This requirement was adopted by our Court of Errors and Appeals in *Wild v. Davenport* (1886) 48 N. J. Law 129, 7 Atl. 295, 57 Am. Rep. 552."

Continuing at p. 135 Vice-Chancellor Howell said:

"I take it therefore to be established law in this state that there can be no 'partnership, within the proper meaning of that term, unless the agreement between the parties contemplates the sort of agency which is contemplated by the rule announced in *Cox v. Hickman*. This peculiar sort of agency is thus described by Sir George Jessel in *Pooley v. Driver* (1876) 5 C. D. 458, 46 L. J. Ch. 466; It is the one person acting on behalf of the firm; he does not act as agent in the ordinary sense of the word for the others so as to bind the others; he acts on behalf of the firm of which they are members, and as he binds the firm and acts on the part of the firm he is properly treated as the agent of the firm.'"

* * * "The application of this rule to the facts in this case leaves my mind in some doubt as to whether the agreement set out in the bill itself amounts to a partnership agreement, or whether the long course of dealings between the complainant and

Horace E. Hooper would justify the inference that they considered that some sort of a partnership existed between them. *The feature which is inconspicuous is the fact of agency*, which is put forward so prominently in the cases above cited. So far as I am able to observe there was never any transaction of real importance carried on in relation to the joint business which was not discussed and passed upon by the two principal parties in person. I find no transaction of any consequence that was carried through by either Mr. Jackson or Mr. Hooper alone.

This rather leads me to the view that the series of transactions set out in the bill were not strict partnership affairs but belonged to that class of transactions which are known by the name of 'joint adventures.' (Italics ours.)

In conclusion Vice-Chancellor Howell stated:

"In *Warwick v. Stockton*, 55 N. J. Eq. 61, 36 Atl. 488, Vice-Chancellor Pitney dealt squarely with the question. There an inventor sold to a manufacturer the exclusive right to manufacture and sell certain inventions; the manufacturer to furnish all the capital for the enterprise and to pay the inventor half the profits and a salary for his services. The Vice-Chancellor says by way of distinguishing the case from *Wild v. Davenport*, *supra*: 'There is no provision, expressed or implied, that the complainant (the inventor) should have the usual power of a partner as agent of the firm to bind the partnership and to take part in the details of the management of the business, * * *'"

And see *Braddock v. Hinchman*, 78 N. J. E. 270, 79 Atl. 419.

Allen Bros v. Raleigh Savings Bank & Trust Co., 105 S. E. 401.

An examination of the Master's report (pp. 182-183) which is based on the testimony adduced before him, bears out his conclusions. Fischer in his direct examination before the Master (p. 146, ll. 25-40) and (p. 147, ll. 1-15) said:

“Q You were associated with Mr. Martin in this transaction? A Yes.

Q Did he speak to you about an agreement to pay Gabriel Lavinson some money?

A Yes, sir.

Q What did you say to him about it? A I strongly objected.

Q How did you object, what did you say to him? A I said, ‘This deal cannot go through this way.’

Q Where did he speak to you about it? A In your office.

Q Who else besides yourself and Mr. Martin and myself were present? A One young lady, your stenographer.

Q How did you find out that the payment of \$4,720. had been made to Mr. Lavinson? A After the deal was consummated.

Q Did you know anything about it before that? A No.

Q Did Martin tell you? A No.

Q Did you ever discuss the payment after? A Not that I recall. I had knowledge of it but not through him.

Q Did you ever at any time after that meeting at my office approve of this agreement with Mr. Gabriel Lavinson? A No, sir.

Q Was that done without your approval? A Yes.”

And Martin in his direct examination before the Master at p. 126, ll. 10-16, testified

“Q You testified that you dealt with Gabriel Lavinson as a broker? A Yes, sir.

Q Did you not deal directly with Simon Lavinson, the owner? A Yes, sir.

Q When you dealt with Gabriel Lavinson, did you inform Mr. Fischer that you were doing so? A No, sir."

See *Allen Bros v. Raleigh Savings Bank & Trust Co.*, 105 S. E. 401.

In view of the distinction between a partnership and a joint adventure as recognized by the courts to the effect that co-adventurers have not the right to bind each other as agents, by what right can it be said that Martin could bind Fischer to accept Gabriel Lavinson as a co-worker to effect the lease between the owners of the Trenton property and the Childs Company?

The payment to Gabriel Lavinson is not satisfactorily explained. He was not produced to testify; the check for \$4,720. was not given to him by Martin. It went to Simon Lavinson, his son. In his deposition before the Master, upon direct examination, Simon Lavinson at p. 159 testified (l. 40)

"Q What is your father's name? A Gabriel Lavinson."

And at p. 160 (ll. 1-26):

"Q Was Gabriel Lavinson interested in this transaction in any way? A He was.

Q What was his position in the transaction? A He was to receive one per cent of the commission.

Q Was he a co-broker with Mr. Martin? A I don't know whether you can call it that. Without him the deal couldn't have been made.

Q What do you mean? You insisted on that arrangement? A I did for the amount of work he put in.

Q You insisted that he be paid one per cent? Do you know whether or not he was paid one per cent? A He was.

Q Were you present when the matter was closed? A Yes.

Q Was payment given to your father?

A It was given to me and in turn given to my father.

Q You in turn gave it to your father?

A Yes.

Q In what amount? A \$4,720."

On cross examination at p. 167, ll. 19-40, and at p. 168, ll. 1-9 Lavinson testified as follows:

"Q Is your father a real estate broker?

A Yes, sir.

Q Licensed? A Yes, sir.

Q He represented you in the transaction? A He was advising me. I was taking a lot of his time at all times. It was a big proposition and I didn't want to take the entire burden on my shoulders. I said 'Jack before going any further I want my father to get a portion of this commission or I won't make the deal.'

Q He was advising you? A Yes, sir.

Q Representing your interests? A Yes.

Q Mr. Martin was representing the Childs interest? A Yes.

Q In other words, your father was acting in an opposite position? A The is true. There were a lot of things that helped the deal or the deal wouldn't have been consummated. I found that he was paying a commission to Ellsworth Childs. After a lot of talk we agreed to pay three per cent. The New Jersey rate was two per cent. That one per cent didn't cost him anything. I know in Trenton it is two per cent.

Q You gave him the extra one per cent so that your father would have it? A Yes, we had an agreement to that effect."

In his deposition before the Master, Fischer on cross examination (p. 150, ll. 30-40) and (p. 151, ll. 1-10) testified:

"Q Was there discussed at that time an agreement between Martin and Gabriel Lavinson? A Yes.

Q Mr. Smith drew the agreement? A To the best of my knowledge. I didn't see it actually drawn.

Q You knew he was drawing the agreement? A Over my protest.

Q Did you tell Mr. Smith that his services were no longer required? A No.

Q You acquiesced in his agreement? A I said 'No, I will not do it.'

Q You stood by then and registered your objection and did nothing else? A I registered my objection and left. I didn't know anything about it. It was all done so smoothly."

It is extremely incredible that the owners of the Trenton property would have hazarded the failure to consummate the lease involving a total rental of \$472,000. with a resulting substantial profit to them merely to pry out of the hands of the joint adventurers the sum of \$4,720. It is reasonable to suppose that if Martin had good and sufficient reason for paying this money to Gabriel Lavinson that Fischer would have as readily assented to it as he did in the case of the payment to Childs. Complainant contends that the payment to Lavinson was made to discharge other obligations which Martin owed to Simon Lavinson, and that, therefore, the Master was correct in refusing to allow credit to Martin for the payment to Lavinson. Although Martin denies any other transaction, he specifically committed himself in this regard in Exhibit C. 9 (p. 108) where the following paragraph appears:

"The reason why I did not want you to say anything about the deal is that Lavinson, his lawyer and maybe Bradley and myself will buy the adjoining property. We have an option to buy at \$150,000. On this deal I am taking it very, very slowly. Although the C. Co. in that block will certainly improve all the property."

To countenance such disbursement as defendant claims credit for in this instance, would be

in effect to allow Martin to introduce a new joint adventurer into the contract. This he could not do, because he had no right to bind his joint adventurer by such an act of agency.

The Master should be sustained in his disallowance of credit to Martin for the payment of \$2,000. to A. S. Nugent for these reasons: There were private money transactions between Martin and Nugent as testified to by Nugent (p. 145). It would seem that any payments by Martin to Nugent, one to the other, were in settlement of their respective debts to each other. There is considerable doubt as to how much money Nugent actually received. Martin on direct examination (p. 137) testified:

“Q Where are the notes and the check you gave Nugent? A I gave him cash.

Q How much did you give him all told?
A \$2,000.”

And Nugent on cross examination at p. 139 testified:

“Q How much did you receive? A \$2,000.

Q How was that paid? A By the cancellation of a note which I owed Martin. \$750. it was for. He cancelled that note. He gave me the cash \$250. and a note for sixty days for \$250. and I still hold the note for \$750.

Q Is that amount unpaid? A I still hold the note.”

And on cross examination (p. 142, ll. 28-41).

“Q What did this note for \$750. represent that he took? A Personal note.

Q Money that he loaned you? A Yes.

Q Was that money secured by this note?

A Yes.

Q He paid you \$250? A Yes.

Q How? A In cash.

Q When was that? A That was sometime in November, 1927.

Q Then how did he pay you after that?
 A At that time he also gave me two further notes, one for \$250. for sixty days which was later paid."

At p. 143

"Q How was that paid? A That was paid in cash, and a note for \$750. which I still have.

Q When was that due? A It is a demand note."

None of these notes was put in evidence. And it is significant that other payments alleged to have been made to Nugent were in cash. In fact, of all of the numerous payments for which Martin claims credit he has been able to give convincing proof of but two, that to Ellsworth Childs which is undisputed, and that to Gabriel Lavinson which has been challenged.

Nugent's testimony utterly discredited him as having performed any service to the joint adventure sufficient in any way to justify the payment to him as stated. In a letter dated March 21, 1927 (Exhibit C. 9, p. 107) written by Martin to Fischer this paragraph appears.

"In regards to the Ellsworth deal, everything points to a closing before long. No other one had anything to do with the deal outside of yourself. On two or three occasions I received counsel from a fellow by the name of Nugent here in town who has had considerable experience in the business."

The Master found that the services supposed to have been rendered by Nugent did not warrant any compensation. Even if they did, Martin should have consulted his co-adventurer, Fischer, before making the payment.

Allen Bros v. Raleigh Savings Bank & Trust Co., 105 S. E. 401;

Jackson v. Hooper, 76 N. J. Eq. 185, 74 Atl. 130.

And such expenditure must be reasonable.
33 C. J. 864.

In his deposition before the Master Martin at p. 131, ll. 12-15 testified:

“Q When you made the payment of \$2,000. to Mr. Nugent, did you ever tell Mr. Fischer how much you intended to pay him, Mr. Nugent? A No.”

Martin also testified at p. 137, ll. 19-28:

“Q Did you consult Fischer when you paid him this \$2,000? A No, sir. We weren't on speaking terms.

Q You didn't tell him anything about it? A No.

Q Didn't write to him? A No, sir.

Q When was the first time he got any inkling or notice that you were paying Nugent \$2,000? A My testimony to the Vice-Chancellor. I mentioned it in my affidavit.”

It is certain that Fischer never had the opportunity to object to the payment to Nugent as he did in the case of the payment to Lavinson.

Complainant concedes that defendant would be entitled to credit for reasonable disbursements in regard to prosecuting the adventure provided he can sustain his claim by proper legal proof. But Martin's testimony in this respect at p. 123, ll. 19, 20, 30; pp. 124-125; p. 129, ll. 29-40; p. 130, ll. 20-35; pp. 135-136, is so contradictory and evasive, it is impossible to determine what his expenses were.

Wisconsin Sulphite Fibre Co. v. D. K. Jeffris Lumber Co., 132 Wis. 1, 111 N. W. 237.

The Master best epitomizes it in his report (pp. 186-187) and properly disallowed the disbursements for which credit is claimed, namely, expenses on trips made to Trenton \$750; use of William street property, \$100; office hire, \$300; payment to stenographer, \$100; telephone calls, \$114.35.

As to the contention of defendant's counsel at the hearing before the Master that defendant is entitled to reasonable value of his services, the Master found correctly. Unless the contract so provides no member of a joint adventure is entitled to any compensation for services rendered by him toward the common enterprise.

Mass v. Lonstrof, 194 Fed. 577, 114 C. C. A. 419 (Sixth Circuit);

Petrie v. Torrent, 100 Mich. 117, 58 N. W. 690, 59 N. W. 941;

Hopkins Mfg. Co. v. Ruggles, 51 Mich. 474, 16 N. W. 862;

Stevenson v. Maxwell, (N. Y.) 2 Sandf. Ch. 273;

Burke v. Wright, 230 N. Y. S. 596, 132 Misc. Rep. 758;

Crutchfield v. Robinson, 208 Ky. 178, 270 S. W. 778.

POINT 4.

Co-adventurers must act in good faith with each other.

In *Jackson v. Hooper*, 76 N. J. Eq. 185, 75 Atl. 130, at p. 136, Howell, V.-C., quoted from the opinion in the case of *Getty v. Devlin*, 54 N. Y. 403:

“In all such cases, the subscribers enter into relations of trust and confidence with each other. They engage in a common en-

terprise for their mutual benefit, and have the right to demand and expect from their associates good faith in all that relates to their common interests.”

See

15 R. C. L., p. 501, par. 3;

Reid v. Shaffer, 249 Fed. 553, citing *Jackson v. Hooper*, *supra*.

Nelson v. Lindsley, 162 Northwestern, 3. (Supreme Court of Iowa);

Selwyn & Co. v. Waller, 142 N. Y. Sup. 1051.

The testimony of Martn (p. 121) shows that in October, 1927, after the contract of joint adventure between complainant and defendant had been in existence for more than a year, that defendant entered into a broker's agreement with Gabriel Lavinson. Fischer at p. 146 “strongly objected” and said, “This deal cannot go through that way.” Notwithstanding Fischer's objection, and without authority to do so, and also without notice to Fischer, Martin paid to Gabriel Lavinson \$4,720. a very substantial part of the commission he had received. Now, if Martin had no authority as agent to represent Fischer in this respect, certainly there was no good faith on Martin's part in proceeding as he did to make this disbursement.

Carr v. Sterling Realty Corp., 94 N. J. Eq., 128, 119 Atl. 184.

And if Martin was not content with Fischer's objections to his proposed arrangement with Gabriel Lavinson because they were unreasonable and threatened the success of the enterprise, he could have terminated the adventure with Fischer.

33 C. J. 850;

Marston v. Gould, 69 N. Y. 220;

Brown v. Leach, 178 N. Y. S. 319.

Martin's conduct with respect to the payment to Nugent was a similar breach of good faith in his relations with Fischer.

Comments on Defendant's brief.

Conjecture by defendant's counsel at p. 16 of its brief as follows:

"Fischer most likely expected reimbursement for his work, and Martin intended to pay him and did offer to pay for it."

and the conclusion stated at the bottom of p. 16,

"Both statements show the situation to be that of an individual asking his friend to aid him in negotiating a lease. The facts do not show that a joint adventure was ever contemplated, nor that there was an oral agreement to that effect between the parties."

are absolutely refuted by establishment of the four points mentioned in this brief.

If this was not a joint adventure, then the proposition that complainant's remedy was in the courts of law in a suit for the reasonable value of his services (defendant's brief, p. 17) is well stated. But complainant has offered convincing corroboration of the creation of the agreement to divide the commissions equally. Therefore, the Court of Chancery had jurisdiction to decree an accounting. *Rickey v. Moon Clay & Kaolin Co.*, 89 N. J. Eq. 602; 108 Atl. 2.

Ebell v. De Stephano, 97 N. J. Eq. 29; 127 Atl. 258;

Howarth v. Teunon, 97 N. J. Eq. 364; 127 Atl. 338;

Scudder v. Budd, 52 N. J. Eq. 320; 26 Atl. 904,

and the bill in the instant case is well pleaded.

In its brief (p. 21) counsel for the defendant cites the case of *Citron-Byer Co. v. H. E. Salzburg Co.* (1928 Errors & Appeals), 6 Adv. Rep. 836; 141 Atl. 782, as authority for the reversal of the Court of Chancery in the instant case. In the *Citron-Byer Co. v. H. E. Salzburg Co.* case, complainant alleged that the defendant made a certain purchase in behalf of itself, complainant and a third party under an arrangement between them that the purchase should be made and held in three equal parts as a joint venture, and that the profits and losses arising therefrom should be borne in equal one-third parts. The Court of Chancery dismissed the bill and the Court of Errors and Appeals affirmed that decree. In that case defendant denied the alleged agreement, and declared that the transaction was an individual enterprise. Not so in the case at bar. Here complainant merely alleged an agreement with defendant to negotiate a lease and divide the commission. Defendant does not deny that he was associated with complainant in the enterprise, but admits it. The Court below held that complainant had proved the allegation in his bill.

In *Walters v. Mirken*, 128 Atl. 621 (defendant's brief, p. 23) Buchanan, V.-C., dismissed the bill because he was unable to find satisfactory proof of the actual existence of a joint adventure. In his opinion the Vice-Chancellor remarked that Mr. Walters' conception of the relation between himself and Mirken was far from being clearly understood even by himself. In the case at bar there was never any doubt in the mind of Fischer of his relation to Martin and of his rights and duties thereunder. And Martin knew his relation to Fischer and understood it the same as Fischer did. He was simply trying to evade his obligation.

In defendant's brief (p. 25) counsel quotes from the Master's report:

"In joint adventures the one element that is noticeably lacking is the right of one joint adventurer to act as the agent of the other or others."

And then says:

"The sentences italicized are clearly not the law of the State of New Jersey."

Jackson v. Hooper, 76 N. J. E. 185; 74 Atl. 130 and cases therein collected, are absolute authority for the proposition cited in the Master's report.

In *Jackson v. Hooper*, a bill was filed to dissolve a partnership. The litigation involved the publishers of the Encyclopaedia Britannica. At page 135, after pointing out the doctrine that in partnerships the partner is the agent for the other partners, the Court said:

"The feature which is inconspicuous is the fact of agency, which is put forward so prominently in the cases above cited. So far as I am able to observe there was never any transaction of real importance carried on in relation to the joint business which was not discussed and passed upon by the two principal parties in question."

Continuing, the Court said:

"This rather leads me to the view that the series of transactions set out in the bill were not strict partnership affairs but belonged to that class of transactions which are known by the name of 'joint adventures.'"

The Court went on to say,

"There is a class of cases which relate to persons who embark in such undertakings but who do not enter upon the prosecution of their business as partners strictly."

Citing the case of *Ross v. Stevans*, 11 Atl. 114; 13 Atl. 225. See *Warwick v. Stockton* (1896), 55 N. J. E. 61; 36 Atl. 488.

And complainant takes issue with the statement in defendant's brief (p. 26) that members can bind the enterprise while acting within the scope of the relationship and for the purpose of the joint venture in the same manner as partners can bind a partnership. This is clearly contrary to the rule stated in *Hooper v. Jackson*, *supra*.

On page 27 of defendant's brief the following statement appears:

"In view of the above, what basis is there for the disallowance of this payment to Lavinson? The expenditure was made in furtherance of the negotiation of the lease and was a necessary payment. It was made in good faith and the obligation was incurred during Fischer's extended stay in Miami, and although Fischer may have told Martin that Lavinson was not entitled to the money, it was an existing obligation at the time Fischer may have made any of his alleged objections."

Complainant has already argued that Martin committed a breach of good faith with Fischer when he made this payment to Lavinson. He cannot expect nor compel Fischer to contribute any portion of a payment which he voluntarily undertook to make to Lavinson.

33 C. J. 864;

Zeck v. Bell, 162 Pac. 363 (Sup. Ct. of Wash.);

Braddock v. Hinchman, 78 N. J. E. 270, 79 Atl. 419 (Court of Errors and Appeals).

In *Braddock v. Hinchman*, *supra*, Justice Swayze held (79 Atl. 420):

“It cannot be said that the agreement is sufficient to create a partnership between Braddock and Hinchman, since it is evident that neither of them intended to constitute the other the general agent for the management of the business, and neither intended to assume the liability for obligations incurred by the other. * * *”

CONCLUSION.

The total commission was \$14,160. Expenses allowed were:

Attorney's fee	\$ 90.00	
Trenton plat	15.00	
Blue Print25	
		\$105.25
Expenses Disallowed:		
Automobile hire	\$ 15.00	
Hotel expenses	750.00	
Telephone	114.35	
Office hire	300.00	
Stenographer	100.00	
Use of William street property....	100.00	
		\$1,379.35
		\$1,484.60
Balance which Martin claims was in his possession immediately after commission was collected....	12,675.40	
From this balance there may rightfully be deducted the payment to Ellsworth Childs.....	4,250.00	
		\$8,425.40
Which would leave		
Martin claims credit for payment to Gabriel Lavinson	\$4,720.00	
Payment to Nugent	2,000.00	
		\$6,720.00
Balance		\$1,705.40

It must be remembered that defendant offered Fischer \$750 as compensation for his services. This would leave less than \$1,000. to defendant.

Defendant would have this court believe that he devoted his whole time and attention exclusively to the negotiation of the lease in question, and that he was willing to retain less than \$1,000. as the net product of his intensive and sustained efforts over a period of at least a year and five months.

It is respectfully submitted that the decree below should be affirmed with costs, and that the respondent should be allowed in this court a reasonable counsel fee as well as the costs of printing the brief.

CHARLES S. SMITH,
Of Counsel with Respondent.

